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Fresno, CA 93711
www.fcera.org
(559) 457-0681 p.
(559) 457-0318 f.

BOARD AGENDA LETTER

DATE: June 20, 2018

TO: Board of Retirement

FROM: Donald C. Kendig, CPA
Retirement Administrator

SUBJECT: **Approval of the 2018-2019 Fiduciary Liability Insurance Program (FLIP) Renewal Proposal – APPROVE**

Recommended Action(s)

1. Receive and File the Fiduciary Liability Insurance Program (FLIP) 2018-19 renewal proposal, policy and endorsements; and
2. Authorize the Retirement Administrator to bind coverage and execute all applicable documents.

Fiscal and Financial Impacts

Total annual cost of insurance decreased \$2,555 from \$125,100 to \$122,545.

Discussion

Alliant is pleased to provide us with the enclosed Fiduciary Liability (FLIP) proposal effective 7/1/18-2019. The program was put out to market/bid (“marketed”) this year and Alliant successfully negotiated favorable terms with Hudson Insurance (Euclid) for renewal, replacing RLI. Hudson’s does not eliminate any key coverage that was provided by RLI, and in fact broadens the coverage even beyond where RLI was, so the renewal is now broader and enhanced in scope of coverage. They have quoted a premium of \$122,545 including waiver of recourse.

Also attached is a copy of the new FLIP policy form including endorsements. The attached Vanguard Elite endorsement is specifically for members of the Alliant FLIP program. Lastly the California Amendatory Endorsement is standard.

Binding Requirements:

- Signed/dated request to bind document
- Premium due 15 days from effective date (July 15, 2018)

The Hudson Vanguard Policy can cover other items, such as Employment Practices, A Side DIC, and other excess coverages; however, staff believes that Employment Practices are covered by the County and excess coverages are not needed at this time.

Staff recommends receiving and filing the FLIP 2018-19 renewal proposal, policy and endorsements and authorizing the Retirement Administrator to bind coverage and execute all applicable documents.

Attachment(s)

1. Fresno County Employees' Retirement Association – 2018-19 FLIP Proposal
2. Sample 45386568_Euclid Vanguard Package Policy (Pages 1 through 18 with amounts to be added in item 4)
3. 45386569_ESF-31220099 Vanguard Elite Enhancement Endorsements for FLIP
4. 45386571_ESF-31230005 California Amendatory Endorsement



**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
2018-2019 INSURANCE PROPOSAL**

INSURANCE COMPANY	<u>PRESENT</u> RLI Insurance Company	<u>PROPOSED</u> Hudson Insurance Company
A.M. BEST'S GUIDE RATING*	A+ (Superior), Financial Size Category: XI (\$750 Million to \$1 Billion), <i>as of September 23, 2016</i>	A (Excellent), Financial Size Category: XV (\$2 Billion or greater), <i>as of February 28, 2018</i>
STANDARD & POOR'S RATING*	A+ (Strong), <i>pulled on May 3, 2017</i>	Not rated <i>as of June 1, 2018</i>
CALIFORNIA STATUS	Admitted	Admitted
INSURED PLANS	Fresno County Employees' Retirement Association and any benefit plan sponsored and administered solely thereby	Fresno County Employees' Retirement Association and any benefit plan sponsored and administered solely thereby
COVERAGE TERM	July 1, 2017 to July 1, 2018	July 1, 2018 to July 1, 2019
PRIOR OR PENDING DATE	April 30, 2004	April 30, 2004
COVERAGE	Governmental Plans Fiduciary Liability Claims-Made Form Form Number: GEF 100 (4/11) / GEF 101 (4/11)	The Euclid Vanguard Package Policy Claims-Made Form Form Number: ESVP-31210000 (03/2018)
LIMITS	\$10,000,000 Aggregate Limit of Liability (Including Defense Costs) \$10,000,000 Settlor Sublimit \$ 1,500,000 HIPAA Sublimit \$ 1,500,000 HITECH Sublimit \$ 500,000 Voluntary Compliance Program (VCP) Compliance Fees Sublimit \$ 250,000 Tax Penalty Sublimit \$ 250,000 PPACA Sublimit \$ 250,000 Section 502(c) Pension Protection Act \$ 100,000 Benefit Overpayment Sublimit	\$10,000,000 Aggregate Limit of Liability (including Defense Costs) \$10,000,000 Settlor Sublimit \$ 1,500,000 HIPAA and HITECH Sublimit \$ 500,000 Voluntary Compliance Program (VCP) Compliance Fees Sublimit \$ 250,000 Tax Penalty Sublimit \$ 250,000 PPACA Sublimit \$ 250,000 Section 502(c) Pension Protection Act \$ 100,000 Benefit Overpayment Sublimit \$ 2,000,000 Trustee Claim Expenses Sublimit \$ 1,000,000 Death Master File Penalties (Bipartisan Budget Act of 2013) Sublimit

*See last page for additional information

Alliant Insurance Services, Inc.
1301 Dove Street, Suite 200, Newport Beach CA 92660-2511 ♦ 949-756-0271
Lic #0C36861 ♦ www.alliant.com

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
2018-2019 INSURANCE PROPOSAL**

INSURANCE COMPANY:		<u>PRESENT</u>	<u>PROPOSED</u>
		RLI Insurance Company	Hudson Insurance Company
LIMITS Continued		\$ 250,000	Coverage for Claims of Equitable Relief and Surcharges Sublimit
		\$ 250,000	Reinstatement of Sublimit for Voluntary Compliance Program Expenditures
		\$ 100,000	Miscellaneous / Other Penalties Sublimit
RETENTION	\$ 100,000	Indemnifiable	\$ 100,000 Indemnifiable
	\$ 0	Non-Indemnifiable	\$ 0 Non-Indemnifiable
PROGRAM HIGHLIGHTS	<ul style="list-style-type: none"> • Definition of Loss to include Punitive, Exemplary, and Multiplied Damages (where insurable) with Most Favorable Venue wording • Definition of Insured Persons to include Employees of any Insured Plan • Non Cancellable by Insurer other than for Non Payment of Premium • Wrongful Act definition includes administrative duties; counseling employees, participants, and beneficiaries; handling of records; failure to comply with privacy provisions of HIPAA • Notice/Claim Reporting Provision – notice required after General Council, Risk Manager or Trustee first learns of claim • No Libel or Slander exclusion • Defense cost coverage for performance of managed care services with respect to selection of medical or health service providers • Final Adjudication wording for conduct exclusions. • Employee Benefit Law defined to acknowledge Public Entity Risks not subject to ERISA • Modified Consent to Settle Clause to 80%/20% • Severability for all exclusions 	<ul style="list-style-type: none"> • Definition of Loss to include Punitive, Exemplary, and Multiplied Damages (where insurable) • Definition of Insured Persons to include Employees of any Insured Plan • Non Cancellable by Insurer other than for Non Payment of Premium • Wrongful Act definition includes administrative duties; counseling employees, participants, and beneficiaries; handling of records; failure to comply with privacy provisions of HIPAA • Notice/Claim Reporting Provision – notice required after General Council, Risk Manager or Trustee first learns of claim • Defense cost coverage for performance of managed care services with respect to selection of medical or health service provider • Final Adjudication wording for conduct exclusions. • Employee Benefit Law defined to acknowledge Public Entity Risks not subject to ERISA • No Hammer Clause • Severability of Exclusions 	

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**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
2018-2019 INSURANCE PROPOSAL**

INSURANCE COMPANY:	<u>PRESENT</u> RLI Insurance Company	<u>PROPOSED</u> Hudson Insurance Company
PROGRAM HIGHLIGHTS Continued	<ul style="list-style-type: none"> • Spousal Extension amended to include Domestic Partner • Priority of Payments provision • Severability of Application • Broadened Definition of Administration • Extended Reporting Period (Discovery Period) available for one to six years • Automatic Coverage for COBRA Violations 	<ul style="list-style-type: none"> • Spousal Extension amended to include Domestic Partner • Priority of Payments provision • Severability of Application • Broadened Definition of Administration • Extended Reporting Period (Discovery Period) available for one to six years • Automatic Coverage for COBRA Violations • Interview Coverage by Enforcement (Govt) Unit • Retainer Fees & Expenses of Independent Fiduciary
ENDORSEMENTS & EXCLUSIONS (Including but not limited to)	<ul style="list-style-type: none"> • Failure to collect Contributions Exclusion • Return of Contributions Exclusion • Bodily Injury, Mental Anguish, Emotional Distress, Sickness, Disease or Death and Property Damage Exclusion • Illegal Personal Profit Exclusion • Discrimination Except for Employee Benefit Law Exclusion • Known Prior Acts Exclusion • Delete Pollution Exclusion • Workers Compensation, Unemployment Insurance, Social Security or Disability Benefits Laws Exclusion • Deliberate Fraudulent or Dishonest Acts Exclusion • Amend Definition of Administration to include determining and calculating benefits • AmWINS Amendatory Endorsement (08/17) • State Of California - Notice To Policyholder • Notice to Policyholders Regarding US Treasury Department- Office of Foreign Assets Control (OFAC) 	<ul style="list-style-type: none"> • Failure to collect Contributions Exclusion • Return of Contributions Exclusion • Bodily Injury, Mental Anguish, Emotional Distress, Sickness, Disease or Death and Property Damage Exclusion • Illegal Personal Profit Exclusion • Discrimination Except for Employee Benefit Law Exclusion • Known Prior Acts Exclusion • Workers Compensation, Unemployment Insurance, Social Security or Disability Benefits Laws Exclusion • Deliberate Fraudulent or Dishonest Acts Exclusion • Definition of Administration to include determining and calculating benefits • AmWINS Vanguard Elite Endorsement for Governmental Plans (03/2017) • California Amendatory Endorsement
PREMIUM	\$125,100 Annual Premium (includes waiver of recourse fee)	\$122,545 Annual Premium (includes waiver of recourse fee)

**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
 FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
 2018-2019 INSURANCE PROPOSAL**

INSURANCE COMPANY:	<u>PRESENT</u> RLI Insurance Company	<u>PROPOSED</u> Hudson Insurance Company
EXTENDED REPORTING PERIOD	<ul style="list-style-type: none"> • 12 months for 100% of the annual premium • 24 months for 175% of the annual premium • 36 months for 200% of the annual premium • 72 months upon request and carrier approval 	<ul style="list-style-type: none"> • 12 months for 100% of the annual premium • 24 months for 175% of the annual premium • 36 months for 200% of the annual premium • 72 months upon request and carrier approval
QUOTE VALID UNTIL	No longer applicable	July 1, 2018
BINDING CONDITIONS	No longer applicable	<ul style="list-style-type: none"> • Written request to bind coverage • Payment due within 15 days of effective date



**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
2018-2019 INSURANCE PROPOSAL**

DATE PREPARED: June 1, 2018

BROKER: **ALLIANT INSURANCE SERVICES, INC.**

Shawn Kraatz, First Vice President
Mariana Salyer, CSAC EIA Program Specialist- Lead

ALLIANT DISCLOSURE

This proposal of insurance is provided as a matter of convenience and information only. All information included in this proposal, including but not limited to personal and real property values, locations, operations, products, data, automobile schedules, financial data and loss experience, is based on facts and representations supplied to Alliant Insurance Services, Inc. by you. This proposal does not reflect any independent study or investigation by Alliant Insurance Services, Inc. or its agents and employees.

Please be advised that this proposal is also expressly conditioned on there being no material change in the risk between the date of this proposal and the inception date of the proposed policy (including the occurrence of any claim or notice of circumstances that may give rise to a claim under any policy which the policy being proposed is a renewal or replacement). In the event of such change of risk, the insurer may, at its sole discretion, modify, or withdraw this proposal whether or not this offer has already been accepted.

This proposal is not confirmation of insurance and does not add to, extend, amend, change, or alter any coverage in any actual policy of insurance you may have. All existing policy terms, conditions, exclusions, and limitations apply. For specific information regarding your insurance coverage, please refer to the policy itself. Alliant Insurance Services, Inc. will not be liable for any claims arising from or related to information included in or omitted from this proposal of insurance

Alliant embraces a policy of transparency with respect to its compensation from insurance transactions. Details on our compensation policy, including the types of income that Alliant may earn on a placement, are available on our website at www.alliant.com. For a copy of our policy or for any inquiries regarding compensation issues pertaining to your account you may also contact us at: Alliant Insurance Services, Inc., Attention: General Counsel, 701 B Street, 6th Floor, San Diego, CA 92101.

Analyzing insurers' over-all performance and financial strength is a task that requires specialized skills and in-depth technical understanding of all aspects of insurance company finances and operations. Insurance brokerages such as Alliant Insurance typically rely upon rating agencies for this type of market analysis. Both A.M. Best and Standard and Poor's have been industry leaders in this area for many decades, utilizing a combination of quantitative and qualitative analysis of the information available in formulating their ratings.

A.M. Best has an extensive database of nearly 6,000 Life/Health, Property Casualty and International companies. You can visit them at www.ambest.com. For additional information regarding insurer financial strength ratings visit Standard and Poor's website at www.standardandpoors.com.

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**FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
FIDUCIARY LIABILITY INSURANCE PROGRAM (FLIP)
2018-2019 INSURANCE PROPOSAL**

Our goal is to procure insurance for you with underwriters possessing the financial strength to perform. Alliant does not, however, guarantee the solvency of any underwriters with which insurance or reinsurance is placed and maintains no responsibility for any loss or damage arising from the financial failure or insolvency of any insurer. We encourage you to review the publicly available information collected to enable you to make an informed decision to accept or reject a particular underwriter. To learn more about companies doing business in your state, visit the Department of Insurance website for that state.

THIS IS A CLAIMS MADE POLICY

This claims-made policy contains a requirement stating that this policy applies only to any claim first made against the Insured and reported to the insurer during the policy period or applicable extended reporting period. Claims must be submitted to the insurer during the policy period, or applicable extended reporting period, as required pursuant to the Claims/Loss Notification Clause within the policy in order for coverage to apply. Late reporting or failure to report pursuant to the policy's requirements could result in a disclaimer of coverage by the insurer.

CLAIMS REPORTING NOTICE

Your policy will come with specific claim reporting requirements. Please make sure you understand these obligations. Contact your Alliant Service Team with any questions.

NY REGULATION 194 DISCLOSURE

Alliant Insurance Services, Inc. is an insurance producer licensed by the State of New York. Insurance producers are authorized by their license to confer with insurance purchasers about the benefits, terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of the producer in any particular transaction typically involves one or more of these activities. Compensation will be paid to the producer, based on the insurance contract the producer sells. Depending on the insurer(s) and insurance contract(s) the purchaser selects, compensation will be paid by the insurer(s) selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract(s) and the insurer(s) the purchaser selects. In some cases, other factors such as the volume of business a producer provides to an insurer or the profitability of insurance contracts a producer provides to an insurer also may affect compensation. The insurance purchaser may obtain information about compensation expected to be received by the producer based in whole or in part on the sale of insurance to the purchaser, and (if applicable) compensation expected to be received based in whole or in part on any alternative quotes presented to the purchaser by the producer, by requesting such information from the producer.

FATCA DISCLOSURE

IMPORTANT NOTICE - The Foreign Account Tax Compliance Act (FATCA) requires the notification of certain financial accounts to the United States Internal Revenue Service. Alliant does not provide tax advice so please contact your tax consultant for your obligation regarding FATCA.

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SOLIDARITY PROTECTION GROUP

a voluntary membership organization operating pursuant to the Liability Risk Retention Act of 1986 and whose principal office is:
4323 Warren Street, NW, Washington, DC 20016-2437

**The Euclid Vanguard Package Insurance Policy
Fiduciary Liability, Employee Dishonesty, D&O and EPL for Employee
Benefit Plans**



NOTICE:

EXCEPT WITH RESPECT TO THE FIDUCIARY DISHONESTY COVERAGE PART, THIS IS A CLAIMS
MADE INSURANCE POLICY WITH DEFENSE EXPENSES INCLUDED WITHIN THE LIMIT OF
LIABILITY. **PLEASE CAREFULLY REVIEW THE ENTIRE POLICY.**

The Euclid Vanguard Package Policy Certificate

THIS IS A CLAIMS-MADE POLICY WITH CLAIM EXPENSES INCLUDED WITHIN THE LIMITS OF LIABILITY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

This Policy Certificate is issued under Master Policy Number SFM31210000
issued to Solidary Protection Group

Policy Number: SPP312#####
Renewal of: _____

Issued By: Hudson Insurance Company
100 William Street
New York, NY 10038

ITEM 1. Producer: _____
Address: _____

ITEM 2. Named Insured: _____
Insured Plan (or Plans): _____
Address: _____

ITEM 3. Policy Period:
Effective Date: xx/xx/xxxx (12:01 a.m. local time)
Expiration Date: xx/xx/xxxx (12:01 a.m. local time)

ITEM 4.

A. Limits of Liability and Retentions: (Other than Fiduciary Dishonesty Coverage Part)

Coverage Section	Separate Limit(s)	Shared Limit(s)	Retention
Fiduciary Liability Coverage	\$xx,xxx,xxx	\$xx,xxx,xxx	\$xx,xxx,xxx
Directors and Officers Liability Coverage	\$xx,xxx,xxx	\$xx,xxx,xxx	\$xx,xxx,xxx
Employment Practices Liability Coverage	\$xx,xxx,xxx	\$xx,xxx,xxx	\$xx,xxx,xxx

B. Aggregate Limit of Liability: Applicable: YES ___ NO ___ If Yes, Aggregate Limit is: \$X,XXX,XXX

The Aggregate Limit of Liability is the maximum Limit of Liability of the Insurer for all Loss for which coverage is provided under all Coverage Sections listed in Item 4.A. above. This Aggregate Limit of Liability does not apply to the Crime Coverage Section.

C. Limits of Liability and Deductibles for Fiduciary Dishonesty Coverage Section

Insuring Agreements	Limit(s) of Insurance	Retention Amount(s)
1. Employee Theft	\$xx,xxx,xxx	\$xx,xxx,xxx
2. Depositors Forgery or Alteration	\$xx,xxx,xxx	\$xx,xxx,xxx
3. Inside the Premises – Money, Securities and Other Property	\$xx,xxx,xxx	\$xx,xxx,xxx
4. Outside the Premises – Money, Securities and Other Property	\$xx,xxx,xxx	\$xx,xxx,xxx
5. Computer and Funds Transfer Fraud	\$xx,xxx,xxx	\$xx,xxx,xxx
6. Money Orders and Counterfeit Currency	\$xx,xxx,xxx	\$xx,xxx,xxx
7. Investigatory Expense Coverage	\$xx,xxx,xxx	\$xx,xxx,xxx

*Retentions shall apply for loss outside the scope of ERISA, pursuant to Department of Labor Regulation 2580.412-20

D. Fiduciary Dishonesty Coverage Part Aggregate Limit of Liability: \$X,XXX,XXX

This Aggregate Limit of Liability set forth above is the maximum Limit of Liability of the Insurer for any loss or losses for which coverage is provided under the Fiduciary Dishonesty Coverage Part.

F. Other Coverage Sublimits

Coverage Section	Sublimit
Settlor Coverage (Fiduciary)	\$xx,xxx,xxx
Trustee Claims Expense Coverage / Defense of Non-Fiduciary Claims (Fiduciary)	\$xx,xxx,xxx
Voluntary Compliance Program Expenditures	\$xx,xxx,xxx
ERISA 502(c) Civil Penalties (Fiduciary)	\$xx,xxx,xxx
HIPAA and HITECH Fines and Penalties (Fiduciary)	\$xx,xxx,xxx
PPACA Fines and Penalties (Fiduciary)	\$xx,xxx,xxx
Section 4975 Penalties (Fiduciary)	\$xx,xxx,xxx
Miscellaneous/ Other Penalties (Fiduciary)	\$xx,xxx,xxx
Benefit Overpayment (Fiduciary)	\$xx,xxx,xxx
Coverage for Claims of Equitable Relief and Surcharges (Fiduciary)	\$xx,xxx,xxx
Euclid Penalty Box (Fiduciary)	\$xx,xxx,xxx
Reinstatement of Sublimit for Voluntary Compliance Program Expenditures	\$xx,xxx,xxx
Death Master File Penalties (Bipartisan Budget Act of 2013)	\$xx,xxx,xxx

ITEM 6. Continuity Date xx/xx/xxxx
Pending or Prior Proceeding Date: xx/xx/xxxx

ITEM 7. Coverage Sections and Premium

This Policy provides coverage under a Coverage Part only if purchase by the **Insured** and indicated by an “X” below.

Liability Coverage Section	Premium
Fiduciary Liability Coverage	\$XXX,XXX + Waiver of Recourse
Fiduciary Dishonesty Coverage	\$XXX,XXX
Directors & Officers Coverage	\$XXX,XXX
Employment Practices Coverage	\$XXX,XXX
Taxes/Fees	\$XXX,XXX
Total Policy Premium	\$XXX,XXX

ITEM 8. Extended Reporting Period

1 Year 100%
 2 Years
 3 Years

ITEM 9. Contact Information for Notices Under this Policy

Claim-related notices:

professionalclaims@euclidsspecialty.com; or
 Euclid Specialty Managers
 ATTN: Claims Department
 234 Spring Lake Drive
 Itasca, Illinois 60143

All Other Notices:

underwriting@euclidsspecialty.com; or
 Euclid Specialty Managers
 ATTN: Underwriting Department
 380 Maple Avenue W, Suite 302
 Vienna, VA 22180

ITEM 10. Endorsements:

The following schedule lists all endorsements which form a part of the policy. It is only for reference and provides no coverage. The actual endorsement(s) should be reviewed to determine the effect on coverage:

<u>Endorsement Number</u>	<u>Endorsement Name</u>
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This Policy Certificate, together with Policy Form ESF-31210001 (03/2018), the endorsements indicated in ITEM 9 above, if any, and the completed and signed application(s) with any submitted attachments, complete the above-numbered policy.

Date: April 17, 2018

A handwritten signature in black ink that reads "Dan Aronowitz". The signature is written in a cursive style with a prominent loop at the end of the last name.

Authorized Representative

FIDUCIARY COVERAGE PART

In consideration of the payment of the premium and subject to the limits of liability and the Policy Certificate, conditions, limitations, provisions and other terms of this policy, Hudson Insurance Company (the “Insurer”) and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

- A. The Insurer will pay on behalf of the **Insureds** those **Damages** and **Claim Expenses** which the **Insureds** become legally obligated to pay as a result of any **Claim** first made against them during the policy period or, if applicable, the extended reporting period.
- B. The Insurer will pay on behalf of the **Insureds** those **Voluntary Compliance Program Expenditures** incurred by the **Insureds** as a result of their participation in any **Voluntary Compliance Program** if such participation commences during the policy period or, if applicable, the extended reporting period.

II. DEFINITIONS

The following terms, when set forth in this policy in bold-face type, will have the meanings set forth below:

- A. **Administration** means, with respect to a **Plan**: giving advice and/or counseling to participants and beneficiaries; providing interpretations; handling records; determining and calculating **Benefits**, including the alleged failure to make timely determinations of eligibility for **Benefits**; preparing, distributing or filing required notices or documents, including but not limited to the actual or alleged failure to properly and timely provide COBRA notices or other required notices; or activities relating to enrollment, termination or cancellation of participants or beneficiaries under a **Plan**.
- B. **Benefits** means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property.
- C. **Claim** means:
 - 1. a written demand for civil monetary damages or other civil relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
 - 2. a civil proceeding commenced by the service of a complaint or similar pleading;
 - 3. a criminal proceeding commenced by the return of an indictment;
 - 4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
 - 5. a written notice by the Department of Labor or the Pension Benefit Guaranty Corporation of the commencement of an investigation;seeking to hold an **Insured** liable or responsible for a **Wrongful Act** committed or attempted, or allegedly committed or attempted, by such **Insured** or by any person for whose **Wrongful Acts** such **Insured** is or is alleged to be legally responsible.
- D. **Claim Expenses** means reasonable expenses and legal fees (other than regular and overtime wages, salaries or fees of the directors, officers, trustees or employees of the Insured) incurred by or on behalf of the **Insureds** in the investigation, adjustment, defense or appeal of a **Claim**, including the premium for an appeal bond.

E. Covered Penalties means, solely in connection with a **Plan**, and subject to the aggregate limit of the policy and the aggregate sublimit of liability set forth in the Policy Certificate:

1. civil penalties or any excise tax imposed pursuant to Section 502(c) of the Employee Retirement Income Security Act of 1974 (“ERISA”) or pursuant to any other provision of ERISA or the Code that was amended by the multiemployer plan provisions of the Pension Protection Act of 2006;
2. civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of ERISA;
3. civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty;
4. civil fines and penalties imposed pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the HITECH Act of 2009;
5. civil fines and penalties imposed pursuant to the Patient Protection and Affordable Care Act (“PPACA”);
6. the 15% or less excise tax penalty imposed pursuant to Section 4975 of the Internal Revenue Code, with respect to covered judgments; and
7. relief arising under Section 502(a)(3) of ERISA.

F. Damages means monetary and non-monetary damages, judgments (including pre- and post-judgment interest on a covered judgment), settlements and **Covered Penalties** which an **Insured** is legally obligated to pay as a result of a **Claim**. **Damages** shall also include reasonable and necessary fees and expenses of an Independent Fiduciary if such fiduciary is retained as a necessary measure under fiduciary standards to review a proposed settlement of a covered **Claim**.

Damages will not include:

1. civil or criminal fines or penalties other than **Covered Penalties**;
2. taxes or tax penalties other than **Covered Penalties**;
3. cleanup costs relating to hazardous materials, pollution or product defects;
4. wages, tips and commissions;
5. **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; provided, however, that **Damages** shall include a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** or loss in the actual accounts of participants in a **Plan** by reason of an alleged breach of fiduciary duty resulting in a change in value of the investments held by that **Plan**; and provided further, however, that **Damages** shall include any negligent act, error or omission committed by the **Insured** solely in the miscalculation of any **Benefit** which results in an overpayment that would otherwise not be covered by the **Plan** and cannot be recovered by the **Plan** after reasonable effort; and
6. matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Damages** shall include punitive, exemplary and multiplied damages imposed upon any **Insured**, subject to this policy’s other terms, conditions, and limitations, including, but not limited to, Section V.A(1) of this policy. Enforceability of this paragraph shall be governed by the applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages.

Claims Expenses shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs 1 – 6 above, subject to the other terms, conditions, and exclusions of this policy.

G. Employee Benefit Law means:

1. the Employee Retirement Income Security Act of 1974, as amended (ERISA), or any state statute or provision concerning fiduciary standards of care with respect to a **Plan**, including but not limited to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Women's Health and Cancer Rights Act of 1998, the Pension Protection Act of 2006, and Patient Protection and Affordable Care Act (PPACA);
2. the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH); and solely with respect to subparagraph (2) of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits or similar law; and
3. Section 301 of the Labor Management Relations Act (LMRA) relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

In no event shall **Employee Benefit Law**, other than as set forth in subparagraph (2) above, include any law other than ERISA which concerns workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

H. Insurance Representative means the person or organization authorized to represent the **Insureds** and designated as such in ITEM 1 of the Policy Certificate of this policy.

I. Insured means:

1. any **Plan**;
2. any natural person serving as a past, present or future trustee, committee member or employee of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary or trustee of a **Plan**;
3. any members of the board of trustees, directors, officers, management committee members that sponsor or offer any **plan**; and
4. any other entity or natural person designated as an additional **Insured** by written endorsement to this policy.

J. Loss means **Damages, Claim Expenses, Voluntary Compliance Program Expenditures and Information Breaches**; provided, however, that **Loss** will not include:

1. any overhead expenses or charges, salaries, wages, fees or benefits of any **Insured**;
2. any surcharges, taxes, fines or penalties other than those defined as **Covered Penalties** in Section II.F; or
3. any matter uninsurable under the law pursuant to which this policy is construed.

K. Plan means each plan or trust enumerated in ITEM 2 of the Policy Certificate of this policy.

L. Related Claims means all **Claims** based upon, arising from or in consequence of causally connected **Wrongful Acts**.

M. Voluntary Compliance Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to the Employee Plans Compliance Resolution System, the Audit Closing Agreement program, the Voluntary Compliance Resolution Program, the Walk-In Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax

Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program.

N. Voluntary Compliance Program Expenditures means:

1. reasonable costs, charges and expenses of attorneys, accountants and/or other professionals that are incurred solely in investigating and evaluating a **Plan's** actual or alleged noncompliance with any statute, rule or regulation and effecting a resolution thereof pursuant to a **Voluntary Compliance Program**; and
2. any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** as a result of a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation and, subject to the Insurer's approval, costs to correct a **Plan's** actual or alleged inadvertent noncompliance with any statute, rule or regulation that are incurred by the **Plan** in connection with its participation in a **Voluntary Compliance Program**.

O. Wrongful Act means:

1. any breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by an **Employee Benefit Law**;
2. any negligent act, error or omission by any **Insured** in the **Administration** of any **Plan**; and
3. with respect to **Claims Expenses** only, any negligent act, error or omission, other than a wrongful employment practice, by an **Insured** solely in such **Insured's** capacity as a trustee of a **Plan** that is not otherwise covered in subparagraphs (1) and (2) above.

III. DEFENSE AND SETTLEMENT

- A.** The Insurer will have the right and duty to defend any **Claim** covered by this policy, even if the allegations in such **Claim** are groundless, false or fraudulent. Upon the exhaustion of the limit of liability applicable to any **Claim**, the Insurer's duty to defend such **Claim** will cease and, upon the exhaustion of the Insurer's maximum aggregate limit of liability under this policy as set forth in ITEM 4(a) of the Policy Certificate, the Insurer will thereafter have no duty or obligation to defend or to continue to defend any **Claim**.
- B.** Subject to Section III.A above, the **Insureds** will have the right to select defense counsel to defend **Claims** against them, subject to the Insurer's approval, such approval not to be unreasonably withheld, and subject to such counsel's agreement to comply with applicable litigation management guidelines. The **Insureds** must, however, exercise this right in writing within thirty (30) days after first giving the Insurer notice of the **Claim** with respect to which such counsel is to be retained. If the **Insureds** do not inform the Insurer in writing of their intent to retain their own defense counsel within thirty (30) days after providing notice of a **Claim**, the Insurer will have the right to appoint defense counsel to represent the **Insureds** in connection with such **Claim** and to conduct the defense thereof.
- C.** **Claim Expenses** incurred by counsel retained by the **Insureds**, or by the Insurer if the **Insureds** do not exercise their right to retain their own defense counsel, are part of and not in addition to the applicable limit of liability as set forth in ITEM 4(a) of the Policy Certificate, and the payment by the Insurer of such **Claim Expenses** will reduce, and may exhaust, the applicable limit of liability under this policy.
- D.** The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and the **Insureds** further agree that, in the event of a **Claim**, they will do nothing that may prejudice the Insurer's position or actual or potential rights of recovery. At

the Insurer's request, the **Insureds** will assist in the conduct of actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements.

- E. The **Insureds** agree not to settle any **Claim**, incur any **Claim Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which consent will not be unreasonably withheld. The Insurer will not be liable for any settlement, **Claim Expenses**, assumed obligation or admission to which it has not consented.
- F. The Insurer may make any investigation it deems necessary and may, with the written consent of the **Insureds**, make any settlement of a **Claim** it deems expedient.

IV. EXTENSIONS OF COVERAGE

A. Spouses, Estates and Legal Representatives

Subject to the limits of liability and the Policy Certificate, conditions, limitations, provisions and other terms of this policy, the coverage provided by this policy will extend to **Claims** made against:

1. the estate, heirs, legal representatives or assigns of any natural person **Insured** if such natural person **Insured** is deceased, or the legal representatives or assigns of any natural person **Insured** if such natural person **Insured** is incompetent, insolvent or bankrupt; and
2. the lawful spouse or domestic partner of a natural person **Insured** solely by reason of such spouse or domestic partner's status as such or such spouse or domestic partner's ownership interest in property which the claimant seeks as recovery for liability of such natural person **Insured**.

All conditions, limitations, provisions and other terms of this policy applicable to **Claims** against and **Loss** incurred by natural person **Insureds** will also be applicable to **Claims** against and loss incurred by their estates, heirs, legal representatives, assigns, spouses and domestic partners. No coverage will be available under this Section IV.A, however, for any loss, including costs, charges or expenses of defense, arising from any act, error or omission committed or attempted, or allegedly committed or attempted, by a natural person **Insured's** estate, heir, legal representative, assign, spouse or domestic partner.

B. Extended Reporting Period

1. If this policy is terminated or not renewed for any reason other than the non-payment of premium, the **Insureds** will have the right to purchase an extension of the coverage granted by this policy for a twelve (12) month period (the "extended reporting period") after the effective date of such termination or non-renewal. The extended reporting period, if purchased, will apply only to:
 - a. **Claims** first made during the extended reporting period, and only if such **Claims** are for otherwise covered **Wrongful Acts** committed, attempted or allegedly committed or attempted before the effective date of such termination or non-renewal;
 - b. **Voluntary Compliance Program Expenditures** incurred by **Insureds** as a result of the **Insureds'** participation during the extended reporting period in a **Voluntary Compliance Program**, but only if such participation commences during the extended reporting period and involves a **Plan's** actual or alleged inadvertent

noncompliance with any statute, rule or regulation before the effective date of such termination or non-renewal.

2. The additional premium for the extended reporting period will be that amount set forth in ITEM 8 of the Policy Certificate. This additional premium must be paid within thirty (30) days after the effective date of the termination or non-renewal of the policy, and will be deemed to have been fully earned immediately as of the inception of the extended reporting period.
3. The Insurer's limits of liability for **Loss** from **Claims** first made or deemed made during the extended reporting period and for **Voluntary Compliance Program Expenditures** resulting from the **Insureds** participation during the extended reporting period in a **Voluntary Compliance Program** will be part of, and not in addition to, the limits of liability stated in ITEM 4(c) of the Policy Certificate, which are applicable to all **Loss** for which this policy provides coverage.
4. The Insurer reserves the right to approve a request for a longer extended reporting period not to exceed seventy-two (72) months, for such additional premium as the Insurer may require.

V. EXCLUSIONS

A. The Insurer will not be liable for any **Loss** on account of any **Claim** against any **Insured**:

1. Arising out of, based upon or attributable to any:
 - a. profit or advantage to which the **Insured** was not legally entitled; or
 - b. deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law**, by the **Insured**;

if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;

2. For any actual or alleged libel or slander;
2. For any actual or alleged bodily injury to, or mental or emotional distress, sickness, disease or death of, any person, or damage to or destruction, loss or loss of use of any tangible property; provided, however, this exclusion shall not apply to **Claims Expenses** incurred in the defense of a **Claim** for a violation of an **Employee Benefit Law** by an **Insured**;
3. Based upon, arising from or in consequence of any liability of others assumed by any **Insured** under any contract or agreement, whether oral or written, other than an agreement or declaration of trust or similar agreement creating or establishing a **Plan**; provided, that this exclusion will not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
4. Based upon, arising from or in consequence of:
 - a. any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** if written notice thereof has been given under any policy of which this policy is a renewal or replacement if such prior policy affords coverage or, but

- for the exhaustion of its limit or limits or liability, would have afforded coverage for such **Loss**, in whole or in part, as a result of such notice; or
- b. any demand, suit or other proceeding, or order, decree or judgment rendered, against any **Insured** on or prior to the Pending or Prior Proceeding Date set forth in ITEM 6 of the Policy Certificate of this policy, or the same or substantially similar facts, circumstances or situations underlying or alleged in any such demand, suit, proceeding, order, judgment or decree;
5. The failure to collect contributions owed to any **Plan**, or the failure to fund a **Plan** in accordance with any **Employee Benefit Law** or the **Plan** instrument. However, this exclusion shall not apply to **Claim Expenses**.

B. Full Severability of Exclusions

No facts pertaining to or knowledge possessed by any **Insured** will be imputed to any other **Insured** to determine the application of any of the above Exclusions.

VI. CONDITIONS

A. Limits of Liability and Retention

1. Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, the number of **Insureds** included in a particular **Claim** or the number of claimants who may make **Claims** against the **Insureds**, the amount stated in ITEM 4(a) of the Policy Certificate will be the Insurer's maximum aggregate limit of liability under this policy for all **Loss** for which this policy provides coverage, and the retention stated in ITEM 5 of the Policy Certificate will apply separately to each **Claim**.
2. **Claim Expenses** are part of and not in addition to the limit of liability set forth in ITEM 4(a) of the Policy Certificate, and payment of **Claim Expenses** by the Insurer will reduce, and may exhaust, that limit of liability.
3. The Insurer will have no obligation to pay **Loss**, including **Claim Expenses**, or to defend or continue to defend any **Claim**, after the limit of liability set forth in ITEM 4(a) of the Policy Certificate has been exhausted.
4. The amount set forth in ITEM 4(b) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Claim Expenses** only in connection with **Claims** solely alleging **Wrongful Acts** as defined in Section II.R(3) of this policy, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
5. The amount set forth in ITEM 4(c) of the Policy Certificate will be the Insurer's maximum limit of liability under Section I. Insuring Agreement B for all **Voluntary Compliance Program Expenditures** incurred in connection with the **Insureds** participation in **Voluntary Compliance Programs**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
6. The amount set forth in ITEM 4(d) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Loss** in the form of civil penalties or excise tax imposed pursuant to Section 502(c) of ERISA and the Pension Protection Act of 2006, and such

amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.

7. The amount set forth in ITEM 4(e) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for **Loss** in the form of civil fines and penalties imposed pursuant to HIPAA and the HITECH Act, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
8. The amount set forth in ITEM 4(f) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for civil fines and penalties imposed pursuant to the Patient Protection and Affordable Care Act (PPACA), and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
9. The amount set forth in ITEM 4(g) of the Policy Certificate will be the Insurer's maximum limit of liability under this policy for excise taxes imposed pursuant to Section 4975 of the Internal Revenue Code, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
10. The amount set forth in ITEM 4(h) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for relief imposed pursuant to Section 502(a)(3) of ERISA, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
11. The amount set forth in ITEM 4(i) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for miscalculation of benefits resulting in the overpayment of a benefit that would otherwise not be covered by the **Plan**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
12. The amount set forth in ITEM 4(j) of the Policy Certificate will be the Insurer's maximum limit of liability under Section I. Insuring Agreement C for all **Loss** resulting from an **Information Breach**, and such amount will be part of and not in addition to the Insurer's maximum aggregate limit of liability for all **Loss** under this policy as stated in ITEM 4(a) of the Policy Certificate.
13. The obligations of the Insurer to pay **Loss**, including **Claim Expenses**, will only be in excess of any applicable retention as stated in ITEM 5 of the Policy Certificate, which amount will be borne by the **Insureds** at their own expense. The Insurer will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any applicable retention amount on behalf of any **Insured**, although the Insurer will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Insurer any amounts so paid.

B. Notice

1. As a condition precedent to exercising their rights under Section I. Insuring Agreement A of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of any **Claim** made against them.

2. As a condition precedent to exercising their rights under Section I. Insuring Agreement B of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of their participation or intent to participate in a **Voluntary Compliance Program**; provided, that the Insurer will not be liable under Section I. Insuring Agreement B for any **Voluntary Compliance Program Expenditures** incurred in connection with any **Voluntary Compliance Program** before such written notice has been given to the Insurer.
3. As a condition precedent to exercising their rights under Section I. Insuring Agreement C of this policy, the **Insureds** must give the Insurer written notice as soon as practicable of an **Information Breach** discovered by the **Insured** or a trusted party. When an Information Breach is discovered that may reasonably be expected to result in a covered **Loss**, the **Insured** must:
 - a. immediately, upon the first discovery of the **Information Breach**, notify the Insurer in writing or by email. This notification must include a description of the **Information Breach**, a description of how, when and where the **Information Breach** or circumstances happened and copies of all available information relating to the **Information Breach** and its duration;
 - b. promptly authorize the Insurer to obtain records and other information and provide the Insurer with records and information as requested by the Insurer;
 - c. promptly cooperate with and assist the Insurer in the investigation of the **Information Breach** and any **Loss**; and
 - d. promptly assist the Insurer, upon request, in enforcing all rights of contribution or indemnity that any **Insured** or the person affected may have against all persons or entities.
4. If during the policy period or, if exercised, the extended reporting period an **Insured** becomes aware of circumstances that could give rise to a **Claim** or an **Information Breach** and gives the Insurer written notice of such circumstances, then any **Claims** or **Information Breaches** subsequently arising from such circumstances will be considered to have been made during the policy period or, if exercised, the extended reporting period in which such circumstances were first reported to the Insurer.
5. As a condition precedent to exercising their rights under this policy, the **Insureds** must give the Insurer such information and cooperation as the Insurer may reasonably require, including but not limited to a description of any **Claim** or circumstances that could give rise to a **Claim**, the nature of any **Wrongful Acts** actually or allegedly committed or attempted, the nature of the alleged or potential damage, the identities of actual or potential claimants, and the manner in which the **Insureds** first became aware of any such **Claim** or circumstances that could give rise to a **Claim**.

C. Coverage Territory

The insurance afforded by this policy applies anywhere in the world.

D. Related Claims

All **Related Claims** will be deemed to be a single **Claim** which will be deemed to have been first made at the earlier of the following times:

1. When the earliest of such **Related Claims** was first made, or

2. At the earliest time at which notice was given under any policy of insurance of any act, error, omission, fact, circumstance, situation, transaction, event, decision or **Wrongful Act** underlying any such **Related Claim**.

E. Changes in Exposure

1. If, during the policy period, a **Plan** merges into or consolidates with another plan not enumerated in ITEM 2 of the Policy Certificate, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Plan**, by any natural person **Insureds** with respect to any **Plan** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this policy will cease with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible and for the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.
2. If, during the policy period, the responsibility for the administration of a **Plan** is fully assumed by another person, entity or group of persons or entities, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by any natural person **Insureds** with respect to such **Plan** prior to such transfer of responsibilities or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and for such natural person **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. However, coverage under this policy will cease with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such natural person **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible and for such natural person **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.
3. If any **Plan** is terminated, whether before or during the policy period, written notice thereof must be provided to the Insurer as soon as practicable. Coverage under this policy will continue to apply to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted before such event by such **Plan**, by any natural person **Insureds** with respect to such **Plan** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, and to the **Insureds'** participation in **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation before such event. No coverage will be available under this policy, however, with respect to **Claims** for **Wrongful Acts** committed, attempted or allegedly committed or attempted after such event by any such **Insured** or by any person for whose **Wrongful Acts** any such **Insured** is legally responsible, or for **Voluntary Compliance Program Expenditures** in connection with **Voluntary Compliance Programs** in respect of any such **Plan's** actual or alleged noncompliance with any statute, rule or regulation after such event.

F. Other Insurance

All **Loss** payable under this policy will be specifically excess of and will not contribute with any other valid and collectible insurance, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this policy), contingent or otherwise.

G. Allocation

If, in connection with a **Claim**, both **Loss** covered by this policy and loss not covered by this policy are incurred, either because the **Claim** contains both covered and uncovered matters or because the **Claim** is made in part against persons or entities not insured hereunder, the **Insureds** and the Insurer will use their best efforts to determine a fair and appropriate allocation of amounts incurred in connection with such **Claim** as between **Loss** covered under this policy and loss not covered under this policy. The **Insureds** and the Insurer agree that, in determining such a fair and appropriate allocation, the parties will take into account the relative legal and financial exposures associated with any such covered and uncovered matters, as well as the relative legal and financial exposures of, and the relative benefits obtained in connection with the defense and/or settlement of any **Claim** by, the **Insureds** and other persons or entities not insured hereunder. If an agreement between the **Insureds** and the Insurer as to a fair and appropriate allocation cannot be reached, then the Insurer will pay or advance that portion of those amounts incurred in connection with such **Claim** which the **Insureds** and the Insurer agree constitutes **Loss** covered under this policy until a final allocation is agreed upon or determined pursuant to the provisions of this policy and applicable law.

H. Subrogation; Waiver of Right of Recourse

1. In the event of payment under this policy, the Insurer will be subrogated to, and will be entitled to an assignment of, all of the **Insureds'** rights of recovery therefor. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer effectively to pursue and enforce such rights and to bring suit in the name of the **Insureds**.
2. If any premium for this policy is paid out of the assets of a **Plan**, the Insurer will have the right of recourse required by Section 410(b)(1) of ERISA, unless an **Insured** other than a **Plan** shall have paid the additional waiver of recourse premium set forth in ITEM 7(b) of the Policy Certificate.

I. Termination of Policy; No Obligation to Renew

1. This policy may not be cancelled or rescinded by the Insurer except for non-payment of premium.
2. This policy will terminate at the earliest of the following times:
 - a. Upon receipt by the Insurer of written notice of termination from the **Insurance Representative**;
 - b. Subject to Section IV.B, above, upon expiration of the policy period, as set forth in ITEM 3 of the Policy Certificate; or
 - c. At such other time as the Insurer and the **Insurance Representative** may agree.
3. If the policy is terminated by the **Insurance Representative**, the Insurer will refund any unearned premium computed at customary short rates. Under all other circumstances, unearned premium, if any, will be computed pro rata. Refund of any unearned premium will be made either at the time of termination or as soon as practicable thereafter, but payment or tender by the Insurer of any unearned premium is not a condition of termination.

4. The Insurer will not be required to renew this policy upon its expiration. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal will not constitute refusal to renew.

J. Representations and Severability

1. The **Insureds** represent that the Policy Certificate and statements contained in the written application for this policy are true, accurate and complete, and agree that this policy is issued in reliance on the truth of that representation, and that such Policy Certificate and statements, which are deemed to be incorporated into and to constitute a part of this policy, are the basis of this policy and are material to the Insurer's acceptance of this risk.
2. Such written application for coverage will be considered as a separate application for coverage by each **Insured** and, with respect to the Policy Certificate and statements contained in such written application for coverage, no declaration or statement in the application or knowledge possessed by any **Insured** will be imputed to any other **Insured** for the purpose of determining whether coverage is available.

K. No Action Against the Insurer

No action may be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy. No person or entity will have any right under this policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor may the Insurer be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

L. Bankruptcy or Insolvency of Insured

The Insurer will not be relieved of any of its obligations under the policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

M. Authorization and Notices

1. By acceptance of this policy, the **Insurance Representative** agrees to act on behalf of all **Insureds** with respect to all matters under this policy, including but not limited to the payment of premiums and the receipt of any return premiums, the giving and receiving of notices of **Claim** and of circumstances that may give rise to a **Claim** and all other notices and communications (except notices to effect the purchase of any extended reporting period), the effecting or accepting of any endorsements to or termination or non-renewal of this policy and the **Insureds** agree that the **Insurance Representative** will act on their behalf.
2. All notices to the Insurer of **Claims**, of circumstances that may give rise to **Claims** or of the **Insureds'** intent to participate in a **Voluntary Compliance Program** or any other notice required under the policy must be given in writing via mail, fax or email to:

Euclid Specialty Managers, LLC
380 Maple Avenue West, Suite 302
Vienna, VA 22180
(571) 730-4813 (fax)
professionalclaims@euclidspecialty.com

N. Alteration and Assignment

No change in, modification of or transfer or assignment of interest under this policy will be effective unless made by written endorsement to this policy signed by an authorized representative of the Insurer or a designated affiliate thereof.

O. Valuation and Foreign Currency

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or any element of **Loss** under this policy is stated in a currency other than United States of America dollars, payment under this policy will be made in United States of America dollars at the rate of exchange published in the Wall Street Journal on the date such final judgment is reached, the amount of such settlement is agreed upon or such element of **Loss** is due, respectively.

Q. Entire Agreement

The **Insureds** agree that this policy, including the application and any endorsements, constitutes the entire agreement between them and the Insurer or any of its agents relating to this insurance.

CRIME COVERAGE PART

In consideration of the payment of the premium and subject to the terms and provisions of this policy, the Insurer agrees with the **Insured** to pay for losses any **Insured** shall sustain at any time which are **Discovered** during the **Policy Period** in the manner set forth below:

I. INSURING AGREEMENTS

1. Fiduciary Dishonesty Coverage

The Insurer shall pay the **Insured** for loss of **Money, Securities, or Property** resulting directly from **Fraud or Dishonesty** committed by any **Plan Official**, acting alone or in collusion with others, that the **Insured** may during the policy period sustain or discover it has sustained.

2. Forgery Coverage

The Insurer shall pay the **Insured** for loss of **Money or Securities** resulting directly from **Forgery** or alteration of a **Financial Instrument** committed by a **Third Party**.

3. Computer Fraud Coverage

The Insurer shall pay the **Insured** for loss of **Money, Securities or Property** resulting directly from **Computer Fraud** committed by a **Third Party**.

4. Funds Transfer Fraud Coverage

The Insurer shall pay the **Insured** for loss of **Money or Securities** resulting from **Funds Transfer Fraud** committed by a **Third Party**.

5. Payment Instruction Fraud Coverage (Social Engineering Fraud Coverage)

The Insurer shall pay the **Insured** for loss of **Money or Securities** resulting directly from **Payment Instruction Fraud** committed by a **Third Party**.

6. Expense Coverage

The Insurer shall pay the **Insured** for:

- (1) **Investigative Expenses** resulting from any loss covered under any Insuring Clause, except this Expense Coverage Insuring Clause; or
- (2) **Computer Violation Expenses** resulting from any direct loss covered under the Fiduciary Dishonesty Coverage, Computer Fraud Coverage or Funds Transfer Fraud Coverage Insuring Clauses; incurred by any **Insured** in the amount set forth in Item 3 of the Declarations, solely if such covered loss is in excess of the Deductible applicable to such covered loss. Other than with regard to the Fiduciary Dishonesty Coverage, such amount shall be part of and not in addition to the Limit of Liability applicable to such covered loss.

II. DEFINITIONS

The terms appearing in bold in this Policy shall have the following meanings:

Administrator means any natural person plan administrator as defined in section 3(16)(A) of **ERISA**, executive director or any other natural person in an equivalent position thereof of an **Employee Benefit Plan**.

Computer Fraud means the unlawful taking of **Money, Securities or Property** resulting from a **Computer Violation**.

Computer System means computer hardware, software, voice-based telecommunications systems, firmware, and the data stored thereon, as well as associated input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities.

Computer Violation means an unauthorized:

- (1) entry into or deletion of data from a **Computer System**;
- (2) change to **Data** elements or program logic of a **Computer System**, which is kept in machine readable format; or
- (3) introduction of instructions, programmatic or otherwise, which propagate themselves through the **Insured's Computer System** directed solely against any Insured by a **Third Party**.

Computer Violation Expenses means reasonable expenses, other than an Insured's internal corporate costs (such as employee remuneration), incurred by an Insured with the Insurer's prior written consent to reproduce or duplicate damaged or destroyed electronic **Data** or computer programs. If such computer programs cannot be duplicated from other computer programs, then **Computer Violation Expenses** shall also include reasonable costs incurred for computer time, computer programmers, technical experts or consultants to restore the computer programs to substantially the same level of operational capability immediately preceding the covered direct loss.

Data means information contained in records, manuscripts, accounts, microfilms, tapes or other records, which are processed and stored in a **Computer System**.

Discovery, Discover or Discovered means knowledge acquired by a trustee or **Administrator** of any **Insured** which would cause a reasonable person to believe a covered loss has occurred or an occurrence has arisen that may subsequently result in a covered loss. This includes loss:

- (1) sustained prior to the inception date of any coverage under this policy;
- (2) which does not exceed the Retention Amount; or
- (3) the exact amount or details of which are unknown.

Discovery, Discover or Discovery shall not include knowledge acquired by a trustee or **Administrator** of any **Insured** acting alone or in collusion with a **Plan Official**, or the knowledge possessed by any trustee or **Administrator** of an **Insured** who is a participant in any **Fraud or Dishonesty**.

Employee Benefit Plan means any plan listed as an Insured in Item 1 of the Declarations.

Employee Benefit Plan Participant means any natural person who has a written agreement with the **Insured** authorizing the **Insured** to transfer **Money** or **Securities** on deposit in their account in reliance upon instructions transmitted to the **Insured** via telefacsimile, telephone, electronic mail or electronic instruction.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Financial Instrument means checks, drafts or similar written promise, order or directions to pay a sum certain in money, that are made, drawn by or drawn upon an **Insured** or by anyone acting as an Insured's agent, or by an **Employee Benefit Plan** vendor, acting in such capacity, or that are purported to have been so made or drawn.

Forgery means the signing of another natural person's name with the intent to deceive, but does not mean a signature that includes one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically reproduced or reproduced signatures shall be treated the same as hand-written signatures, but shall not include a typed name in any form (including but not limited to email, letterhead or pre-printed material).

Fraud or Dishonesty means any intentional act of larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion or willful misapplication, or any other intentional fraudulent or dishonest act. **Fraud or Dishonesty** shall also include any intentional act prohibited by Title 18, Section 1954 of the U.S. Code.

Funds Transfer Fraud means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any bank account maintained by an **Insured** at such institution, without an **Insured's** knowledge or consent.

Insured means any **Employee Benefit Plan** listed in ITEM 1 of the Policy Certificate. **Principal Insured** means the Named Insured listed in ITEM 1 of the Policy Certificate.

Insured's Computer System means a **Computer System** leased, owned or operated by an **Insured** or operated solely for the benefit of an **Insured** by a **Third Party** under written contract with an **Insured**.

Investigative Expenses means reasonable expenses, other than an Insured's internal corporate costs (such as employee **Salary** or remuneration), incurred by an **Insured** with the Insurer's prior written consent to establish the existence and amount of a covered loss.

Legal Expenses means the reasonable court costs and attorneys' fees incurred and paid with the Insurer's prior written consent in defending an **Insured** or its bank in any legal proceeding brought against it to enforce payment of a **Financial Instrument**.

Money means currency, coin, bank notes and bullion.

Official Authorization means a valid handwritten signature of an actual **Plan Official**, or an electronic record of entry and approval into a wire transfer system, accounting system, or similar system which is capable of maintaining and reproducing an audit trail which demonstrates that an actual **Plan Official** approved a transaction within his or her authority. A **Forgery** is not an **Official Authorization**. **Official Authorization** shall not include a typed name in any form (including but not limited to email, letterhead or pre-printed material), but shall include electronic reproductions of handwritten signatures in any form.

Payment Instruction Fraud or **Social Engineering Fraud** means the intentional misleading of a **Plan Official** through misrepresentation of a material fact which is relied upon by such **Plan Official** believing it to be genuine, committed by a person purporting to be a (i) **Vendor**, (ii) **Employee Benefit Plan Participant**, or (iii) a **Plan Official** who was authorized by the **Insured** to instruct other **Plan Officials** to transfer **Money** or **Securities**, which results in such transfer, provided that the **Insured** has complied with the Section XXIV Special Conditions prior to transferring such **Money** or **Securities**.

Plan Official means any natural person while in the service of an **Employee Benefit Plan** as a fiduciary, trustee, committee member, administrator, officer, or employee, and any other natural person who handles **Employee Benefit Plan** assets, whether or not required to be bonded by Title 1 of **ERISA**. **Plan Official** also includes any natural person described in the preceding sentence during a period not exceeding sixty (60) days following the termination of such natural person's service.

Policy Period means the period of time set forth in ITEM 2 of the Policy Certificate (subject to any termination in accordance with section XVIII of the Policy).

Premises means the interior portion of a building occupied by an **Insured** in conducting its business.

Property means tangible property other than **Money** or **Securities**.

Recovery Legal Expenses means the reasonable court costs and attorneys' fees incurred and paid by an **Insured** in pursuing subrogation and recovery of loss from any source.

Salary means compensation an **Insured** pays a natural person trustee, **Administrator**, officer or **Plan Official**, including but not limited to bonus, commission, incentive payments, and the cost of health, welfare and pension benefits.

Securities means negotiable and non-negotiable instruments representing either **Money** or **Property**.

Third Party means a person other than an **Insured** or Plan Official.

Vendor means any **Third Party** natural person or entity other than an **Insured** or **Plan Official** that has provided goods or services to a **Plan Official** under a legitimate pre-existing arrangement or written agreement. However, **Vendor** does not include any asset manager, broker-dealer, counter party, custodian, or any similar entity.

III. NON-ACCUMULATION OF LIABILITY

Regardless of the number of years this policy shall continue in force, and the number of premiums which shall be payable or paid or any circumstance whatsoever, the liability of the Insurer under this policy with respect to any loss or losses shall not be cumulative from policy year to policy year or from **Policy Period** to **Policy Period**.

IV. DISCOVERY PERIOD

This policy does not cover any loss not discovered within twelve (12) calendar months following the termination of this policy as an entirety or any loss sustained by any Plan not discovered within twelve (12) calendar months following the termination of this policy as to such Plan, or if coverage has been replaced.

V. EXTENDED DISCOVERY PERIOD

This policy covers loss sustained prior the termination or cancellation of this **Policy** and **Discovered**:

- (A) within twelve (12) calendar months following the termination or cancellation of this policy in its entirety; or
- (B) within twelve (12) calendar months following the termination or cancellation of this policy as to any **Insured**, in accordance with Section VXIII, Termination of Policy.

Provided that this Extended Discovery Period terminates immediately upon the effective date of any other insurance obtained which replaces the coverage afforded by this policy in an amount no less than the minimum amount required under **ERISA** Section 412 and provides coverage for loss sustained prior to its effective date.

VI. JOINT INSURED

The total liability of the Insurer for loss or losses sustained by any or all **Employee Benefit Plans** shall not exceed the amount of coverage specified herein and the Insurer shall not be liable for loss sustained by one Plan to the advantage of any other Plan. Only the Principal Insured shall have the right to make, adjust, receive and enforce payment of any and all claims hereunder and shall be deemed to be the sole agent of all Plans for such purposes and for the giving or receiving of any notice required or permitted to be given by the terms hereof and for the purpose of affecting or accepting any amendments to or termination of this policy.

Each and every Plan shall be conclusively deemed to have consented and agreed that none of them shall have any direct beneficiary interest herein or any right of action hereunder whatsoever and that this policy or any right of action herein shall not be assignable; but knowledge possessed for discovery made by any office of any Insured shall constitute knowledge possessed or discovery made by all **Insureds** for the purposes of this policy.

VII. PAYOVER

In compliance with Title 1 of ERISA, and the Pension Protection Act of 2006, payment by the Insurer shall be held to the benefit of any **Employee Benefit Plan(s)** sustaining a loss. If such payment is in excess of the

amount of coverage required by such Acts for said Plan(s), such excess shall be held for the use and benefit of any other named Plan(s) should such Plan(s) also discover loss recoverable hereunder. If **Money, Securities and other property** of two or more **Employee Benefit Plans** is commingled, recovery hereunder for loss of such **Money, Securities and other property** shall be shared by such Plans on a pro rata basis in accordance with the amount of coverage each such Plan is required to carry by such Acts.

VIII. EXCLUSIONS [do not apply to Fiduciary Dishonesty Coverage]

No coverage will be available under the Forgery Coverage, Computer Fraud Coverage, Funds Transfer Fraud Coverage, Payment Instruction Fraud Coverage, and Expense Coverage Insuring Agreements for:

- (A) loss caused by a **Plan Official**, whether or not in collusion with a **Third Party**, except loss otherwise covered under the Payment Instruction Fraud Coverage Insuring Agreement;
- (B) loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities, or Property**, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account;
- (C) threat to do bodily harm to any person or a threat to do damage to any property;
- (D) loss involving:
 - (1) the disclosure of confidential or personal information while in the care, custody or control of an **Insured**, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information, provided that this limitation shall not apply to loss that is otherwise covered under this policy caused by a **Plan Official** or **Third Party** through the use of, disclosure of or access to such confidential or personal information; or
 - (2) fees, costs, fines or penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of an **Insured's** or another entity's or person's confidential or personal information, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information.
- (E) loss of trade secrets, confidential processing methods or other confidential information of any kind;
- (F) **Forgery** committed against an **Insured** by a **Plan Official** of such **Insured** whether acting alone or in collusion with others; provide that, if **Forgery** committed by such **Plan Official** would have resulted in a covered loss, the Insurer shall pay the amount which exceeds such **Plan Official's** percentage ownership of such **Insured**, on the day immediately preceding the date of **Discovery**, multiplied by such **Insured's** total assets as reflected in such **Insured's** most recent audited financial statements;
- (G) loss due to declared or undeclared war, civil war, insurrection, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization; or any act or condition incident to any of the foregoing;
- (H) loss due to nuclear reaction, nuclear radiation or radioactive contamination;
- (I) loss of income not realized as the result of a covered loss;
- (J) indirect or consequential loss of any kind; provided that this Exclusion (J) shall not apply to otherwise covered: (1) **Investigative Expenses, Computer Violation Expenses, Legal Expenses** or

Recovery Legal Expenses provided under the Legal Expense Extension, as forth in Section XXI of this Policy;

(K) expenses incurred:

- a. as a result of the reconstitution of **Data** if an **Insured** knowingly uses illegal copies of programs;
- b. to render the **Data** usable by replacement processing equipment;
- c. to design, update or improve software or programs or to perfect their operation or performance; or
- d. as a result of an alternation in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the **Computer System**;

(L) fees, costs or expenses incurred or paid by an **Insured** in defending or prosecuting any legal proceeding or claim; provided that this Exclusion (L) shall not apply to the coverage provided under the Legal Expense Extension, as set for in Section XXI of this Policy;

(M) loss due to an **Insured** knowingly having given or surrendered **Money, Securities** or **Property** in any exchange or purchase with a **Third Party**, not in collusion with a **Plan Official**, except when covered under the **Forgery Coverage Insuring Agreement**;

(N) loss sustained by one **Insured** to the advantage of any other **Insured**;

(O) loss due to the unlawful taking of **Money, Securities** or **Property, Computer Fraud** or any other fraudulent, dishonest or criminal act, by any authorized representative of an **Insured**, other than a **Plan Official**, provided that such authorized representative is not acting in collusion with any **Plan Official**;

(P) loss unless sustained prior to the termination of this policy in its entirety, and **Discovered** and written notice thereof is given to the Insurer:

- a. within sixty (60) days following such termination, if this policy is not renewed with the Insurer; or
- b. prior to such termination, if this policy is renewed with the Insurer.

No coverage will be available under the Computer Fraud Coverage and Funds Transfer Fraud Coverage Insuring Agreements for:

(A) loss or damage of **Money, Securities** and other property as a result of a kidnap, ransom or other extortion payment surrendered to any person as a result of a threat to do bodily hard to any person or a threat to do damage to the **Premises** or other property. For purposes of this Limitation, **Property** shall include **Data** held, owned or controlled by the **Insured**;

(B) loss or damage to **Money, Securities** or **Property** as a result of **Payment Instruction Fraud**.

No coverage will be available under the Forgery Coverage Insuring Agreement for loss due to **Forgery** or alteration of: (1) any **Financial Instrument** committed to any **Third Party** in collusion with any **Plan Official**; or (2) any registered or coupon obligations issued or purported to have been issued by an **Insured**, or any coupons whether attached or detached.

No coverage will be available under the Payment Instruction Fraud Coverage for:

(A) loss or damage to **Money** or **Securities** as a result of **Forgery, Computer Fraud** or **Funds Transfer Fraud**;

- (B) loss due to the failure of any party to perform, in whole or in part, under any contract;
- (C) loss due to the extension of any loan, credit or similar promise to pay;
- (D) loss due to any party's use of or acceptance of any credit card, debit card or similar instrument, or any digital currency payments, whether or not genuine;
- (E) loss due to any person purporting to be a representative of any financial institution, asset manager, broker-dealer, armored motor vehicle company, or any similar entity;
- (F) loss of **Money** or **Securities** while in the mail or in the custody of any carrier for hire, including but not limited to any armored motor vehicle company;
- (G) loss due to the failure, malfunction, inadequacy or illegitimacy of any product or service;
- (H) loss of or damage to any **Property**; or
- (I) loss of **Money** or **Securities** if any **Employee Benefit Plan Participant** or their beneficiary is not entitled to receive such **Money** or **Securities**.

IX. LIABILITY FOR PRIOR LOSSES

Coverage will be available for loss sustained at any time and **Discovered** during the policy period, provided that coverage for loss sustained prior to the inception date of this policy, or the effective date of coverage for any additional Insureds, or the effective date of any coverage added by endorsement, is subject to the following:

- (a) if an **Insured** or some predecessor in interest of such **Insured** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was not issued by the Insurer or its affiliates and such loss was first **Discovered** by an **Insured** prior to the expiration of the time allowed for discovery under the last such policy, then no coverage shall be available under this policy, unless the total amount of covered loss exceeds the limit of liability of the last such bond or policy carried by the **Insured** or predecessor in interest of such **Insured**, and the Insurer's Limit of Liability for any such loss will be in excess of the limit of liability of the last bond or policy subject to all of the terms and conditions of this policy; or
- (b) if an **Insured** or some predecessor in interest of such **Insured** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was issued by the Insurer or its affiliates, then such prior bond or policy shall terminate as of the inception of this policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Insurer prior to the inception of this policy and then the Insurer's Limit of Liability for such loss shall be the applicable Limit of Liability as set forth in Item 3 of the Policy Certificate.

X. TOTAL LIABILITY

Solely with respect to the **Fiduciary Dishonesty Coverage**, the payment of any loss under this policy shall not reduce the liability of the Insurer for other losses whenever sustained; provided however, that the total liability of the Insurer for any loss or losses caused by a **Plan Official** or in which such **Plan Official** is concerned or implicated, is limited to the amount of coverage specified herein.

With respect to any **Employee Benefit Plan**:

- a. if covered loss is sustained by any **Employee Benefit Plan** which does not have any employer securities, the Limit of Liability applicable to such covered loss shall be the lesser of ten percent (10%)

- of the Employee Benefit Plan's funds handled as of the beginning of such **Employee Benefit Plan's** fiscal year or five hundred thousand dollars (\$500,000); or
- b. if covered loss is sustained by an **Employee Benefit Plan** which does have any employer securities, the Limit of Liability applicable to such covered loss shall be the lesser of ten percent (10%) of the **Employee Benefit Plan's** funds handled as of the beginning of such **Employee Benefit Plan's** fiscal year or one million (\$1,000,000);

provided that, in all events, (i) if the Limit of Liability as set forth in Item 3 of the Declarations of this policy is less than the amounts set forth in paragraphs a. or b. above, then the applicable Limit of Liability shall be amended to the respective amounts set forth in paragraphs a. or b. above; or (ii) if the Limit of Liability as set forth in Item 3 of the Declarations of this policy equals or exceeds the amount set forth in paragraphs a. or b. above, then the Limit of Liability shall be the Limit of Liability as set forth in Item 3 of the Declarations of this policy.

Solely with respect to the coverage afforded under the Forgery Coverage, Computer Fraud Coverage, Funds Transfer Fraud Coverage, Payment Instruction Fraud, and Expense Coverage Insuring Agreements, the following Limits of Liability shall apply:

- a. The Insurer's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss, as set forth in Item 3 of the Declarations, regardless of the number of **Insureds** sustaining the loss.
- b. If a direct loss is covered under more than one Insuring Agreement, the maximum amount payable under this policy shall not exceed the largest applicable Limit of Liability of any such Insuring Agreements.
- c. All loss resulting from a single act or any number of acts of the same **Plan Official** or **Third Party**, and all loss whether such act or acts occurred before or during the Policy Period, will be treated as a single loss and the applicable Limit of Liability of this policy will apply, subject to the Liability for Prior Losses section of this policy.

XI. OWNERSHIP

The money, securities and other property covered under this policy may be owned by any **Employee Benefit Plan** or as respects which any **Employee Benefit Plan** is legally liable, or held by it in any capacity, whether or not such **Employee Benefit Plan** is liable for the loss thereof.

XII. NOTICE OF LOSS – PROOF – LEGAL PROCEEDINGS

- (A) Solely with respect to the coverage afforded under the Forgery Coverage, Computer Fraud Coverage, Funds Transfer Fraud Coverage, Payment Instruction Fraud, and Expense Coverage Insuring Agreements, knowledge possessed by any Insured or **Discovery** shall be deemed knowledge possessed by or **Discovery** by all Insureds.
- (B) It is a condition precedent to coverage hereunder that, upon "Discovery," the Insured will:
 - a. give written notice to the Insurer at the earliest practicable moment, and in no event later than ninety (90) days after such **Discovery**;
 - b. furnish a proof of loss with full particulars to the Insurer within six (6) months of such **Discovery**, including:
 - i. submission to examination under oath at the Insurer's request;
 - ii. production of all pertinent records at such reasonable times and places as the Insurer shall designate; and
 - iii. provide full cooperation with the Insurer in all matters pertaining to a loss or claim.
- (C) The **Insured** may offer a comparison between an **Insured's** inventory records and actual physical count of its inventory to prove the amount of loss, only where an **Insured** establishes wholly apart from such comparison that it has sustained a covered loss, caused by an identified **Plan Official**.
- (D) No **Insured** shall institute legal proceedings against the Insurer:
 - a. after two (2) years immediately following any **Discovery**; or

- b. to recover a judgment or settlement against it or its bank resulting from **Forgery**, or related legal expenses as set forth in the Legal Expense Extension, as set forth in section XVIII of the Policy, after two (2) years immediately following the date upon which such judgment shall become final or settlement was entered.

If any limitation embodied in this section is prohibited by any law controlling the construction thereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

XIII. VALUATION

The Insurer shall pay:

- (A) the least of:
 - a. the actual market value of lost, damaged or destroyed **Securities** at the published closing price of such **Securities** on the business day immediately preceding the day on which a loss is **Discovered**, provided that if no market value is published for such **Securities**, the value shall be fixed by agreement between the parties or by arbitration;
 - b. the cost of replacing **Securities**; or
 - c. the cost to post a Lost Instrument Bond;
Such cost shall be paid by the Insurer on behalf of an **Insured**;
- (B) the cost of blank books, pages or tapes or other blank materials to replace lost or damaged books of account or other records;
- (C) the least of:
 - a. the price paid by an Insured for the **Property**; or
 - b. the cost to repair or replace **Property** with that of similar quality and value at the time the **Insured** complies with Notice of Loss-Proof-Legal Proceedings regarding the furnishing of proof of loss; or
- (D) the United State of America dollar value of foreign currency based on the rate of exchange published in the *Wall Street Journal* on the day loss involving foreign currency is **Discovered**.

XIV. SUBROGATION AND RECOVERIES

In the event of any payment under this policy, the Insurer shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after loss to prejudice such rights.

If any loss covered by this policy exceeds the amount of coverage provided by this policy, the **Insurer** shall be entitled to all recoveries (except from suretyship, insurance, reinsurance or indemnity taken by or for the benefit of the Insurer) by whomsoever made, on account of such loss under this policy until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Insurer.

XV. OTHER INSURANCE

If the **Insured**, or any other party at interest in any loss, has any other bond indemnity or insurance which in the absence of this policy would cover such loss in whole or in part, then this policy shall be null and void, and shall not cover, to the extent of the amount of such other bond, indemnity or insurance; but shall attach to and cover, subject to its conditions and limitations, only the amount of such loss in excess of the amount of such other bond, indemnity or insurance.

XVI. TERMINATION AS TO ANY EMPLOYEE

This policy shall terminate as to any **Plan Official** and no coverage will be available for loss caused by such **Plan Official**:

- (A) immediately upon **Discovery** by any trustee or **Administrator** of the **Insured** (not in collusion with such **Plan Official**) of any fraudulent or dishonest act on the part of such **Plan Official** while in the service of any **Insured**:

- (B) after a trustee or **Administrator** of any **Insured** becomes aware of any fraudulent or dishonest act by such **Plan Official** involving **Money, Securities** or other **Property** valued at twenty-five thousand dollars (\$25,000) or more, committed prior to such **Plan Official's** service with any **Insured**; or
- (C) more than sixty (60) days following the termination of service to any **Insured** of such **Plan Official**.

XVII. TERMINATION OF POLICY

- (A) This policy shall terminate at the earliest of the following times:
 - a. upon receipt by the Insurer of written notice of termination from the **Principal Insured**;
 - b. upon expiration of the Policy Period as set forth in Item 3 of the Declarations;
 - c. twenty (20) days after receipt by the **Principal Insured** of a written notice of termination from the Insurer based upon non-payment of premium, unless the premium is paid within such twenty (20) day period;
 - d. as to any **Insured** upon such **Insured's** liquidation or dissolution, or upon the full assumption of responsibilities for the administration of an **Employee Benefit Plan** by another entity or organization that was not the plan sponsor as of either the inception date of this policy or the date such **Employee Benefit Plan** was added to this policy; or
 - e. at such other time as may be agreed upon by the Insurer and the **Principal Insured**.
- (B) The Insurer shall refund the unearned premium computed at customary short rates if this policy is terminated by the **Principal Insured**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XIII. TERMINATION OF PRIOR BONDS OR POLICIES

Any prior bonds or policies issued by the Insurer or any subsidiary or affiliate of the Insurer, of which this policy is a renewal or replacement thereof shall terminate, if not already terminated, as of the inception of this policy.

XIX. CONCEALMENT, MISREPRESENTATION OR FRAUD

This policy is void in any case of fraud by the **Insured** as it relates to this policy at any time. It is also void if any **Insured**, at any time, intentionally conceals for misrepresents a material fact concerning:

- (A) this policy;
- (B) **Money, Securities, or Property** covered under this policy;
- (C) the **Insured's** interest in **Money, Securities, or Property** covered under this policy; or
- (D) a claim under this policy.

XX. ALTERATION

No change in or modification of this policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurer.

XXI. LEGAL EXPENSE EXTENSION

In addition to the Limits of Liability set forth in Item 3 of the Declarations, the Insurer shall pay the **Insured**:

- (A) solely with respect to the **Forgery** coverage under the Forgery Coverage Insuring Agreement, **Legal Expenses** incurred and paid, with the Insurer's prior written consent; and
- (B) as a result of loss covered under any Insuring Agreement of this policy, **Recovery Legal Expenses** incurred and paid, provided however that such costs shall not exceed \$10,000.

XXII. LIMITATIONS

The Insurer shall not be liable for loss involving:

- (A) the disclosure of confidential or personal information while in the care, custody or control of an **Insured**, including but not limited to patents, trade secrets, processing methods, customer lists,

financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information, provided that this limitation shall not apply to loss that is otherwise covered under this policy by a **Plan Official's** acts of **Fraud or Dishonesty** through the use of, disclosure of or access to such confidential or personal information; or

- (B) fees, costs, fines, penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of an **Insured's** or another entity's or person's confidential or personal information, including but not limited to patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any similar type of non-public information.

XXIII. OWNERSHIP

The **Money, Securities, and Property** covered under this policy is limited to **Money, Securities, and Property**:

- (A) owned by any **Insured**;
(B) for which any **Insured** is legally liable; or
(C) held by an **Insured** in any capacity,
whether or not such **Insured** is liable for the loss thereof.

XXIV. SPECIAL CONDITIONS – PAYMENT INSTRUCTION FRAUD

- (A) For any single transfer of **Money** or **Securities** on deposit in the **Insured's** own account, the **Insured** obtained an **Official Authorization** from at least two **Employees**, one of who is a trustee or **Administrator**; or
- (B) For any single transfer of **Money** or **Securities** on deposit in an **Employee Benefit Plan Participant's** account maintained with an **Insured**:
- i. the sender of the **Payment Instruction Fraud** instruction confirmed with the **Insured** the identity of the **Employee Benefit Plan Participant** with the password, personal identification number, token, or other security code of such **Employee Benefit Plan Participant**;
 - ii. the **Payment Instruction Fraud** instruction was received by an **Employee** specifically authorized by the **Insured** to receive and act upon such instructions;
 - iii. the **Insured** verified such instructions via a call back to a predetermined telephone number set forth in the **Insured's** written agreement with such **Employee Benefit Plan Participant** or other security procedure approved in writing by the Insurer for the purpose of detecting error in the transmission or the content of such instructions, and verifying that such instructions are that of an **Employee Benefit Plan Participant**; and
 - iv. the **Insured** preserved a contemporaneous record of the call back and the instruction which verifies use of the authorized password, personal identification number, token, or other security code of the **Employee Benefit Plan Participant**.

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

IN WITNESS WHEREOF, Hudson Insurance Insurer has caused this policy to be signed by its President and Corporate Secretary at 100 William Street, New York, NY 10038 but this policy will not be effective unless the Insurer shall have issued a Policy Certificate as part of this policy.



President

ESVP-31210000 (03/2018)



Secretary

DIRECTORS, OFFICERS AND COMPANY LIABILITY COVERAGE PART

General Terms and Conditions [Applies to Directors, Officers and Company Liability and Employment Practices Liability Coverage Parts]

I. GENERAL TERMS AND CONDITIONS

The **Directors, Officers and Company Liability Coverage Part** and the **Employment Practices Liability Coverage Part** are subject to the General Terms and Conditions set forth in this Part of the Policy. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of such Coverage Part. The terms and conditions of each Coverage Part shall apply only to such Coverage Part, unless otherwise specifically stated to the contrary.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) **"Affiliate"** means any insurance company controlling, controlled by or under common control with the Insurer.

(B) **"Application"** means the application for this Policy, which shall be deemed to be a part of this Policy and attached to it, regardless of physical attachment, including any materials or information submitted therewith or made available to the Insurer during the underwriting process, which application shall be on file with the Insurer.

Application shall also mean the application for any policy in an uninterrupted series of policies issued by the Insurer or any **Affiliate** of which this Policy is a renewal or replacement.

(C) **"Claim"** shall have the meaning specified for such term in each Coverage Part.

(D) **"Company"** means:

(1) The entity or organization that is the **Named Insured**; or

(2) any **Subsidiary**.

Company shall include any such entity as a Debtor in Possession as that term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.

(E) **"Defense Costs"** means all reasonable and necessary legal fees and expenses incurred in the defense of any **Claim** after such **Claim** has been made, and shall also include the reasonable and necessary expenses in connection with any appeal of such **Claim** or in connection with an **Extradition**, but shall not include the **Company's** overhead expenses

or any salaries, wages, fees, or benefits of any **Insured Person** or agents or **Employees** of the **Company**.

- (F) "**Extradition**" means any formal and lawful process or proceeding commenced against an **Insured Person** located in any jurisdiction in an attempt to obtain the voluntary or involuntary surrender of such **Insured Person** to another jurisdiction in connection with a **Claim**.
- (G) "**Employee**" shall mean any past, present or future employee of the **Company**, other than an **Insured Executive**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such.

Employee shall also mean any person leased to the **Company**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, or who is a volunteer serving the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees. However, this definition of **Employee** shall hereby expressly not apply for purposes of the Crime Coverage Part of this Policy.

- (H) "**ERISA**" means the Employee Retirement Income Security Act of 1974 including any amendments thereto and any rules or regulations promulgated thereunder, including but not limited to similar laws that are applicable to not-for-profit organizations.
- (I) "**Financial Insolvency**" means the status of a **Company** as a result of the appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such **Company**; or such **Company** becoming a Debtor in Possession.
- (J) "**Insured Executive**" means any or all of the following:

- (1) a past, present or future duly elected trustee, director, duly appointed officer or duly elected or appointed member of a board of managers of the **Company**, including any general counsel who is also an employee of the **Company** and other employed lawyers who are both employees and duly appointed officers of the **Company**;
- (2) the functional equivalent of such director, officer or manager of the **Company** when serving in such capacity outside the United States of America; or
- (3) any duly elected or appointed member of a Medical, Scientific, or Technology Advisory Board of the **Company** in such person's capacity in such position.

- (K) "**Insured Person**" shall have the meaning specified, if any, for such term in each Coverage Part.
- (L) "**Insureds**" shall have the meaning specified, if any, for such term in each Coverage Part.
- (M) "**Interrelated Wrongful Acts**" means **Wrongful Acts** that are logically, causally or

otherwise related based upon, arising from, resulting from, or in consequence of the same of related facts, circumstances, situations, transactions, causes or events, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claims** under this Policy or any other policy in effect prior to the inception of the **Policy Period**.

- (N) **"Liability Coverage Part"** means the Directors and Officers Liability, Employment Practices Liability and Fiduciary Liability Coverage Parts, if granted and marked "YES" in **ITEM 3** of the Declarations.
- (O) **"Loss"** shall have the meaning specified, if any, for such term in each Coverage Part of this Policy.
- (P) **"Named Insured"** means the entity named in **ITEM 1** of the Declarations.
- (Q) **"Policy Period"** means the period set forth in **ITEM 2** of the Declarations, or any shorter period resulting from termination of this Policy pursuant to its terms and conditions.
- (R) **"Pollutants"** means any solid, liquid, gaseous or thermal irritant, nuisance or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** also means any substance located anywhere in the world identified on a list of hazardous substances or emissions issued by any federal agency or any state, local or foreign equivalent thereof.
- (S) **"Subsidiary"** means any organization that is scheduled as a **Subsidiary** on an endorsement to this Policy, or is created or acquired during the **Policy Period** and:
 - (1) is an organization in which and so long as the **Named Insured** owns or controls, directly or indirectly, the right to elect, appoint or designate more than 50% of such organization's managers; or
 - (2) is a foundation, charitable trust or political action committee in which and so long as such entity or organization is controlled by the **Named Insured** or any **Subsidiary** as defined in (1) above.
- (T) **"Wrongful Act"** shall have the meaning specified, if any, for such term in each Coverage Part.

III. COVERAGE EXTENSIONS

(A) Spouses and Domestic Partners

Coverage under this Policy shall extend to the lawful spouse or domestic partner of an **Insured Person** for a **Claim** made against such spouse or domestic partner, provided that:

- (1) the **Claim** arises solely from:
 - (a) such person's status as the spouse or domestic partner of an

Insured Person; or

- (b) such spouse's or domestic partner's ownership of property, and the property is sought solely as a source of recovery for a **Wrongful Act** by an **Insured Person**;
- (2) the **Insured Person** is named in such **Claim** together with the spouse or domestic partner; and
- (3) coverage of the spouse or domestic partner shall be on the same terms and conditions, including any applicable Retention, as apply to coverage of the **Insured Person** for such **Claim**.

No coverage shall apply to any **Loss** resulting from any act, error or omission of such spouse or domestic partner.

(B) Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** made against such **Insured Person**. No coverage shall apply to any **Loss** directly resulting from any act, error or omission of such estate, heirs, legal representatives or assigns.

IV. LIMIT OF LIABILITY

With respect to all Coverage Parts and **Liability Coverage Parts** of this Policy:

- (A) The Limit of Liability for each **Liability Coverage Part** in **ITEM 3** of the Declarations shall be the maximum aggregate amount that the Insurer shall pay under such **Liability Coverage Part** for all **Loss** from all **Claims** covered under such **Liability Coverage Part**.
- (B) Notwithstanding the above, if a Combined Aggregate Limit of Liability for all Coverage Parts is granted in **ITEM 3** of the Declarations, then:
 - (1) such single Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** covered under all included Coverage Parts combined; and
 - (2) any amount specified as a Limit of Liability for any individual Coverage Part in **ITEM 3** of the Declarations shall be subject to, part of, and not in addition to, the amount stated as the Combined Aggregate Limit of Liability for all Coverage Parts.
- (C) At such time as any Limit of Liability under any Coverage Part of this Policy is exhausted, the premium for this Policy shall be deemed fully earned.

V. DEFENSE COSTS

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the Insurer shall reduce each Limit of Liability.
- (B) Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations, then payment of **Defense Costs** shall be in addition to any applicable Limit of Liability, provided that:
- (1) if a Limit of Liability is specified for any individual **Liability Coverage Part** in **ITEM 3** of the Declarations, then the maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under such **Liability Coverage Part** shall be limited and capped by the percentage of the Limit of Liability indicated within **ITEM 3** of the Declarations .
 - (2) if a Combined Aggregate Limit of Liability for all Coverage Parts is included in **ITEM 3** of the Declarations, then:
 - (a) the single maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under all included **Liability Coverage Parts** combined shall be the percentage amount stated in **ITEM 3** of the Declarations and shall only be a percentage of the Combined Aggregate Limit of Liability for all **Liability Coverage Parts**; and
 - (b) any amount of **Defense Costs** available for any individual Coverage Part shall be subject to, part of, and not in addition to, the single maximum amount of **Defense Costs** available for all included Coverage Parts combined specified in Section V. (B)
(2) (a), above; and
 - (3) if the amount available for **Defense Costs** in Sections V. (B) (1) or (2), above is exhausted by the payment of **Defense Costs**, then **Defense Costs** shall be paid by the Insurer solely from any remaining applicable Limit of Liability until the exhaustion of the applicable Limit of Liability.

VI. RETENTIONS

Solely with respect to the **Liability Coverage Parts** of this Policy:

- (A) The Insurer shall pay **Loss** only in excess of the Retention applicable to each **Claim** as specified in **ITEM 3** of the Declarations.
- (B) All Retentions shall be borne by the **Insureds** at their own risk, and shall not be insured under any other insurance policy.
- (C) If a **Claim** is covered under more than one **Liability Coverage Part**, the applicable Retention for each **Liability Coverage Part** shall be applied separately to such **Claim**, provided that the maximum Retention applied to such **Claim**

shall not exceed the highest of all applicable Retentions.

- (D) No Retention shall apply to **Loss** incurred by any **Insured Person** that a **Company** is not legally permitted to indemnify, or for which the **Company** is unable to legally indemnify by reason of its **Financial Insolvency**.
- (E) If any **Company** is permitted or required by law to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on their behalf, and does not do so other than because of **Financial Insolvency**, then the **Company** and **Named Insured** shall be jointly and severally obliged to reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the Retention that would have applied if such indemnification had been made.

VII. DEFENSE AND SETTLEMENT

Solely with respect to the **Liability Coverage Parts** of this Policy and unless specifically stated to the contrary within such Coverage Part:

- (A) The Insurer shall have the right and duty to defend any **Claim** for which the **Insureds** give notice to the Insurer, even if such **Claim** is groundless, false or fraudulent. The Insurer may make any investigation of such **Claim** it deems appropriate, and according assign counsel at its sole choice and discretion to defend such **Claim**.
- (B) The Insurer's duty to defend a **Claim** shall cease upon exhaustion of any applicable Limit of Liability.

Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations then the Insurer's duty to defend any **Claim** shall cease upon exhaustion of the maximum aggregate amount of **Defense Costs** available under Section V. DEFENSE COSTS, and any applicable Limit of Liability.

- (C) The **Insureds** shall not admit nor assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** regarding any **Claim** without the prior written consent of the Insurer, such consent not to be unreasonably withheld. The Insurer shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.
- (D) If with respect to any **Claim** the **Insureds** consent to the first settlement opportunity which is recommended by the Insurer and which is acceptable to the claimant, the applicable Retention for **Loss** on account of such **Claim** shall be retroactively reduced 10%. If the **Insureds** refuse to consent to a settlement opportunity acceptable to the claimant in accordance with the Insurer's recommendation, then with respect to all **Loss** (inclusive of **Defense Costs**) on account of such **Claim** which exceeds the amount for which such **Claim** could have been settled by the Insurer plus **Defense Costs** incurred prior to the date the **Insureds** first refused to consent to the proposed settlement of such **Claim**, the Insurer shall be liable under this Policy solely for 80% of the amount of **Loss** (inclusive of **Defense Costs**).
- (E) Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations, then the Insurer may settle any **Claim** for a monetary amount that the Insurer deems reasonable and the consent of the **Insureds** shall not be

required to settle such **Claim**.

- (F) As a condition precedent to any payment obligations of the Insurer under this Policy, the **Insureds**, severally according to their interests, shall provide the Insurer all information and cooperation as the Insurer may reasonably request to enable it to assess the causation, liability and damages issues and exposure with respect to such **Insureds**.

VIII. AWARENESS OF WRONGFUL ACT OR CIRCUMSTANCES AND NOTICE OF CLAIM AND OTHER MATTERS

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If, during the **Policy Period**, any **Insured** first becomes aware of a **Wrongful Act** or circumstances that might reasonably be expected to give rise to a **Claim** for a **Wrongful Act** and if, during such **Policy Period**, the **Insured** provides the Insurer with written notice of the specific circumstances and actual, alleged or potential **Wrongful Act**, the consequences which have resulted or may result from such **Wrongful Act** or circumstances (including but not limited to actual or potential damages), the identities or descriptions of potential claimants, and the manner in which the **Insured** first became aware of such circumstances or **Wrongful Act**, then, any **Claim** subsequently made arising from such **Wrongful Act** or circumstances shall be treated as if it had been first made during the **Policy Period**.
- (B) Any and all **Claims** shall be reported to the Insurer as soon as practicable after they are first made against an **Insured** and first known by either the **Company's** executive director, chief executive officer, chief financial officer, chief operating officer, general counsel or risk manager, but in no event later than ninety (90) days after the termination of the **Policy Period**, or **Discovery Period**, if applicable.
- (C) All notices intended for the Insurer under this Policy, whether with regard to **Claims**, **Wrongful Acts**, circumstances or any other matter pertaining to this Policy, should be directed to the appropriate address set forth in **ITEM 7** of the Declarations.

IX. DISCOVERY PERIOD

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If either the **Named Insured** or the Insurer does not renew this Policy, the **Insureds** shall have the right, upon payment of the additional premium set forth in **ITEM 4** of the Declarations, to an extension of the insurance provided by this Policy with respect solely to any **Claim** first made during the Discovery Period set forth in **ITEM 4** of the Declarations, but only with respect to a **Wrongful Act** occurring prior to the termination of the **Policy Period**.
- (B) As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid in full. The right of the **Insureds** to purchase the Discovery Period shall be immediately terminated if the Insurer does not receive written notice from or on behalf of an **Insured** advising that any or all **Insureds** wish to purchase the Discovery Period together with full payment of the premium for the Discovery Period on a non-refundable basis within thirty (30) days after the

termination of the **Policy Period**.

- (C) The purchase of the Discovery Period shall not in any way increase the Limit of Liability set forth in **ITEM 3** of the Declarations, and the Limit of Liability with respect to **Claims** made during the Discovery Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

This Section IX, Discovery Period, shall not apply to the Crime Coverage Part of this Policy.

X. RELATED CLAIMS

Solely with respect to all **Liability Coverage Parts** of this Policy:

All **Claims** based upon, arising from or in any way related to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** for all purposes under this Policy first made on the earliest date that:

- (A) any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (B) notice of any **Wrongful Act** described above was given to the Insurer under this Policy pursuant to Section VIII. (A);
- (C) notice of any **Wrongful Act** described above was given under any prior insurance policy, whether issued by the Insurer, an **Affiliate** or any other insurance company.

XI. ALLOCATION

Solely with respect to all **Liability Coverage Parts** of this Policy:

Where **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Policy and also amounts that are not covered by this Policy because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage shall apply as follows:

- (A) 100% of **Defense Costs** shall be allocated to covered **Loss**; and
- (B) **Loss** other than **Defense Costs** shall be allocated between covered **Loss** and non-covered amounts based upon the relative legal exposure of all parties to such matters.

XII. OTHER INSURANCE

Except for the Employment Practices Liability Coverage Part, if **Loss** arising from any **Claim** is insured under any other valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

XIII. CANCELLATION AND NON-RENEWAL

- (A) The **Company** as listed in **ITEM 1** of the Declarations or any duly authorized party acting on its behalf shall have the exclusive right to cancel this Policy on behalf of any or all **Insureds**. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in **ITEM 2(B)** of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (B) The Insurer may cancel this Policy only for nonpayment of premium. In such event, the Insurer shall deliver or mail written notice of cancellation to the **Named Insured** at the address stated in **ITEM 1** of the Declarations not less than twenty (20) days before the effective date of cancellation. The notice shall state the reason for cancellation.
- (C) The Insurer is under no obligation to renew this Policy upon its expiration. Upon the Insurer's election to non-renew this Policy, the Insurer shall deliver or mail written notice of non-renewal to the **Named Insured**, at the address listed in **ITEM 1** of the Declarations at least sixty (60) days before the Expiration Date set forth in **ITEM 2(B)** of the Declarations.

XIV. CHANGES IN EXPOSURE

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If, during the **Policy Period**, the **Company** consummates any of the following transactions:
- (1) makes an asset acquisition;
 - (2) acquires any entity, including one that is a **Subsidiary**; or
 - (3) assumes the liability of another entity,

then, insurance under this Policy shall only apply to a **Claim** for a **Wrongful Act** involving such assets or entities and first made against an **Insured**, provided that such **Wrongful Act** is committed or alleged to have been committed after such transaction closes.

- (B) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, such **Subsidiary** and its **Insured Persons** shall only be covered under this Policy with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such entity ceased to be a **Subsidiary**.
- (C) If, during the **Policy Period**, there is a "change in control" of the **Named Insured** listed in **ITEM 1** of the Declarations, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** occurring prior to the time of the "change in control." The entire premium for the Policy shall be deemed to be fully earned immediately upon the consummation of the "change in control" transaction.

"Change in control" means:

- (1) the merger or acquisition of the **Named Insured** listed in **ITEM 1** of the Declarations, or of all or substantially all of its assets, by any other entity such that another entity becomes the surviving entity; or
- (2) the acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than fifty percent (50%) of the directors of the **Named Insured** listed in **ITEM 1** of the Declarations.

XV. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Company** and the **Insured Persons**. The **Company**, through its **Employees** or other agents, and the **Insured Persons** shall execute all papers required and shall do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and shall provide all other assistance and cooperation which the Insurer may reasonably require. The Insurer does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed.

XVI. REPRESENTATIONS AND SEVERABILITY

It is agreed by the **Insureds** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the Insurer and attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Insureds** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations; provided, 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 the Insurer under this Policy, this Policy shall be void and have no effect whatsoever with respect to those **Insureds** who made or had knowledge of such misrepresentations. Knowledge of any matter which may give rise to a **Claim** or any misrepresentation made by the **Company's** Executive Director, Chief Executive Officer or Chief Financial Officer shall be imputed to the **Company**, but shall not be imputed to any **Insured Person** who had no knowledge of the matter which may give rise to a **Claim** or the misrepresentation with respect thereto.

XVII. ACTION AGAINST THE INSURER

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) Except for an action undertaken by or on behalf of an **Insured**, no action may be taken against the Insurer unless, as a condition precedent thereto:
 - (1) there has been full compliance with all of the terms and conditions of this Policy; and
 - (2) the amount of any liability of the **Insured** has been finally determined either by judgment against such **Insured** after actual trial, or by written agreement

of the **Insured**, the claimant and the Insurer.

- (B) Nothing contained herein shall give any person or entity the right to join the Insurer as a party to any **Claim** against an **Insured** to determine its liability, nor may an **Insured** implead or join the Insurer in any such **Claim**.
- (C) Assignment of the interest of any **Insured** under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

Solely with respect to the Crime Coverage Part of this Policy:

- (D) No legal action shall be taken against the Insurer involving loss unless the **Insured** has complied with all the terms of this Policy;
- (E) No legal action shall be taken against the insurer involving loss until ninety (90) days after the **Insured** has filed proof of loss with us; and
- (F) No legal action shall be taken against the Insurer involving loss unless such action is brought within two (2) years from the date that the **Insured** discovers such loss.

XVIII. INSOLVENCY OF THE COMPANY AND WAIVER OF AUTOMATIC STAY IN BANKRUPTCY

In the event that an insolvency or bankruptcy proceeding is commenced by or against the **Company**, the **Company** waives and releases any automatic stay or injunction which may apply to its benefit and advantage in such proceeding in connection with this Policy or its proceeds, and agrees not to oppose or object to any efforts by the Insurer or any **Insured Person** to obtain relief from any such stay or injunction that may be applied against their interests.

However, the rights of an **Insured Person** or the **Company** under this Policy shall not otherwise be affected by the bankruptcy or insolvency of the **Company** or any other **Insured Person**.

XIX. AUTHORIZATION AND NOTICES

The **Named Insured** as set forth in **ITEM 1** of the Declarations shall act on behalf of any and all **Insureds** with respect to the giving and receiving of notices involving the Insurer and this Policy, as well as payment and any other action with regard to premiums and satisfaction of any Retention Amounts set forth in **ITEM 3** of the Declarations.

XX. ENTIRE AGREEMENT

The **Insureds** agree that this Policy shall constitute the entire agreement between the Insurer and the **Insureds** in relation to the insurance afforded under the Policy.

Notice to any agent or knowledge possessed by any agent or other person acting or purporting to act on behalf of the Insurer shall not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The

terms, conditions and limitations of this Policy may only be waived or changed by written endorsement to the Policy signed by the Insurer.

XXI. HEADINGS, TITLES, NUMBER AND GENDER

Any headings or titles used with respect to any section or sub-section in this Policy are solely for descriptive convenience and shall not be construed as substantive provisions for purposes of interpreting any provision in the Policy.

Wherever used in this Policy, whether in defined or undefined terms, the singular number shall include the plural and vice versa. All personal pronouns shall include the female, male and neutral versions, regardless of which form is used, unless specific provision is made for a natural person as opposed to an entity.

XXII. TERRITORY AND CURRENCY

Insurance provided under this Policy shall apply to **Claims** that are made anywhere in the world.

The premiums, limits, **Loss** and other amounts set forth in this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in such dollars at the applicable rate of currency 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.

XXIII. CONFORMITY TO STATUTE AND REGULATION

If any provision in this Policy conflicts with any mandatory applicable law, regulation or rule or the provisions of a state amendatory endorsement attached to this Policy as required by applicable state insurance law, regulation or rule, then the terms of such law, regulation, rule or amendatory endorsement shall apply in place of the Policy provision.

Directors, Officers and Company Liability Coverage Part

I. DIRECTORS, OFFICERS AND COMPANY LIABILITY INSURING AGREEMENTS

(A) Executive and Employee Liability

Except for **Loss** which the Insurer pays pursuant to Section I. (B) of this Coverage Part, the Insurer shall pay **Loss** on behalf of an **Insured Person**, which such **Insured Person** has become legally liable to pay as a result of a **Claim** first made against them during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

(B) Company Indemnification Liability

The Insurer shall pay **Loss** on behalf of the Company for which the Company has, to the extent permitted or required by applicable law, indemnified an **Insured Person**, and which such **Insured Person** has become legally liable to pay as a result of a **Claim** first made against them during the Policy Period or Discovery Period, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

(C) Company Liability

The Insurer shall pay **Loss** on behalf of the **Company**, which the **Company** has become legally liable to pay as a result of a **Claim** first made against it during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) "Claim" means:

- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
- (2) a civil or criminal judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;
- (3) a formal civil, criminal, administrative, or regulatory proceeding, including any appeal therefrom; or
- (4) solely with respect to an **Insured Person**, a formal investigation of such **Insured Person** in which such **Insured Person** has been identified by name in a subpoena, formal order or notice of investigation, as someone against whom a civil or criminal lawsuit or other legal proceeding may later be commenced.

A **Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company**, **Insured Person** or their agent of a written demand, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.

(A) **"Insured"** means:

- (1) the **Company**; or
- (2) any **Insured Person**

(B) **"Insured Person"** means:

- (1) any **Insured Executive**; or
- (2) any **Employee**

(C) **"Loss"** means judgment and settlement amounts (including pre- or post- judgment interest, punitive or exemplary damages, and the multiplied portion of any damages award, provided that such amounts are insurable pursuant to the law in any jurisdiction whose law may reasonably be applicable and which holds such amounts to be insurable), and **Defense Costs** that an **Insured** is legally liable to pay. In determining applicable law with respect to any amounts referenced in this Definition only the following factors shall be considered.

- the state in which the **Company** is incorporated;
- the state in which the **Company** has its principal place of business;
- the state in which the litigation awarding punitive or exemplary damages was filed and maintained; or
- the state in which any **Wrongful Act** takes place and on which the punitive or exemplary damages award is predicated.

The Insurer shall not challenge any written opinion of counsel retained by or on behalf of an **Insured** asserting that the award of punitive or exemplary damages at issue is insurable, provided that such counsel is duly licensed to practice law in the jurisdiction whose law is opined to be applicable and such counsel agrees in writing that the Insurer is a party that may rely upon its opinion.

Loss shall also include taxes imposed by law upon any **Insured Executive** in his or her capacity as such solely in connection with any bankruptcy, receivership, conservatorship or liquidation of the **Company**, provided always that such taxes are insurable under applicable law.

Loss shall in no event include the following:

1. taxes (other than when imposed as described above in this Definition);

2. the cost of complying with any non-monetary relief;
3. any amounts otherwise uninsurable pursuant to applicable law; and
4. fines and penalties, except for civil penalties imposed upon an **Insured Executive** pursuant to the Foreign Corrupt Practices Act (FCPA).

(D) **"Outside Capacity"** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of the **Company**.

(E) **"Outside Entity"** means any entity, other than the **Company**, which is:

- (1) a not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) an entity organized for a religious or charitable purpose under any not-for-profit statute; or
- (3) an entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.

(F) **"Personal, Publishers and Advertising Injury"** means, collectively, the following, whether actual or alleged:

- (1) false arrest;
- (2) malicious prosecution or abuse of process;
- (3) wrongful detention, entry, eviction or imprisonment;
- (4) defamation, whether libel or slander;
- (5) disparagement;
- (6) plagiarism;
- (7) misappropriation of ideas, trade secrets or trade dress;
- (8) infringement of copyright, trademark or service mark; or
- (9) unauthorized use of title.

(G) **"Wrongful Act"** means any actual or alleged:

- (1) **Personal, Publishers and Advertising Injury**, error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed

by an **Insured Person** in their capacity as such or in their **Outside Capacity**, or, with regard to Insuring Agreement (C) the **Company**; or

- (2) matter claimed against an **Insured Person**, by reason of their serving in such capacity, including service in an **Outside Capacity**.

III. **COVERAGE EXTENSION FOR OUTSIDE DIRECTORSHIP LIABILITY**

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage is afforded for **Loss** resulting from any **Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be available and attach solely and specifically excess of all indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce by the amount of such payment obligation, the Limit of Liability available under this Policy for such **Claim**.

IV. **ADDITIONAL LIMITS OF LIABILITY**

Subject to the terms and conditions of this Policy and **Liability Coverage Part** and further subject to it being granted as indicated in **ITEM 3** of the Declarations, an additional aggregate Limit of Liability shall be available for **Loss** resulting from a **Claim** against any **Insured Executive**, provided that:

- (A) such **Claim** is covered under the Insuring Agreement set forth in Section I. (A) of this **Liability Coverage Part**;
- (B) such additional Limit shall apply solely in excess of all other insurance and indemnity available to pay **Loss** for such **Claim**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be fully exhausted by payment by the respective insurers thereunder prior to this additional Limit being made available to pay **Loss**; and
- (C) such additional Limit shall be subject to the maximum aggregate Limit of Liability for this **Liability Coverage Part** set forth in **ITEM 3** of the Declarations.

V. **EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS**

The Insurer shall not pay **Loss** in connection with any **Claim**:

- (A) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use or diminution of value thereof;
- (B) based upon, arising from, or in any way related to any prior or pending, suit or proceeding against any **Insureds** as of the Prior or Pending Date in **ITEM 3** of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged in such suit or proceeding;

- (C) for any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other similar policy of which this **Liability Coverage Part** is effectively, in whole or in part, a renewal, replacement or which otherwise succeeds in time;
- (D) based upon, arising from, or in any way related to any:
 - (1) actual or alleged discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
 - (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

However, these exclusions in this Section V. (D) shall not apply to **Loss** otherwise covered under the Insuring Agreement set forth in Section I. (A) of this Coverage Part.

- (E) based upon, arising from, or in any way related to any employment-related **Wrongful Act** involving:
 - (1) unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
 - (2) actual or alleged violation of, ERISA, the Fair Labor Standards Act (FLSA), Equal Pay Act (EPA), Worker Adjustment and Retraining Notification Act (WARN), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), or any similar law;
- (F) based upon, arising from, or in any way related to the rendering of, or failure to render, any professional services for others, including, without limitation, services performed by any **Insureds** for or on behalf of a customer or client;
- (G) that is brought or maintained by or on behalf of the **Company**, **Outside Entity**, any director, officer or functionally equivalent position in an **Outside Entity** or any **Insured Person**, regardless of her or his capacity as such;
- (H) based upon, arising from, or in any way related to an **Insured Person's** service, at any time, as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than the **Company** even if such service is at the direction or request of the **Company**, provided that this exclusion shall not apply to coverage afforded under Section III. of this **Liability Coverage Part** for a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (I) for:
 - (1) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by the **Company** or an **Insured Person**; or

- (2) profit or remuneration gained by the **Company** or any **Insured Person** to which she, he or it is not legally entitled.

provided that the acts or conduct underlying the foregoing exclusions in this Section V. (I) are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying **Claim**. These exclusions shall not be applicable to that part of **Loss**, which is comprised of **Defense Costs**. Neither the intent, knowledge nor **Wrongful Act** of any **Insured Person** or the **Company** shall be imputed to any other **Insured Person** to determine the application of these exclusions

VI. EXCLUSIONS SOLELY APPLICABLE TO INSURING AGREEMENT (C)

The **Insurer** shall not pay **Loss** under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:

- (A) liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
- (B) employment-related **Wrongful Act**;
- (C) discrimination or sexual harassment;
- (D) price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;
- (E) infringement, dilution or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property; or
- (F) a settlement or judgment amount, as well as **Defense Costs** in such **Claim**, that represents the amount by which the purchase price or consideration is effectively increased in connection with a **Claim** alleging that the price or consideration paid or proposed to be paid in a transaction involving all or substantially all of the ownership interest in or assets of any entity is inadequate, as well as plaintiff counsel fees and costs awarded or settled as part of such **Claim**.

VII. PRIORITY AND ORDER OF PAYMENTS

If any amount sought as **Loss** payable under this Policy exceeds the available Limits of Liability or is subject to competing claims of different **Insureds**, then **Loss** shall be paid not exceeding the available Limits of Liability in the following order of priority:

- (A) First to **Loss** covered under Section I. (A);
- (B) Second to **Loss** covered under Sections I. (B) or (C) of this Coverage Part at the sole election of the **Company** as to the timing of payment and applicable Section.

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Employment Practices Wrongful Act Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable, for an **Employment Practices Wrongful Act** by the **Insureds**.

(B) Third Party Wrongful Act Liability

If Third Party Liability Coverage is granted by the Insurer and included in **ITEM 3** of the Declarations, the Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable, for a **Third Party Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Liability Coverage Sublimit of Liability, Retention, and Prior or Pending Date in **ITEM 3** of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

II. DEFINITIONS

The following terms shall have the meanings specified below:

- (A) **“Benefits”** means perquisites, fringe benefits, severance payments, deferred compensation and any other form of compensation (other than salaries, wages, or bonuses as a component of a front or back pay award).
- (B) **“Claim”** means any,
- (1) **Employment Practices Claim**; or
 - (2) **Third Party Claim**.
- (C) **“Employment Practices Claim”** means any **Claim** brought by or on behalf of an **Employee**, an applicant for employment with the **Company**, or an **Independent Contractor** that is:
- (1) a written demand for monetary or non-monetary relief (including as example, a written demand for reinstatement of employment), including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
 - (2) a civil judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;

- (3) a proceeding brought by, on behalf of or before the Equal Employment Opportunity Commission (EEOC) or similar federal, state or local governmental agencies, including any appeal therefrom.

“Employment Practices Claim” also means an audit conducted by the United States of America Office of Federal Contract Compliance Programs (OFCCP).

An **Employment Practices Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company, Insured Person** or their agent of a written demand, notice of violation or charges or service of summons, subpoena, order to show cause or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.

“Employment Practices Claim” shall not include any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

(D) **“Employment Practices Wrongful Act”** means any actual or alleged:

- (1) wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
- (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law;
- (4) **Retaliation**;
- (5) breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising from a personnel manual, employee handbook, or policy statement; or
- (6) violation of the Family and Medical Leave Act.

Employment Practices Wrongful Act shall also mean the following, but only when alleged in addition to or as part of any **Employment Practices Wrongful Act** described above:

- (a) employment-related wrongful infliction of emotional distress;
- (b) failure to create, provide for or enforce adequate or consistent employment-related policies and procedures;
- (c) negligent retention, supervision, hiring or training; or
- (d) employment-related invasion of privacy, defamation, or misrepresentation.

- (E) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to an **Independent Contractor Agreement**.
- (F) **“Independent Contractor Agreement”** means any written and express contract or agreement between an **Independent Contractor** and an **Insured Entity** specifying the terms of the **Insured Entity’s** engagement of such **Independent Contractor**.
- (G) **“Insured”** means:
- (1) the **Company**; or
 - (2) any **Insured Person**.
- (H) **“Insured Person”** means any:
- (1) **Employee**;
 - (2) **Insured Executive**; or
 - (3) solely with regard to Insuring Agreement (A), an **Independent Contractor**, provided that within 30 days of an **Employment Practices Claim** having been made against such **Independent Contractor** that the **Company** agrees in writing to indemnify such **Independent Contractor** for any **Loss** arising out of such **Claim**.
- (I) **“Loss”** means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, front pay and back pay, settlement amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

Loss also includes all damages, including liquidated damages, awarded under the Age Discrimination in Employment Act.

However, **Loss** shall not include:

- (1) taxes, fines or penalties imposed by law;
- (2) non-monetary relief;
- (3) **Benefits**;
- (4) future compensation for any person hired, promoted, or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**;
- (5) **Stock Benefits**;
- (6) costs associated with providing any accommodations required by the Americans with Disabilities Act or any similar law;
- (7) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive, exemplary, multiple or liquidated damages, the insurability of such

damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.

(J) **“Retaliation”** means adverse treatment of an **Employee** or **Independent Contractor** based upon such person:

- (1) exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, **ERISA**, or the Americans with Disabilities Act;
- (2) refusing to violate any law;
- (3) assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any **Insured**;
- (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
- (5) filing any “whistle blower” claim against any **Insured** under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar law.

(K) **“Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Employee** that grants stock, stock options or stock appreciation rights in the **Company** to such person, including, without limitation, restricted stock or any other stock grant. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.

(L) **“Third Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**, and shall not include **Employees**.

(M) **“Third Party Claim”** means any **Claim** brought by or on behalf of a **Third Party** that is:

- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
- (2) a civil judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;

A **Third Party Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company**, **Insured Person** or their agent of a written demand, notice of violation or charges or service of summons, subpoena, order to show cause or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.

(N) **“Third Party Wrongful Act”** means any actual or alleged:

- (1) discrimination against a **Third Party** based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law; or
- (2) sexual harassment against a **Third Party**, including unwelcome sexual advances, requests

for sexual favors or other conduct of a sexual nature.

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

- (A) The Insurer shall not pay **Loss** in connection with any **Claim**:
- (1) for bodily injury, sickness, disease, death, false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use or diminution of value thereof;
 - (2) for any actual or alleged **Employment Practices Wrongful Act** or **Third Party Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such, or by any **Subsidiary**, if such **Wrongful Act** actually or allegedly occurred when such entity was not a **Subsidiary**;
 - (3) based upon, arising from, or in any way related to any suit, or proceeding against any **Insured**, including any audit initiated by the OFCCP pending as of or commenced before the Prior or Pending Date in **ITEM 3** of the Declarations, or the same or substantially similar fact, circumstance, or situation underlying or alleged in such suit, proceeding, or audit;
 - (4) for any **Employment Practices Wrongful Act** or **Third Party Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other similar policy of which this **Liability Coverage Part** is effectively, in whole or in part, a renewal, replacement or which otherwise succeeds in time;
 - (5) based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;
 - (6) for breach of any **Independent Contractor Agreement**;
 - (7) based upon, arising from, or in any way related to unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
 - (8) based upon, arising from, or in any way related to any actual or alleged violation of the Fair Labor Standards Act (FLSA) (except for Equal Pay Act (EPA)), Worker Adjustment and Retraining Notification Act (WARN), the National Labor Relations Act (NLRA), the Occupational Safety and Health Act (OSHA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), **ERISA**, or any similar federal, state or local law;

Provided that the exclusions set forth in this Section III. (A) (7) and (8) shall not apply to that portion of **Loss** that represents a specific amount the **Insureds** become legally obligated to pay solely predicated upon **Retaliation**.

- (9) based upon, arising from, or in any way related to liability incurred for breach of any oral, written, or implied employment contract; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract; provided, however, that this exclusion shall not apply to the portion of **Loss** representing **Defense**

Costs incurred to defend against such liability.

IV. EXCLUSION APPLICABLE TO INSURING AGREEMENT (B)

Solely with respect to Insuring Agreement (B), the Insurer shall not pay **Loss** in connection with any **Third Party Claim** based upon, arising from or in any way related to any price discrimination or violation of any anti-trust law or any similar law designed to protect competition or prevent unfair trade practices.

V. OTHER INSURANCE

- (A) The coverage provided under this Policy for any **Employment Practices Claim** shall be primary.
- (B) Notwithstanding the above, the coverage provided under this Policy for any **Employment Practices Claim** made against a temporary, leased or loaned **Employee** or an **Independent Contractor** shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such **Claim**, whether such other policy or policies are stated to be primary contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this policy's Policy Number.
- (C) Other than as provided in Section V. (A) and V. (B), above, Section XII., Other Insurance, set forth in the General Terms and Conditions Part of this Policy shall apply.

VI. COORDINATION OF COVERAGE

If this **Liability Coverage Part** and either the Directors, Officers and Company Liability Coverage Part or Fiduciary Liability Coverage Part are included under this Policy, and a **Claim** is covered under this **Liability Coverage Part** and any such other **Liability Coverage Part**, **Loss** shall be first covered and paid under this **Liability Coverage Part**.

If notice of a **Claim** has been given under either the Directors, Officers and Company Liability Coverage Part or Fiduciary Liability Coverage Part and a determination is made by the Insurer that such **Claim** would be covered under this **Liability Coverage Part** if notice had been given under this **Liability Coverage Part**, then the **Insureds** shall be deemed to have given notice of such **Claim** under this **Liability Coverage Part** at the same time that notice was given under such other **Liability Coverage Part**.

IN WITNESS WHEREOF, Hudson Insurance Company has caused this policy to be signed by its President and Corporate Secretary at 100 William Street, New York, NY 10038 but this policy will not be effective unless the Insurer shall have issued a Policy Certificate as part of this policy.



President



Secretary



EUCLID SPECIALTY

Policy Number:
Endorsement Number:
Endorsement Effective Date: (12:01 a.m. local time)

AmWINS Vanguard Elite Enhancement Endorsement for Governmental Plans

In consideration of the premium charged it is agreed that the above-numbered policy is amended as follows:

1. **AMEND II. DEFINITION A. Administration (including Settlor Coverage)**

The definition of **Administration** in Section II. DEFINITIONS A. of the policy is deleted and replaced with the following:

A. Administration means:

- a. handling records, giving advice, counsel or interpretation to participants or beneficiaries regarding a **Plan**; or
- b. affecting enrollment, termination, or cancellation of participants or beneficiaries under an **Plan**; or
- c. complying with the privacy provision of HIPAA, or any similar statute, rule or regulation, regarding a **Plan**; or
- d. any matter claimed against an **Insured** solely by reason of serving as an administrator of a **Plan**; or
- e. determining and calculating benefits regarding a **Plan**, including making determinations of eligibility, calculation of benefits or payment of benefits; or
- f. supervising, reviewing, recommending or directing payment or denial of payment under a **Plan**; or
- g. determining eligibility or coverage for or under a **Plan**; or
- h. distributing or filing required notices or documents; or
- i. complying with the notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA);
- j. or any act, error or omission committed, attempted or allegedly committed or attempted by an **Insured** solely in such **Insured's** settlor capacity with respect to establishing, amending, terminating, or funding a **Plan**.

2. **AMEND II. DEFINITION C. Claim**

The definition of **Claim** in Section II. DEFINITIONS C. of the policy is deleted and replaced with the following:

C. Claim means:

1. written demand for:
 - a. monetary or non-monetary (including injunctive) relief; or
 - b. arbitration, mediation or other alternative dispute resolutionagainst an **Insured** for a **Wrongful Act**, commenced by the first receipt of such demand by an **Insured**.
2. proceeding, including any appeal therefrom, against an **Insured** for a **Wrongful Act**, commenced by:
 - a. the service of a civil complaint or similar pleading;
 - b. the filing of a notice of charges or the entry of a formal order of investigation in connection with a formal civil administrative or formal regulatory proceeding, other than an administrative or dispute resolution proceeding handled internally by a governmental entity, body, agency or subdivision; or
 - c. solely with respect to a criminal proceeding, an arrest or the return of an indictment, information or similar document;
3. written notice of commencement of a fact-finding investigation by the U.S. Department of Labor or the U.S. Pension Benefit Guaranty Corporation, against any **Insured** for a **Wrongful Act**.
4. investigation of an **Insured Person**, solely in his or her fiduciary capacity with respect to any **Plan**, for a **Wrongful Act**, commenced by the **Insured Person's** receipt of a written document from an **Enforcement Unit** identifying such **Insured Person** as the target of an investigation, including a Wells Notice, target letter, search warrant, civil investigation demand or subpoena.
5. written notice of commencement of a **Pre-Claim Investigation** or **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Insurer in writing during the policy period; or
6. a notice of participation in a **Voluntary Compliance Program**, solely with respect to the **Voluntary Compliance Program** coverage in Insuring Agreement I.B.

The following definitions S. and T. are added to Section II. DEFINITIONS of the policy:

- S. Benefit Claim Denial** means an appeal of an adverse determination by an **Insured** pursuant to the U.S. Department of Labor's claim procedure regulation 29 C.F.R. Section 2560.503-1(h) or any similar claim procedures pursuant to applicable law.
- T. Pre-Claim Investigation** means a fact-finding investigation which does not contain any allegation of a **Wrongful Act** in writing, commenced by the U.S. Department of Labor or the U.S. Benefit Guaranty Corporation.

3. **AMEND II. DEFINITION L. Insured**

The definition of **Insured** in Section II. DEFINITIONS L. of the policy is deleted and replaced with the following:

L. Insured means:

1. any **Plan**;
2. any natural person serving as a past, present or future trustee, committee member, employee, director, officer, general counsel, governor, general partner, management committee member, member of the board of managers, fiduciary, in-house administrator or public official of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary or trustee of a **Plan**.
3. any other entity or natural person designated as an additional **Insured** by written endorsement to this policy.

4. **AMEND II. DEFINITION R. Wrongful Act**

The definition of **Wrongful Act** in Section II. DEFINITIONS R. is deleted in its entirety and replaced with the following:

R. Wrongful Act means:

1. any breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by an **Employee Benefit Law**;
2. any negligent act, error or omission by any **Insured** in the **Administration** of any **Plan**;
3. with respect to **Claims Expenses** only, any negligent act, error or omission, other than a wrongful employment practice, by an **Insured** solely in such **Insured's** capacity as a trustee of a **Plan** that is not otherwise covered in subparagraphs (1) and (2) above, or subparagraph (4) below;
4. any act, error or omission committed, attempted or allegedly committed or attempted by an **Insured**, solely in such **Insured's** settlor capacity with respect to establishing, amending, terminating or funding a **Plan**; and
5. any failure to comply with the provisions of HIPAA, the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 with respect to a **Plan**.

5. **ADD II. DEFINITION U. Non-Indemnifiable Loss**

Definition U. **Non-Indemnifiable Loss** is added to Section II. DEFINITIONS and states as follows:

U. Non-Indemnifiable Loss means **Loss** incurred by a natural person **Insured** that the **Plan** has not paid, advanced or indemnified to the natural person **Insured** due to financial insolvency of the **Plan**, or because the **Plan** has provided written notice of refusal to pay, advance or indemnify to the natural person **Insured** after written request or demand by the natural person **Insured** for payment, advancement or indemnification. The **Plan** shall be deemed permitted or required to pay, advance or indemnify **Loss** to a natural person **Insured**.

6. **AMEND III. DEFENSE AND SETTLEMENT**

The following is added to Section III. DEFENSE AND SETTLEMENT:

Notwithstanding any of the foregoing, if all **Insureds** are able to dispose of all **Claims** that are subject to one retention amount (as set forth in ITEM 5. of the Policy Certificate) for an amount not exceeding such retention amount (inclusive of **Claim Expenses**) then the Insurer's consent shall not be required for such disposition.

7. **AMEND V. EXCLUSIONS A.1.**

Section V. EXCLUSIONS A.1. is deleted in its entirety and replaced with the following:

A. The Insurer will not be liable for any **Loss** on account of any **Claim** against any **Insured**:

1. Arising out of, based upon or attributable to any:

- a. personal profit or financial advantage to which the **Insured** was not legally entitled; or
- b. deliberately criminal or deliberately fraudulent act;

if established by any final, non-appealable adjudication in the underlying action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;

8. **AMEND V. EXCLUSIONS A.5.**

Section V. EXCLUSIONS A.5. is deleted in its entirety and replaced with the following:

A. The Insurer will not be liable for any **Loss** on account of any **Claim** against any **Insured**:

5. Based upon, arising from or in consequence of:

- a. any act, error, omission, fact, circumstance, transaction, event, decision or **Wrongful Act** if written notice thereof has been given and accepted under any policy of which this policy is a renewal or replacement if such prior policy affords coverage or, but for the exhaustion of its limit or limits or liability, would have afforded coverage for such **Loss**, in whole or in part, as a result of such notice; or
- b. any demand, suit or other proceeding, or order, decree or judgment rendered, against any **Insured** of which the **Insured** had notice on or prior to the Pending or Prior Proceeding Date set forth in ITEM 6 of the Policy Certificate of this policy, or the same or substantially similar facts or circumstances underlying or alleged in any such demand, suit, proceeding, order, judgment or decree;

9. **AMEND V. EXCLUSIONS A.4.**

Section V. EXCLUSIONS A.4. is deleted in its entirety and replaced with the following:

Based upon, arising from or in consequence of any liability of others assumed by any **Insured** under any contract or agreement; however, this exclusion shall not apply: (i) to **Claim Expenses**; and (ii) to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement; or (iii) to the extent the liability was assumed in accordance with or under the **Plan's** declaration of trust or equivalent document pursuant to which the **Plan** was established.

10. **AMEND V. EXCLUSIONS B. Full Severability of Exclusions**

Section V. EXCLUSIONS B. is deleted in its entirety and replaced with the following:

B. Full Severability of Exclusions

No facts pertaining to or knowledge or information possessed by any **Insured** will be imputed to any other **Insured** to determine the application of any of the above Exclusions.

11. **AMEND VI. CONDITIONS A.13. Limits of Liability and Retentions**

Section VI. CONDITIONS A.13. Limits of Liability and Retentions is deleted in its entirety and replaced with the following:

13. The obligations of the Insurer to pay **Loss**, including **Claim Expenses**, will only be in excess of any applicable retention as stated in ITEM 5 of the Policy Certificate as amended by this Endorsement. If a single **Loss** is subject to more than one retention amount, the largest retention amount shall be the maximum retention amount applicable to such **Loss**. **Loss** arising out of the same **Wrongful Act** of any **Insured** shall be deemed one **Loss** and only one retention amount shall apply to such **Loss**.

If (including, but not limited to insolvency) the **Plan** fails or refuses to advance, pay or indemnify covered **Claims Expenses** of any natural person **Insured(s)** within the retention for all **Loss** as to any natural person **Insured(s)**, then the Insurer shall advance covered **Claim Expenses** on a current basis, but no later than sixty (60) days after the receipt by the Insurer of properly itemized and detailed **Claim Expenses** invoices, on behalf of the natural person **Insured(s)** until either (i) the **Plan** has agreed to make such payments, or (ii) the retention for all **Loss** as to any natural person **Insured(s)** has been satisfied. In no event shall any such advancement by the Insurer relieve the **Plan** of any duty it may have to provide advancement, payment or indemnification to any natural person **Insured**. The natural person **Insured(s)** agree that such advancement amounts shall be repaid to the Insurer by the natural person **Insured(s)** severally according to their respective interests if and to the extent it is finally established that any such natural person **Insured(s)** shall not be entitled under the terms and conditions of this Policy to coverage for such **Claim Expenses**. Advancement, payment or indemnification of a natural person **Insured(s) Claim Expenses** by the **Plan** is deemed "failed" if it has been requested by a natural person **Insured** in writing and has not: (i) been provided; (ii) agreed to be provided; or (iii) acknowledged as an obligation by the **Plan** within forty-five (45) days of such request. Advancement, payment or indemnification by the **Plan** is deemed "refused" if the **Plan** gives a written notice of the refusal to the natural person **Insured**. Advancement, payment or indemnification of a natural person **Insured(s) Claim Expenses** by the **Plan** shall only be deemed "failed" or "refused" to the extent such advancement,

payment or indemnification is not: (i) provided; (ii) agreed to be provided; or (iii) acknowledged by and collectible from the **Plan**. Any payment or advancement by the Insurer within the retention for all **Loss** as to any natural person **Insured(s)** shall apply toward the exhaustion of the limit of liability set forth in ITEM 4(a) of the Policy Certificate.

12. **AMEND ITEM 5. Retention (each Claim) in the Policy Certificate**

ITEM 5. Retention (each **Claim**) in the Policy Certificate is deleted in its entirety and replaced with the following:

Retention (each **Claim**):

- (a) **Non-Indemnifiable Loss** as to any natural person **Insured**:
\$0.00
- (b) All **Loss** as to any natural person **Insured**:
Amount indicated in ITEM 5. of the Policy Certificate
- (c) All **Loss** as to the **Plan** or any other entity designated as an additional **Insured** by written endorsement to this policy:
Amount indicated in ITEM 5. of the Policy Certificate

The Insurer's liability hereunder shall apply to that part of **Loss** which is excess of the retention set forth in the ITEM 5 of the Policy Certificate, as amended in paragraph (3) of this endorsement, and such retention shall be borne by the **Insured** at its own risk. The retention for Non-Indemnifiable **Loss** set forth in ITEM 5(a) of the Policy Certificate shall apply to **Loss** for which the **Insured** or any governmental body, agency or subdivision has neither indemnified nor is permitted or required to indemnify a natural person **Insured**. The **Insured** shall be deemed permitted or required to indemnify any natural person **Insured**. The retention amount for Indemnifiable **Loss** as set forth in ITEM 5(b) of the Policy Certificate, as amended by this Endorsement, shall apply to all other **Loss**.

If a single **Loss** is subject to more than one retention amount, the largest retention amount shall be the maximum retention amount applicable to such **Loss**. **Loss** arising out of the same **Wrongful Act** of any **Insured** shall be deemed one **Loss** and only one retention amount shall apply to such **Loss**.

13. **AMEND VI. CONDITIONS I. Subrogation; Waiver of Right of Recourse**

Section VI. CONDITIONS I. Subrogation; Waiver of Right of Recourse is deleted in its entirety and replaced with the following:

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the **Insured(s)** right of recovery. Unless required pursuant to any **Employee Benefit Law**, in no event shall the Insurer exercise its rights of subrogation against an **Insured** unless Exclusion A.1. or Exclusion A.5 is triggered with respect to such **Insured**. If this policy is purchased by the **Plan** and if the Insurer pays **Loss** under this policy, then the Insurer shall have a right of recovery for such **Loss** against any **Insured** that caused or contributed to such **Loss**, other than the **Plan**. However, if this policy is purchased in whole or in part by an **Insured** other than the **Plan**, the Insurer shall have no right of recovery against an **Insured**. With respect to any **Insured** that ceases to

be an **Insured** before or during the policy period, this waiver of recourse will continue to apply with respect to such **Insured** until the end of the policy period and in subsequent policy period(s). The **Insured(s)** shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**.

14. **AMEND VI. CONDITIONS G. Other Insurance**

Section VI. CONDITIONS G. Other Insurance is deleted in its entirety and replaced with the following:

G. Other Insurance

All **Loss** payable under this policy will be specifically excess of and will not contribute with any other valid and collectible fiduciary liability, general liability, employment practices liability or cyber liability policy or policies, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this policy), contingent or otherwise.

15. **AMEND VI. CONDITIONS H. Allocation**

Section VI. CONDITIONS H. Allocation is deleted in its entirety and replaced with the following:

If, in connection with a **Claim**, both **Loss** covered by this policy and loss not covered by this policy are incurred, either because the **Claim** contains both covered and uncovered matters or because the **Claim** is made in part against persons or entities not insured hereunder, the **Insureds** and the Insurer will use their best efforts to determine a fair and appropriate allocation of amounts incurred in connection with such **Claim** as between **Loss** covered under this policy and loss not covered under this policy. The **Insureds** and the Insurer agree that, in determining such a fair and appropriate allocation, the parties will take into account the relative legal and financial exposures associated with any such covered and uncovered matters, as well as the relative legal and financial exposures of, and the relative benefits obtained in connection with the defense and/or settlement of any **Claim** by, the **Insureds** and other persons or entities not insured hereunder. If an agreement between the **Insureds** and the Insurer as to a fair and appropriate allocation cannot be reached, then the Insurer will pay or advance that portion of those amounts incurred in connection with such **Claim** which the **Insureds** and the Insurer agree constitutes **Loss** covered under this policy until a final allocation is agreed upon or determined pursuant to the provisions of this policy and applicable law. However, if, in connection with a **Claim**, the **Insureds** incur both **Claims Expenses** covered by this policy and **Claims Expenses** not covered by this policy, the Insurer shall pay one hundred percent (100%) of such covered and otherwise uncovered **Claims Expenses**.

16. **AMEND IV. EXTENSIONS OF COVERAGE B. Extended Reporting Period**

Section IV. EXTENSIONS OF COVERAGE B. Extended Reporting Period is deleted in its entirety and replaced with the following:

1. If this policy is terminated or not renewed for any reason other than the non-payment of premium, the **Insureds** will have the right to purchase an extension of the coverage granted by this policy (the “extended reporting period”) after the effective date of such termination or non-renewal by paying the additional premium shown below:

<u>Extended Reporting Period</u>	<u>Premium</u>
One (1) Year	100% of original premium
Two (2) Years	175% of original premium
Three (3) Years	200% of original premium

This additional premium must be paid within thirty (30) days after the effective date of the termination or non-renewal of the policy, and will be deemed to have been fully earned immediately as of the inception of the extended reporting period.

2. The extended reporting period, if purchased, will apply only to:
 - a. **Claims** first made during the extended reporting period, and only if such **Claims** are for otherwise covered **Wrongful Acts** committed, attempted or allegedly committed or attempted before the effective date of such termination or non-renewal;
 - b. **Voluntary Compliance Program Expenditures** incurred by **Insureds** as a result of the **Insureds’** participation during the extended reporting period in a **Voluntary Compliance Program**, but only if such participation commences during the extended reporting period and involves a **Plan’s** actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of such termination or non-renewal.
3. The Insurer’s limits of liability for **Loss** from **Claims** first made or deemed made during the extended reporting period and for **Voluntary Compliance Program Expenditures** resulting from the **Insureds** participation during the extended reporting period in a **Voluntary Compliance Program** will be part of, and not in addition to, the limits of liability stated in ITEM 4(c) of the Policy Certificate, which are applicable to all **Loss** for which this policy provides coverage.
4. The Insurer reserves the right to approve a request for a longer extended reporting period not to exceed seventy-two (72) months, for such additional premium as the Insurer may require.

17. INTERVIEW COVERAGE

The following is added to Section III. Defense and Settlement of the policy:

G. Interview Coverage

1. The Insurer will pay, on behalf of an **Insured Person**, **Claim Expenses** incurred solely by such **Insured** on account of an **Interview** first made during the policy period, except to the extent that such **Claim Expenses** have been paid or indemnified.
2. The Insurer will pay, on behalf of a **Plan**, **Claim Expenses** incurred solely by an **Insured Person** on account of an **Interview** first made during the policy period, to

the extent the **Plan** pays or indemnifies such **Claim Expenses**; provided that the coverage afforded pursuant to this paragraph 3(G)(2) shall be subject to the retention set forth in ITEM 5 of the Policy Certificate.

With respect to **Interview Coverage**, the Insurer will not be liable for **Claim Expenses** on account of any **Interview**: (1) based upon, arising from or in consequence of any circumstance if written notice of such circumstance has been given and accepted under any policy of which this policy is a renewal or replacement; or (2) based upon, arising from or in consequence of any written demand, suit or other proceeding pending, or order, decree or judgment rendered against any **Insured** on or prior to the Pending or Prior Proceeding Date set forth in ITEM 6 of the Policy Certificate, or the same or substantially similar fact, circumstance or situation underlying or alleged therein.

For purposes of **Interview Coverage** only as provided in this Endorsement, the following definitions are added to Section II. Definitions of the policy:

Insured Person means any natural person serving as a past, present, or future trustee, committee member or employee of a **Plan**, provided that **Insured Person** shall not include any leased employees, independent contractors or third-party service providers.

Interview means a request for an interview or meeting with, or a sworn statement from, an **Insured Person** by:

1. an **Enforcement Unit** in connection with: (i) such **Insured Person** acting solely in his or her capacity as a fiduciary of a **Plan**; or (ii) a **Plan's** business activities;
2. a **Plan** in connection with an inquiry or investigation of the **Plan** by an **Enforcement Unit** commenced by the first receipt of such request by such **Insured Person**;

provided that **Interview** does not include: (i) any request for document production or discovery; (ii) any request by an **Enforcement Unit** that is part of any routine or regularly scheduled **Enforcement Unit** oversight, compliance, audit, inspection or examination; or (iii) any request that is part of an employment-related investigation or claim.

Enforcement Unit means any federal, state, local or foreign law enforcement or governmental authority (including, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general) or the enforcement unit of any securities exchange or similar self-regulatory body; however, the **Enforcement Unit** shall not include the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or by the United Kingdom Occupational Pensions Regulatory Authority or any successor thereto.

With respect to **Interview Coverage**, the following exclusions shall apply:

The Insurer will not be liable for **Claim Expenses** on account of any **Interview**: (a) based upon, arising from or in consequence of any circumstance if written notice of such circumstance has been given and accepted under any policy of which this policy is a renewal or replacement; (b) based upon, arising from or in consequence of any written demand, suit or other proceeding pending, or order, decree or judgment rendered against any **Insured** on or prior to the Pending or Prior Proceeding Date set forth in ITEM 6 of the Policy Certificate, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein.

18. **CHANGES TO POLICY EXCLUSIONS**

Section V. Exclusions is amended by adding the following new section:

- C. The Insurer will not be liable for any **Loss**, other than **Claim Expenses**, on account of any **Claim** against any **Insured**:
1. For failure to fund a **Plan** in accordance with any applicable **Employee Benefit Law** or the **Plan** instrument, or for failure to collect contributions owed to a **Plan**; provided, that this exclusion will not apply to that portion of **Loss** payable solely as the personal obligation of such natural person **Insured**;
 2. Which constitute the return to any employer, public entities or governmental authorities of any contributions if such amounts are or could be chargeable to a **Plan**.

Nothing contained herein shall vary, alter or extend the terms, conditions and limitations of the policy except as stated above.

This endorsement is part of the above-numbered policy and is effective as of the Endorsement Effective Date shown above. It is not binding unless signed by an authorized representative of the Insurer.

19. **DISPROVEN ALLEGATION PROTECTION**

In the event that an allegation which triggers coverage under this policy is disproven, so that a **Claim** is outside the scope of coverage under this policy, the **Insurer** shall not seek recovery of amounts that it has previously paid.

20. **MANAGED CARE COVERAGE**

The Insurer will pay on behalf of the **Insureds** those **Damages** and **Claim Expenses** which the **Insureds** become legally obligated to pay as a result of a **Claim** alleging improper or negligent selection of a **Managed Care Services** provider or denial or delay of health care, pharmaceutical, vision, dental, or similar **Benefits** under a **Plan**.

For purposes of this Managed Care Coverage Extension, **Benefits** means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property, or any health care, pharmaceutical, vision, dental, or similar benefits under

a **Plan** arising out of, based upon or attributable to any actual or alleged improper or negligent selection of a **Managed Care Services** provider.

HUDSON INSURANCE COMPANY

A handwritten signature in black ink that reads "Dan Aronowitz". The signature is written in a cursive style with a prominent initial "D".

Authorized Representative

Policy Number:
Endorsement Number:
Endorsement Effective Date: (12:01 a.m. local time)

California Amendatory Endorsement

It is agreed that the above-numbered policy is amended as follows:

Section VI.J Termination of Policy; No Obligation to Renew is amended by adding the following wording which supersedes any provision to the contrary:

1. If this policy has been in effect for more than sixty (60) days, or if this is a renewal policy of the Insurer, this policy may be canceled by the Insurer only upon the occurrence, after the effective date of the policy, of one or more of the following:
 - a. Non-payment of premium, including payment due on a prior policy issued by the Insurer and due during the current policy term covering the same risks;
 - b. Discovery of fraud or material misrepresentation by:
 1. Any **Insured** or their **Insurance Representative** in obtaining this insurance; or
 2. Any **Insured** or their **Insurance Representative** in pursuing a **Claim** under this policy;
 - c. A judgment by a court or an administrative tribunal that any **Insured** has violated a California or federal law, having as one of its necessary elements an act which materially increases any of the risks insured against;
 - d. Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by any **Insured** or their Insurance Representative, which materially increase any of the risks insured against;
 - e. Failure by the **Insured** or their Insurance Representative to implement reasonable loss control requirements, agreed to by the **Insured** as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against;
 - f. A determination by the Commissioner of Insurance that the:
 1. Loss of or change in the Insurer's reinsurance covering all or part of the risk would threaten the Insurer's financial integrity or solvency; or
 2. Continuation of the policy coverage would place the Insurer in violation of California law, or the laws of the state where the Insurer is domiciled, or threaten the solvency of the Insurer;
 - g. A change by the **Insured** or their **Insurance Representatives** in the activities or property of the commercial or industrial enterprise which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
2. If this policy is canceled by the Insurer based on one or more of the above reasons it shall mail a written notice of cancellation stating the reason(s) for cancellation to the **Insured** shown in ITEM 2 of the Policy Certificate, and to the **Insurance Representative** shown in ITEM 1 of the Policy Certificate, at least:
 - a. Ten (10) days before the effective date of cancellation if the policy is canceled for reasons (a) or (b) stated above; or
 - b. Thirty (30) days before the effective date of cancellation if the policy is canceled for any other of the above reasons.
3. Subject to the provisions of the following paragraph, if the Insurer elects not to renew this policy it will mail or deliver a written notice of non-renewal stating the reason for non-renewal to the **Insured** shown in ITEM 2 of the Policy Certificate, and to the **Insurance Representative** shown in ITEM 1 of the Policy Certificate, at least sixty (60) days but not more than one hundred twenty

(120) days before the anniversary or expiration date of this policy. Non-renewal notice will be mailed or delivered to the addresses shown in the Policy Certificate.

4. The Insurer is not required to send notice of non-renewal in the following situations:
- a. If the transfer or renewal of a policy without any changes in terms, conditions or rates, is between the Insurer and a company within the same insurance group;
 - b. If the policy has been extended for ninety (90) days or less, provided that notice has been given in accordance with the time periods specified in the preceding paragraph;
 - c. If the **Insured** shown in ITEM 2 of the Policy Certificate has obtained replacement coverage, or if the **Insured** has agreed in writing within sixty (60) days of the termination of the policy to obtain that coverage;
 - d. If the policy is for a period of no more than sixty (60) days and the **Insured** shown in ITEM 2 of the Policy Certificate is notified at the time of issuance that it will not be renewed; or
 - e. If the **Insured** requests a change in the terms and conditions or risks covered by the policy within sixty (60) days of the end of the policy period.

Nothing contained herein shall vary, alter or extend the terms, conditions and limitations of the policy except as stated above.

This endorsement is part of the above-numbered policy and is effective as of the Endorsement Effective Date shown above. It is not binding unless signed by an authorized representative of the Insurer.

HUDSON INSURANCE COMPANY

Dan Aronowitz

Authorized Representative

SPECIMEN