



Policy Number:

## EMPLOYEE BENEFIT PLAN FIDUCIARY INSURANCE

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including the statements made in the application for this insurance which are incorporated herein, and subject to all terms, conditions and limitations of this policy (hereinafter, "Policy"), the **Insured** and **Insurer** agree:

### SECTION I. INSURING AGREEMENT

The **Insurer** shall pay on behalf of the **Insured** all **Loss** which the **Insured** shall become legally obligated to pay as a result of a **Claim** first made anywhere in the world against any **Insured** during the **Policy Period** (or any applicable Discovery Period) and reported to the **Insurer** pursuant to Section VII for a **Wrongful Act** by a **Fiduciary, Administrator** and/or **Sponsor Organization** of a **Covered Plan** or by any person for whose **Wrongful Act** the **Sponsor Organization** is legally responsible.

### SECTION II. DEFENSE AGREEMENT

#### A. INSURER'S DUTY TO DEFEND

Except as hereafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act** by a **Fiduciary, Administrator** and/or **Sponsor Organization** of a **Covered Plan** (even if such **Claim** is groundless, false or fraudulent) and the **Insurer** shall have the right to select defense counsel.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement. The **Insurer** shall not, however, be obligated to defend any **Claim** after the Limit of Liability has been exhausted.

#### B. INSURED'S OPTION TO ASSUME THE DEFENSE

Notwithstanding the above, the **Insured** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Sponsor Organization** on behalf of all **Insureds** within sixty (60) days of the reporting of the **Claim** to the **Insurer** pursuant to Section VII of this Policy. Upon receipt of such written request from the **Insured**, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. The **Insurer** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim**, including but not limited to negotiating a settlement. Provided that the **Insurer** shall be permitted to effectively associate with the **Insureds** in the defense of any **Claim** (including, but not limited to, negotiating a settlement of any **Claim**), the **Insurer's** consent to a settlement, stipulated judgment or **Costs of Defense** shall not be unreasonably withheld.

In the event the **Insured** assumes the defense of the **Claim**, the **Insurer** shall advance **Costs of Defense** pursuant to Section II. C immediately below.

#### C. ALLOCATION

1. If a **Claim**, judgment or settlement results in **Loss** covered under this Policy and loss not covered under this Policy because a **Claim**, judgment or settlement includes both covered and uncovered allegations, damages, defendants, wrongful acts or fees or expenses, the **Insured** and the **Insurer** agree that the **Insurer** shall have the right to allocate for such uncovered loss. If there is no agreement between the **Insurer** and the **Insured** on the amount of **Costs of Defense** to be advanced for the **Claim**, the **Insurer** shall advance **Costs of Defense** that it reasonably believes are covered under this Policy until a different allocation is negotiated or determined.
2. Any negotiated or determined allocation of **Costs of Defense** in connection with a **Claim** shall be applied retroactively, notwithstanding any allocation applied with respect to any prior advancement of **Costs of Defense**. Any allocation or advancement of **Costs of Defense** in connection with a **Claim** shall not apply to or create any presumption as to allocation of indemnity **Loss**.

**D. GENERAL PROVISIONS** (applicable to A., B. and C. above)

The **Insureds** shall not incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the **Insurer** deems appropriate.

If all **Insureds** are able to settle all **Claims** that are subject to a single Retention for an amount that, together with the **Costs of Defense**, does not exceed the Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.

The **Insurer** shall have no obligation to pay **Loss**, including **Costs of Defense**, or to defend or continue to defend any **Claim** after the **Insurer's** aggregate Limit of Liability (as set forth in Item 3 of the Declarations) has been exhausted by the payment of **Loss**, including **Costs of Defense**. If the **Insurer's** aggregate Limit of Liability (as set forth in Item 3 of the Declarations) is exhausted by the payment of **Loss**, including **Costs of Defense**, the entire premium (as stated in Item 5 of the Declarations and any endorsement) will be deemed fully earned.

**E. COOPERATION**

In the event of a **Claim**, the **Insured** shall provide the **Insurer** with all information, documents, assistance, and cooperation that the **Insurer** reasonably requests. At the **Insurer's** request, the **Insured** shall provide full cooperation and assist in any actions, suits, or proceedings, including, but not limited to, attending hearings, trials and depositions, securing and giving evidence, obtaining the attendance of witnesses, and assisting in making settlements.

**SECTION III. DEFINITIONS**

**A. "Administration"** shall mean:

1. giving advice, counsel or notice to **Employees**, participants, or beneficiaries of a **Covered Plan**;
2. maintaining records of a **Covered Plan**; or
3. activities affecting enrollment, termination, or cancellation of **Employees**, participants or beneficiaries of a **Covered Plan**.

**B. "Administrator"** shall mean an **Insured** with respect to any **Wrongful Act** described in Section III.Y.2.

- C. **“Benefits”** shall mean any obligation under a **Covered Plan** to **Employees**, participants or beneficiaries under a **Covered Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- D. **“Breach of Fiduciary Duty”** shall mean a violation of the responsibilities, obligations or duties imposed upon an **Insured** by **ERISA**.
- E. **“Claim”** shall mean:
1. any written demand for monetary, non-monetary or injunctive relief;
  2. any written request to toll or waive any statute of limitations;
  3. any civil proceeding in a court of law or equity or an arbitration proceeding, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment or similar pleading and/or any criminal proceeding which is commenced by the return of an indictment or similar document; or
  4. any administrative or regulatory proceeding or investigation, including an investigation brought by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar governmental agency commenced by the filing of a notice of charges, a formal notice of investigation or similar document.
- F. **“Covered Plan”** shall mean:
- a. any “employee pension benefit plan” or “employee welfare benefit plan” (as each is defined in ERISA) except for the kinds of plans listed in the parenthetical in F.3 below, located anywhere in the world which is operated solely by the Sponsor Organization solely for the Employees of the Sponsor Organization and which existed on or before the Inception Date stated in Item 2 of the Declarations, or which is created or acquired after the Inception Date; provided that any coverage with respect to such plan created or acquired during the Policy Period shall apply only for Wrongful Acts committed, attempted or allegedly committed or attempted after the effective date of such creation or acquisition and shall be subject to Section III.X.3;
  2. any cafeteria plan, as defined in Section 125 of the Internal Revenue Code of 1986 (as amended), from which the participants may choose among two or more benefits consisting of cash and qualified benefits, or any dependent care assistance program, (as defined in Section 129 of the Internal Revenue Code of 1986 (as amended)), sponsored solely by the **Sponsor Organization** for the **Employees** of the **Sponsor Organization** and/or their beneficiaries;
  3. any other employee benefit plan or program added to this Policy by specific written endorsement (including an employee stock ownership plan (**ESOP**), multiple employer welfare arrangement (MEWA), a voluntary employees beneficiary association (VEBA), or a **Non-Qualified Plan**) which is sponsored solely by the **Sponsor Organization** for **Employees** of the **Sponsor Organization**; and
  4. the following government-mandated programs: unemployment insurance, Social Security or disability benefits but solely with respect to a **Wrongful Act**

**Covered Plan** shall not include any “multiemployer plan” (as defined by **ERISA**).

- G.** “**Costs of Defense**” shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured**. If an **Insured** has elected to assume the defense pursuant to Section II.B, **Costs of Defense** shall only be reimbursable when the **Insurer** has consented in advance and in writing to the incurring of such reasonable and necessary legal fees, costs and expenses, such consent to not be unreasonably withheld.
- H.** “**Domestic Partner**” shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Sponsor Organization**.
- I.** “**Employees**” shall mean any natural person whose labor or service is engaged by and directed by the **Sponsor Organization**. Employee shall not include any independent contractor or outside service provider.
- J.** “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974 (as amended) (including, but not limited to, amendments to **ERISA** contained in the Consolidated Omnibus Budget Reconciliation Act of 1985; the Health Insurance Portability and Accountability Act of 1996; the Newborns’ and Mothers’ Health Protection Act of 1996; the Mental Health Parity Act of 1996; or, the Women’s Health and Cancer Rights Act of 1998), and including any rules or regulations under **ERISA** and any similar common or statutory law of any other jurisdiction anywhere in the world to which a **Covered Plan** is subject.
- K.** “**ESOP**” shall mean an “employee stock ownership plan” (as defined in **ERISA**), or any other **Covered Plan** under which investments are made primarily in securities of the **Sponsor Organization** or whose assets at any time within twelve months prior to the inception date of this Policy were comprised of twenty percent (20%) or more of securities of the **Sponsor Organization**.
- L.** “**Fiduciary**” shall mean a fiduciary as defined in **ERISA** and any rules or regulations under **ERISA** with respect to a **Covered Plan** or a person or entity who exercises discretionary control in the management of a **Covered Plan** or the disposition of its assets.
- M.** “**Indemnifiable Loss**” shall mean **Loss** for which the **Sponsor Organization** has indemnified or is permitted or required to indemnify any **Insured Person**.
- N.** “**Insured**” shall mean the **Sponsor Organization**, any **Covered Plan**, any **Insured Person**, or any other person or entity added to this Policy by specific, written endorsement.
- O.** “**Insured Person**” shall mean any past, present or future natural person director, officer, general partner, governor, management committee member, member of the board of managers or **Employees** of a **Sponsor Organization** or, if applicable, of a **Covered Plan**, and as to all of the above solely in his or her capacity as a **Fiduciary** or **Administrator** of a **Covered Plan**.

- P. **“Insurer”** shall mean the company stated in Item 8 of the Declarations.
- Q. **“Loss”** shall mean damages, judgments (including pre-judgment interest and post-judgment interest on that portion of a covered judgment), settlements and **Costs of Defense**; however, **Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law, except (i) the administrative assessment of a five percent (5%) or less civil penalty permitted under Section 502(i) of **ERISA** and (ii) the civil penalties of twenty percent (20%) or less for violations by a fiduciary, permitted under Section 502(l) of **ERISA**, with respect to covered settlements or judgments; **(2)** the return or reversion to any employer of any contribution or asset of a **Covered Plan**; **(3)** the multiplied portion of multiplied damages; **(4)** taxes or tax penalties; **(5)** any amount for which an **Insured** is not financially liable or which is without legal recourse to an **Insured**; **(6)** for any sum, amount or payment which constitutes restitution or disgorgement, is uninsurable as a matter of law or constitutes the return of any fees or expenses in the administration of a **Covered Plan**; or **(7) 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**, is payable as a personal obligation of an **Insured Person**, is non-**Indemnifiable Loss** and is not legally payable from a **Covered Plan**.

However, **Costs of Defense** shall be provided for items **(1)** through **(7)** above that are specifically excluded from **Loss**, subject to the other terms, conditions and exclusions of this Policy.

Where permitted by law, **Loss** shall include punitive or exemplary damages imposed upon any **Insured** (subject to this Policy’s other terms, conditions and exclusions, including, but not limited to, exclusions relating to profit, deliberate fraud or criminal acts and knowing or willful violation of any statute, rule or law).

- R. **“Non-Qualified Plan”** shall mean any of the following plans for a select group of management or highly compensated directors, officers and/or **Employees**: deferred compensation plan, supplemental executive retirement plan, top-hat plan or excess benefit plan.
- S. **“Policy Period”** shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- T. **“Pollutants”** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- U. **“Pollution”** shall mean the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- V. **“Related Wrongful Acts”** shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can

- W.** “**Sponsor Organization**” shall mean the entity named in Item 1 of the Declarations and any **Subsidiary**.
- X.** “**Subsidiary**” shall mean any entity in which the **Sponsor Organization** owns, directly or indirectly, more than fifty percent (50%) of the voting stock:
1. on or before the Inception Date of this Policy;
  2. subsequent to the Inception Date of this Policy by reason of being created or acquired by the **Sponsor Organization** after such date, if the entity’s total assets do not exceed twenty-five percent (25%) of the total consolidated assets of the **Sponsor Organization** as of the Inception Date of this Policy; or
  3. subsequent to the Inception Date of this Policy by reason of being created or acquired by the **Sponsor Organization** other than as described in 2 above, if the **Sponsor Organization**, within ninety (90) days after the effective date of such creation or acquisition, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.
- Y.** “**Wrongful Act**” shall mean:
1. as respects an **Insured**: a violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA** with respect to a **Covered Plan** solely by reason of his, her or its status and duties as a **Fiduciary of a Covered Plan**; and
  2. as respects an **Administrator**: any act, error or omission solely in the performance of the **Administration of a Covered Plan** and solely by reason of his, her or its status and duties as an **Administrator of a Covered Plan**.

#### **SECTION IV. EXCLUSIONS**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A.** alleging, arising out of, based upon or attributable to the **Insured** gaining any profit, advantage or remuneration to which the **Insured** was not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred;
- B.** alleging, arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to, **ERISA**;

(The **Wrongful Act** of any **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the exclusions IV.A and IV.B above.)

- C. for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **ERISA**;
- D. alleging, arising out of, based upon or attributable to any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
- E. alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding involving the **Sponsor Organization** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding;
- F. alleging, arising out of, based upon or attributable to the failure to fund a **Covered Plan** in accordance with **ERISA** or the **Covered Plan** instrument, or the failure to collect or make contributions to a **Covered Plan**, except that this exclusion shall not apply to **Costs of Defense**;
- G. alleging, arising out of, based upon or attributable to any breach of fiduciary duty or act, error or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program (other than a **Covered Plan** as defined in this Policy) or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- H. for bodily injury, sickness, disease, death or emotional distress of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- I. alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects a **Covered Plan** taking place at the time when the **Sponsor Organization** did not sponsor such **Covered Plan** or when the **Insured Person** was not a **Fiduciary** or **Administrator** of a **Covered Plan**; or
- J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Sponsor Organization** or a **Covered Plan**, its security holders or its creditors.

#### SECTION V. LIMIT OF LIABILITY

- A. The **Insurer** shall be liable to pay **Loss** in excess of the Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations, and such **Costs of Defense** shall serve to reduce the Limit of Liability.
- C. The **Insurer's** liability for all **Loss** arising from any and all **Claims** first made and reported during the **Policy Period** shall be the amount shown in Item 3 of the Declarations which shall be the aggregate Limit of Liability of the **Insurer** for the **Policy Period** (and Discovery Period, if applicable) regardless of the time of payment or the number of **Claims**.



**SECTION VI. RETENTION**

- A.** The obligation of the **Insurer** to pay **Loss**, including **Costs of Defense**, will only be in excess of the applicable Retention set forth in Item 4 of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insured** or any other person or entity, to pay all or any portion of any Retention amount by or on behalf of any **Insured** or its representative.
- B.** More than one **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: **(1)** the earliest date on which any such **Claim** was first made; or **(2)** the earliest date on which any such **Wrongful Act** or **Related Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.
- C.** The **Sponsor Organization** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.

**SECTION VII. NOTICE OF CLAIM**

- A.** The **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Such notice shall be given as soon as practicable but in no event later than thirty (30) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Act**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B.** If during the **Policy Period** or during the Discovery Period (if applicable) a **Sponsor Organization** or an **Insured** shall become aware of any circumstance which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstance, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstance or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged or contained in such circumstance, shall be considered made at the time such notice of such circumstance was given. Such notice to be given as soon as practicable, but in no event later than the end of the **Policy Period**.
- C.** In addition to furnishing the notice as provided in Sections VII.A or VII.B the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of all reports, investigations, pleadings and other papers received in connection with such **Claim** or notice of circumstance.
- D.** Notice to the **Insurer** as provided in Sections VII.A or VII.B shall be given to the **Insurer** identified in, and to the address set forth in Item 8 of the Declarations.

**SECTION VIII. DISCOVERY PERIOD**

- A.** In the event the **Insurer** or the **Sponsor Organization** refuses to renew this Policy, the **Sponsor Organization** shall have the right, upon payment of one hundred percent



- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate premium for the Discovery Period must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the aggregate Limit of Liability stated in Item 3 of the Declarations. For purposes of the aggregate Limit of Liability, if the Policy is extended the Discovery Period shall be part of, and not in addition to, the **Policy Period**.

## SECTION IX. GENERAL CONDITIONS

### A. CANCELLATION OR NON-RENEWAL

1. This Policy may be cancelled by the **Sponsor Organization** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D wherein the entire premium for this Policy shall be deemed earned.
2. This Policy may only be cancelled by the **Insurer** if the **Sponsor Organization** does not pay the premium when due. The **Insurer** shall mail or deliver notice of cancellation to the **Sponsor Organization** at least ten (10) days before the effective date of cancellation.
3. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Sponsor Organization** with no less than sixty (60) days advance notice thereof.

### B. APPLICATION

It is agreed by the **Sponsor Organization** and the **Insured Person** that the particulars and statements contained in the application and any information provided therewith (which shall be on file with the **Insurer** and be deemed 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 **Sponsor Organization** and 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. Knowledge of any **Insured Person** of a misstatement or omission in the application shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.

### C. ACTION AGAINST THE INSURER

1. No action shall 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, and until the **Insured's** obligation to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
2. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

**D. CONVERSION TO RUN-OFF COVERAGE**

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Sponsor Organization** through the ownership of more than fifty percent (50%) of the voting stock of the **Sponsor Organization**, or the **Sponsor Organization** merges into another entity or consolidates with another entity such that the **Sponsor Organization** is not the surviving entity, then:

1. this Policy shall only apply to a **Wrongful Act** actually or allegedly committed on or before the effective date of such transaction; and
2. the entire premium for this Policy shall be deemed earned as of the date of such transaction.

**E. COVERAGE EXTENSIONS**

1. Lawful Spouse or Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Act** of such **Insured Person**.

2. Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The terms **Sponsor Organization**, **Fiduciary** and **Administrator** are deemed to include the entity or persons who serve in equivalent positions in a foreign **Subsidiary**.

3. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Act** of such **Insured Person**.

**F. PRIORITY OF PAYMENTS**

1. In the event there is **Loss** arising from one or more covered **Claims** for which payment is due under this Policy, the **Insurer** shall in all events:
  - (a) first pay such **Loss** for which coverage is provided under this Policy to an **Insured Person** and/or a **Covered Plan**; then,
  - (b) with respect to whatever remaining amount of the Limit of Liability is available after payment pursuant to Section F.1.(a) above, pay such

**Loss** for which coverage is provided under this Policy to the **Sponsor Organization**.

**G. SUBROGATION**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Sponsor Organization** and each **Insured Person** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Sponsor Organization**.

**H. WAIVER OF RECOURSE**

If this Policy has been purchased by an **Insured Person** rather than a **Covered Plan**, the **Insurer** shall have no right of recourse against any such **Insured Person**; however, the **Insurer** shall have a right of recourse against any **Insured Person** for any **Claim** by any **Insured** against any other **Insured** if such **Claim** is not initiated by and maintained independent of and without the assistance, participation or solicitation of the **Insured** against whom the **Claim** is made.

**I. DISPUTE RESOLUTION**

In the event any dispute arises in connection with this Policy that cannot be resolved, the **Insurer** and the **Insureds** shall participate in a non-binding mediation in which the **Insurer** and the **Insureds** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the mediation and until at least ninety (90) days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or an arbitration, shall be split equally by the parties.

**J. ASSIGNMENT**

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

**K. CONFORMITY TO STATUTE**

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

**L. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insured** and the **Insurer** agree that this Policy (including the Declarations, application submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**M. SPONSOR ORGANIZATION REPRESENTS INSUREDS**

By acceptance of this Policy, the **Sponsor Organization** shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this

Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

**N. REPRESENTATIVE OF THE INSURER**

Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence; provided, however, notice of **Claims** shall be given pursuant to Section VII of this Policy.

**O. SERVICE OF SUIT**

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

Service of process in any such suit may be made upon Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004. In any suit instituted against the **Insurer** upon this Policy the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004 as the entity to whom said officer is authorized to mail such process or a true copy thereof.

**P. OTHER INSURANCE**

All **Loss** payable under this Policy shall be specifically excess of and will not contribute with any other valid insurance (whether collectible or not), including, but not limited to, any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be and was underwritten as excess insurance to this particular Policy. This Policy will not be subject to the terms of any other insurance.

**Q. BANKRUPTCY**

Bankruptcy or insolvency of the **Sponsor Organization** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

**R. HEADINGS**

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Secretary

President

SPECIMEN