

# NOT-FOR-PROFIT ORGANIZATION INSURANCE POLICY

In consideration of payment of the premium, and in reliance on all statements made in the **Application** for this Policy and all information provided to the Insurer, and subject to all the provisions of this Policy, the Insurer designated as such in the Declarations and the **Policyholder**, on behalf of all **Insured(s)**, agree as follows:

## I. INSURING AGREEMENT

The Insurer shall pay in connection with a **Wrongful Act(s)** which takes place before or during the **Policy Period** all **Loss** on behalf of any **Insured(s)**, which such **Insured(s)** becomes legally liable to pay arising from any **Claim** for a **Wrongful Act(s)** first made against such **Insured(s)** during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after a director, officer or trustee of the **Policyholder**, or an individual serving a similar functional capacity, first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

## II. COVERAGE EXTENSIONS

### A. Spouses

If a **Claim** made against an **Insured Individual(s)** includes a claim against the **Insured Individual's** lawful spouse solely by reason of (1) such spouse's status as a spouse of the **Insured Individual**, or (2) such spouse's ownership interest in property from which the claimant seeks recovery for the **Wrongful Act(s)** of the **Insured Individual**, all **Loss** which such spouse becomes legally obligated to pay on account of such claim shall be treated for purposes of this Policy as **Loss** which the **Insured Individual** is legally obligated to pay on account of the **Claim** made against the **Insured Individual**. Such **Loss** shall be covered under this Policy only if and to the extent that such **Loss** would be covered under this Policy if incurred by the **Insured Individual**.

The coverage extension afforded by this Subsection does not apply to any **Claim** alleging any **Wrongful Act(s)** or omission by an **Insured Individual's** spouse. The term "spouse" as used in this paragraph shall include any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America.

### B. Estates and Legal Representatives

Coverage under this Policy shall extend to a **Claim** made against the estates, heirs, legal representatives or assigns of an **Insured Individual** who is deceased or against the legal representatives or assigns of an **Insured Individual** who is incompetent, insolvent or bankrupt for the **Wrongful Act(s)** of such **Insured Individual**.

The coverage extension afforded by this Subsection does not apply to any **Claim** alleging any **Wrongful Act(s)** or omission by the **Insured Individual's** estates, heirs, legal representatives or assigns.

### C. Extended Reporting Period

If the Insurer chooses not to renew or the **Policyholder** cancels or chooses not to renew this Policy, the **Policyholder** or the **Insured Individual(s)** shall have the right, upon payment of the additional premium required by the Insurer in Item 5.(A) in the Declarations, to an Extended Reporting Period, as specified in Item 5.(B) in the Declarations, following the termination of the **Policy Period**, but only with respect to **Wrongful Act(s)** occurring prior to the effective date of such cancellation or nonrenewal.

The right to purchase the Extended Reporting Period shall not be available in the event of nonrenewal or cancellation of this Policy resulting from the failure to pay any premium due. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew.

This right to elect any Extended Reporting Period shall lapse unless written notice that it is being elected, together with payment of the additional premium due, is given by the **Policyholder** or **Insured Individual** and is received by the Insurer within sixty (60) days following the effective date of cancellation or nonrenewal, as appropriate. Coverage under the Extended Reporting Period shall apply only to a **Claim** that is first made against the **Policyholder** or **Insured Individual(s)** during the Extended Reporting Period, and any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The Limit of Liability applicable to the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the immediately preceding **Policy Period**. Notwithstanding the foregoing, the Insurer may elect, at its sole option, to provide a Limit of Liability applicable to the Extended Reporting Period which is in addition to, and not part of, the Limit of Liability for the immediately preceding **Policy Period**.

### III. DEFINITIONS

- A. **Benefits** means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions or non-deferred cash incentive compensation.
- B. **Breach of Employment Contract** means a breach of any oral, written or implied employment contract alleged by an **Employee**.
- C. **Claim** means:
1. the receipt by any **Insured(s)** of:
    - (a) a written demand against any **Insured(s)** for monetary or non-monetary relief;
    - (b) a civil proceeding against any **Insured(s)** commenced by the service of a complaint or similar pleading;
    - (c) a formal, administrative, investigative or regulatory proceeding by or before the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), or a similar formal proceeding before another federal, state or other governmental agency against any **Insured(s)** commenced by a notice of charges, formal investigative order or similar document; or
    - (d) an arbitration or other alternative dispute resolution proceeding against any **Insured(s)** commenced by a written demand or notice;
  2. a written request received by an **Insured(s)** to toll or waive a statute of limitations relating to a matter described in subparagraph 1. above; or
  3. the term **Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- D. **Defense Costs** means reasonable and necessary legal fees and expenses (other than regular or overtime wages, salaries, fees, benefits, or other compensation of the **Insured Individual(s)** or the **Policyholder's** overhead expenses) incurred by or on behalf of the **Insured(s)** in defending,

settling, appealing or investigating **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds.

- E. **Discrimination** means the violation of any federal, state, or local statute, regulation, ordinance or common law concerning discrimination in employment anywhere in the world.
- F. **Employee** means any one or more natural persons who are past, present or future:
1. duly appointed officer of the **Policyholder**;
  2. individuals whose labor or service is directed by the **Policyholder**, whether such labor or service is on a part-time, temporary, seasonal, or full-time basis;
  3. leased employees and volunteers whose labor or service is directed solely by the **Policyholder**; or
  4. applicants for prospective employment by the **Policyholder**.
- G. **Financial Impairment** means:
1. the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Policyholder**; or
  2. the **Policyholder** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- H. **Harassment** means:
1. work related sexual harassment against an **Employee** that interferes with an **Employee's** performance or creates an intimidating hostile or offensive working environment;
  2. sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of an **Employee's** employment or that is used as a basis for employment decisions; or
  3. illegal work related harassment of an **Employee**.
- I. **Insured(s)** means the **Insured Individual(s)** and the **Policyholder**.
- J. **Insured Individual(s)** means any one or more natural persons who are past, present or future:
1. duly elected or appointed director(s), officer(s) or trustee(s) of the **Policyholder**;
  2. **Employees** of the **Policyholder**; or
  3. committee members of any duly constituted committee of the **Policyholder**.
- K. **Interrelated Wrongful Acts** means any and all **Wrongful Act(s)** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- L. **Loss** means the total amount which the **Insured(s)** become legally obligated to pay on account of a **Claim**, including **Defense Costs**, damages, **Punitive Damages**, awards of front pay and back pay, judgments, pre-judgment and post-judgment interest, settlement amounts and costs and fees awarded pursuant to judgments.

**Loss** does not include:

1. any amounts for which the **Insured(s)** are legally or financially absolved from payment;
2. taxes or the loss of tax benefits, or fines or penalties imposed by law;
3. the multiple portion of any multiplied damage award;
4. the future salary, wages, commissions, or **Benefits** of a claimant who has been or shall be hired, promoted, or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**;
5. any salary, wages, commissions, benefits or other monetary payments which constitute severance payments or payments pursuant to a notice period;
6. any amount incurred by an **Insured(s)** in the defense or investigation of any action, proceeding, or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding or demand subsequently gives rise to a **Claim**; or
7. matters uninsurable under the law applicable to this Policy.

In determining the insurability of **Punitive Damages**, it is agreed that the law of the jurisdiction most favorable to the insurability of those damages will control for the purpose of resolving any dispute between the Insurer and the **Insured(s)**, provided that such jurisdiction is:

- (a) where the **Punitive Damages** were awarded or imposed;
- (b) where the **Wrongful Act(s)** underlying the **Claim** took place;
- (c) where either the Insurer or any **Insured(s)** is incorporated, has its principal place of business or resides; or
- (d) where this Policy was issued or became effective.

M. **Other Workplace Tort** means:

1. an employment related misrepresentation to an employee;
2. failure to grant or adopt adequate employment related policies and procedures;
3. negligent hiring, supervision, evaluation or retention of employees;
4. employment-related invasion of privacy or defamation;
5. employment-related wrongful infliction of emotional distress; or
6. employment-related libel, slander, false arrest, detention imprisonment;

but only when alleged as part of a **Claim** by an **Employee** for an actual or alleged **Breach of Employment Contract, Discrimination, Harassment, Retaliation, or Wrongful Job Action**.

N. **Policyholder** means the not-for-profit organization indicated in Item 1. in the Declarations and any **Subsidiary**.

- O. **Punitive Damages** means punitive or exemplary damages and also includes liquidated damages awarded under the Age Discrimination in Employment Act (ADEA), Equal Pay Act (EPA), and Family and Medical Leave Act (FMLA), all as amended.
- P. **Policy Period** means the period of time specified in Item 2. in the Declarations, subject to prior termination in accordance with Section VIII.C.
- Q. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.
- R. **Retaliation** means the illegal retaliatory treatment of **Employees**, including any retaliatory treatment against an **Employee** for such **Employee** engaging in any of the following activities:
1. exercising his or her rights under the law;
  2. refusing to violate any law or opposing an unlawful practice;
  3. threatening to disclose or actually disclosing violations of the law to any governmental authority or the management of the **Policyholder**; or
  4. testifying, cooperating, or assisting with respect to an investigation or proceeding by a governmental authority against the **Policyholder**.
- S. **Subsidiary(ies)** means:
1. any not-for-profit corporation in which and so long as the **Policyholder**, either directly or indirectly:
    - (a) owns more than fifty (50) percent of the issued and outstanding voting stock; or
    - (b) controls rights representing the present right to elect or to appoint more than fifty (50) percent of the directors or trustees of such not-for-profit corporation.
  2. any corporation which the **Policyholder**, either directly or indirectly:
    - (a) controls as an affiliated organization, regardless of whether it is a not-for-profit or for profit corporation, and which is scheduled by an endorsement attached to this Policy; or
    - (b) controls as a for profit entity, and which is scheduled by an endorsement attached to this Policy;
- on or before the effective date of this Policy, solely with regard to **Wrongful Act(s)** occurring at or after the time such entity became a **Subsidiary**.
- T. **Wrongful Act(s)** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by the **Policyholder** or any **Insured Individual(s)** in their capacity as such; or

2. any matter claimed against any **Insured Individual(s)** solely by reason of his or her capacity as such.

**Wrongful Act(s)** includes **Wrongful Employment Act(s)**, **Wrongful Personal and Publisher's Act(s)** and **Wrongful Third Party Act(s)**.

U. **Wrongful Employment Act(s)** means any **Breach of Employment Contract, Discrimination, Harassment, Retaliation, Wrongful Job Action**, or **Other Workplace Tort** actually or allegedly committed or attempted by:

1. the **Policyholder**;
2. any **Insured Individual(s)** in their capacities as such; or
3. by any other persons for whom the **Insured(s)** are legally responsible.

V. **Wrongful Job Action** means wrongful:

1. dismissal, discharge or termination (either actual or constructive) of employment of an **Employee**;
2. wrongful failure to employ or promote an **Employee**;
3. wrongful reference, discipline or deprivation of a career opportunity of an **Employee**; or
4. wrongful demotion or the adverse change in the terms, conditions or status of employment of an **Employee**.

W. **Wrongful Personal and Publisher's Acts** means any **Wrongful Act(s)** in the nature of defamation (whether libel or slander), invasion of privacy, false arrest, false imprisonment or other wrongful detention, malicious prosecution or abuse of process, wrongful entry or eviction, plagiarism, or infringement of copyright, trademark or other unauthorized appropriation of title or ideas.

X. **Wrongful Third Party Act(s)** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by:

1. the **Policyholder**;
2. any **Insured Individual(s)** in their capacities as such; or
3. by any other persons for whom the **Insured(s)** are legally responsible;

and which discriminates against any natural person who is a customer, vendor or other business invitee of the **Policyholder**, or employee of a customer or vendor of the **Policyholder**, on the basis of that natural person's race, color, creed, national origin, gender, sexual orientation or preference, marital status, sex, religion, age, military service, disability or handicap, pregnancy, or on any other basis prohibited by law, including the sexual or other discriminatory harassment of such customer or vendor or employee of such customer or vendor.

#### IV. EXCLUSIONS

A. Exclusions Applicable to All **Loss**

The Insurer shall not be liable for **Loss** arising from any **Claim** made against any **Insured(s)**:

1. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any fact, circumstance, transaction, event or **Wrongful Act(s)** which before the Inception Date set forth in Item 2. of the Declarations, was the subject of any notice of claim, loss or notice of potential claim or potential loss given under any other policy of insurance of which this Policy is a renewal or replacement;
2. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) any demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured(s)** on or prior to the Pending or Prior Claim Date set forth in Item 6. in the Declarations or any **Wrongful Act(s)**, fact, circumstance or situation underlying or alleged therein; or
  - (b) any other **Wrongful Act(s)** whenever occurring, which, together with a **Wrongful Act(s)** described in (a) above, constitute **Interrelated Wrongful Acts**;
3. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any action that relates to a collective bargaining agreement;
4. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the following laws and any amendments thereto:
  - (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
  - (b) the Employee Retirement Income Security Act of 1974 or any law that governs any employee benefit arrangement, program, policy, plan or scheme of any type, including any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Policyholder**;
  - (c) the Fair Labor Standards Act and amendments thereto or any law that governs wage, hour or payroll policies and practices, except the Equal Pay Act;
  - (d) the National Labor Relations Act and amendments thereto or any law that pertains to the rights of employees with respect to unions, unionizing, or collective activities in the workplace or any obligations of employers with respect to such employee activities;
  - (e) the Worker Adjustment and Retraining Notification Act and amendments thereto, or any law that governs any obligation of an employer to notify, discuss, or bargain with its employees or others in advance of any plant or facility closing, or mass layoff or any similar obligation;
  - (f) the Consolidated Omnibus Budget Reconciliation Act of 1985 and amendments thereto;
  - (g) the Federal False Claims Act and amendments thereto or any similar federal, state, or local statutory law or common law anywhere in the world; or
  - (h) the Occupational Safety and Health Act and amendments thereto or any law that governs workplace safety and health;

including any other federal, state local or foreign statute or law similar to any statute or law described in (a) through (h) of this exclusion, or rules or regulations promulgated under

any of such statutes or laws; provided however this Exclusion A. 4. shall not apply to any **Claim for Retaliation**;

5. made against a **Subsidiary** or an **Insured Individual(s)** of such **Subsidiary** for any **Wrongful Act(s)** committed, attempted, or allegedly committed or attempted during anytime when such entity was not a **Subsidiary**;
6. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) any nuclear reaction, radiation or contamination;
  - (b) the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
  - (c) any direction or request that the **Insured(s)** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

provided that this Exclusion A. 6. shall not apply to **Claims** brought by an **Employee** for **Retaliation**;

7. for actual or alleged bodily injury, mental anguish, emotional distress, humiliation, assault, battery, sickness, disease, or death of any person or damage to or destruction of any tangible property including loss of use thereof; provided that this exclusion shall not apply with respect to any actual or alleged mental anguish or emotional distress in a **Claim** for a **Wrongful Act(s)** or for a **Wrongful Third Party Act(s)** by **Insured(s)**;
8. for any actual or alleged breach of any express contract between the **Policyholder** and an independent contractor of the **Policyholder**;
9. for any actual or alleged charge of contempt of court or violation of a court order;
10. brought or maintained by or on behalf of any **Insured(s)** except a **Claim**:
  - (a) that is a derivative action brought or maintained on behalf of the **Policyholder** by one or more persons who are not **Insured Individual(s)** and who bring and maintain the **Claim** totally independent of and without the solicitation, assistance, participation, or intervention of any **Insured(s)**;
  - (b) that is employment-related and brought by or on behalf of any **Insured Individual(s)**;
  - (c) brought or maintained by any **Insured Individual(s)** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Policy; or
  - (d) brought or maintained by one or more **Insured Individual(s)** who have not served as directors, trustees, officers, or equivalent executives of the **Policyholder** within three (3) years immediately preceding the date the **Claim** is first made, and if the **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation, or intervention of the **Policyholder** or any **Insured Individual(s)** not described in this paragraph (d);
11. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving the actual or alleged liability of an **Insured(s)** pursuant to a contract or agreement, whether written, oral, express and/or implied, and including liability of others



assumed by an **Insured(s)**; provided that this subparagraph IV. A. 11. shall not apply to **Claims** for **Wrongful Employment Act(s)** unless and to the extent that such **Insured(s)** would have been liable for such **Wrongful Employment Act(s)** in the absence of such contract or agreement; or

12. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) the gaining of any profit, remuneration, or advantage to which the **Insured(s)** was not legally entitled; or
  - (b) any criminal or deliberately fraudulent act, error or omission by an **Insured(s)**;if evidenced by any judgment, final adjudication, alternate dispute resolution proceeding or a document or written statement by an **Insured(s)**.

With respect to Exclusion IV. A. 12. (b) set forth above no knowledge possessed by any **Insured Individual(s)** shall be imputed to any other **Insured Individual(s)**.

**B. Exclusions Applicable Solely To Loss other than Defense Costs**

With respect to **Claims** not excluded by Section IV. Exclusions A. of the Policy, the Insurer shall only pay **Defense Costs**, and not other components of **Loss**, on account of any **Claim** made against any **Insured(s)**, for:

1. amounts which constitute **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion B. 1. shall not apply to any **Claim** for a **Wrongful Employment Act(s)** for wrongful termination of employment;
2. amounts which constitute costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law;
3. the recovery of amounts owing under or assumed by any **Insured(s)** pursuant to any express written employment contract or agreement with any **Employee**; provided, however, this exclusion shall not apply to the extent the **Insured(s)** would be liable for such amounts in the absence of such contract or agreement; or
4. any request order (including the cost of compliance with such order) or agreement for non-monetary relief including injunctive relief, declaratory relief, restitution, or any other equitable remedy.

**V. LIMIT OF LIABILITY, RETENTIONS, DEFENSE AND SETTLEMENT**

**A. Limit of Liability**

The Insurer's maximum aggregate liability for **Loss** arising from all **Claims** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 3. in the Declarations. The Limit of Liability for the Extended Reporting Period, if exercised, shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The purchase of the Extended Reporting Period shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the Insurer for such **Policy Period** and Extended Reporting Period, combined.

**Defense Costs** are part of, and not in addition to, the Limit of Liability set forth in Item 3. in the Declarations and the payment by the Insurer of **Defense Costs** reduces and may totally exhaust such Limit of Liability.

If the Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under this Policy shall be completely fulfilled and extinguished.

All **Claims** arising from the same **Wrongful Act(s)** and all **Interrelated Wrongful Acts** shall be deemed one **Claim** and such **Claim** shall be deemed to be first made on the earlier date that: (i) any of the **Claims** is first made against an **Insured(s)** under this Policy or any prior policy, or (ii) valid notice was given by the **Insured(s)** under this Policy or any prior policy of any **Wrongful Act(s)** or any fact, circumstance, situation, event, transaction or cause which underlies such **Claim**. Coverage under this Policy shall apply only with respect to **Claims** deemed to have been first made during the **Policy Period** and reported in writing to the Insurer in accordance with the terms herein.

B. Retention

The Insurer shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 4. in the Declarations, and such Retention shall be borne by the **Insured(s)** uninsured and at their own risk. The Retention amount set forth in Item 4. (A) of the Declarations of this Policy shall only apply with respect to a **Claim** made against an **Insured Individual(s)** for which:

1. the **Policyholder** is not permitted by law to indemnify such **Insured Individual(s)**; or
2. the **Policyholder** is permitted or required by law to indemnify such **Insured Individual(s)**, but does not do so solely by reason of **Financial Impairment**.

Unless otherwise provided for by endorsement to this Policy, the Retention set forth in Item 4. (B) of the Declarations shall apply to any **Claims** made against the **Policyholder** and any **Claims** made against an **Insured Individual(s)**, other than those **Claims** to which the Retention amount set forth in Item 4. (A) of the Declarations applies according to the proceeding sentence of this paragraph. Notwithstanding anything to the contrary in this Policy, for purposes of determining the applicable Retention, indemnification of **Insured Individuals** by the **Policyholder** shall be presumed to be required or permissible whenever indemnification is legally permissible under the broadest applicable laws, regardless of whether the **Policyholder** has agreed in its by-laws or otherwise to provide such indemnification, unless such indemnification cannot be provided solely for the reason of **Financial Impairment**.

If the **Policyholder** is permitted or required by law to indemnify the **Insured Individual(s)** for any **Loss**, and does not in fact do so other than for reasons of **Financial Impairment**, the Insurer shall pay **Loss** on behalf of the **Insured Individual(s)** without regard to the Retention, but the **Policyholder** shall reimburse the Insurer for such amounts up to the applicable Retention amount.

C. Defense, Cooperation and Settlement

The Insurer shall have both the right and the duty to defend any **Claim** and appoint counsel with respect to any **Claim** made against the **Insured(s)** alleging a **Wrongful Act(s)**, even if such **Claim** is groundless, false or fraudulent. The **Insured(s)** shall have the right, at their own expense, to associate with the Insurer in the defense of any **Claim**, including but not limited to negotiating a settlement. However, the Insurer shall not be obligated to defend any **Claim** after the Limit of Liability set forth in Item 3. in the Declarations has been exhausted or after the rejection of a settlement offer as described below.

The **Insured(s)** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment, or otherwise assume any contractual

obligation without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insured(s)** are not legally obligated. The **Insured(s)** shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy. The **Insured(s)** shall provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and shall do nothing that may prejudice the Insurer's potential or actual rights of recovery with respect to **Loss** paid on account of a **Claim**.

If the Insurer recommends a settlement within this Policy's applicable Limit of Liability which is acceptable to the claimant and the **Insured(s)** unreasonably refuse to consent, then the Insurer's liability for all **Loss** on account of such **Claim** shall not exceed the amount for which the Insurer could have settled such **Claim**, plus an additional fifty (50) percent of such amount, plus **Defense Costs** up to the date the **Insured(s)** refused to settle such **Claim**. However, in no event shall the Insurer's liability exceed the Limit of Liability set forth in Item 3. in the Declarations.

## VI. AWARENESS PROVISION

- A. If during the **Policy Period** any **Insured(s)** becomes aware of circumstances which could give rise to a **Claim**, and the **Insured(s)** gives written notice of such circumstances to the Insurer during the **Policy Period**, then any **Claim** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** in which the circumstances were first reported to the Insurer. No coverage shall be provided for fees and expenses incurred prior to the time such circumstances result in a **Claim**.
- B. The **Insured(s)** shall, as a condition precedent to exercising their rights hereunder:
1. include with any notice of circumstances a description of such circumstances, the nature of the potential **Wrongful Act(s)**, the nature and extent of the potential damages, the names of the potential claimants, the identities of the potential defendants and the manner in which the **Insured(s)** first became aware of such circumstances; and
  2. give the Insurer such additional information and cooperation as it may reasonably require.

## VII. NOTICES

All notices under any provision of this Policy must be made in writing and delivered by prepaid express courier, certified mail or fax. Notices to the **Insured(s)** shall be given to the **Policyholder**. Notices to the Insurer shall be given to the appropriate party(ies) at the address(es) set forth in Item 8. in the Declarations. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notices are sent, whichever is earlier.

## VIII. GENERAL CONDITIONS

- A. Transactions That Impact Coverage
1. Acquisition or Creation of Another Organization
    - (a) If, after the effective date of this Policy, the **Policyholder**:
      - (i) creates or acquires a not-for-profit entity;
      - (ii) merges with another not-for-profit entity such that the **Policyholder** is the surviving entity;
      - (iii) acquires all or substantially all of the assets of another not-for-profit entity;  
or

- (iv) assumes voting rights representing the present right to vote for election or to appoint more than fifty (50) percent of the directors or trustees of a not-for-profit entity;

then such entity and any subsidiaries shall be deemed to be a **Subsidiary**.

- (b) There shall be no coverage for any **Wrongful Act(s)** by such created, acquired or merged entity or by any persons or entities considered to be **Insured(s)** pursuant to paragraph (a) above, where such **Wrongful Act(s)** occurred in whole or in part before the effective date of such creation, acquisition or merger or for any **Wrongful Act(s)** occurring on or after such date which, together with any **Wrongful Act(s)** occurring before such date, constitute **Interrelated Wrongful Act(s)**.

2. Acquisition of **Policyholder**

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

- (a) the acquisition of the **Policyholder**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Policyholder** into or with another entity such that the **Policyholder** is not the surviving entity; or
- (b) the acquisition by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty (50) percent of the directors of the **Policyholder**;

then coverage under this Policy shall continue until termination of the **Policy Period** and shall not be cancellable by the **Policyholder**, but only with respect to **Wrongful Act(s)** occurring prior to such merger, consolidation or acquisition. The **Policyholder** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Act(s)** occurring after such event.

3. Cessations of Subsidiaries

In the event that an entity ceases to be a **Subsidiary** before or during the **Policy Period**, coverage under this Policy with respect to such entity and its **Insured Individuals** shall continue until the termination of the **Policy Period**, but only with respect to **Wrongful Act(s)** which take place prior to the date such entity ceased to be a **Subsidiary**.

4. Change in **Policyholder** to For Profit Status

In the event that a **Policyholder** changes its status and/or form of organization to that of a for profit entity or is deemed to be a for profit entity by any governmental authority, coverage under this Policy with respect to such **Policyholder** and its **Insured Individuals** shall continue until the termination of the **Policy Period**, but only with respect to **Wrongful Act(s)** which take place prior to the date of such change in status and/or form of organization.

If the foregoing occurs, the **Insured(s)** shall have the right to purchase an Extended Reporting Period pursuant to Section II.C.

B. Representations and Severability With Respect To Application

In granting coverage to any one of the **Insured(s)**, the Insurer has relied upon the statements made in the written Application for this Policy and all information provided to the Insurer and upon the statements in the original written application submitted to another insurer with respect to prior coverage incepting as of the Continuity Date, if any, set forth in Item 7. in the Declarations. All such statements are the basis of this Policy and shall be incorporated in and constitute part of this Policy.

In order to determine if coverage is available:

1. only facts pertaining to and knowledge possessed by the chairperson, chief executive officer or president, chief financial officer, in-house general counsel, chief information officer, managing director, and equivalent officer of the **Policyholder** shall be imputed to the **Policyholder**; and
2. no declaration or statement in the Application or knowledge possessed by the **Policyholder** or any **Insured Individual(s)** shall be imputed to any other **Insured Individual(s)**. Such written Application(s) for coverage shall be construed as a separate Application for coverage by each **Insured Individual**.

C. Cancellation/Nonrenewal

1. The **Policyholder** may cancel this Policy during the **Policy Period** by giving the Insurer advance written notice of cancellation stating when thereafter such cancellation shall be effective.
2. The Insurer may only cancel this Policy in the event of nonpayment of premium by giving the **Policyholder** written notice of cancellation at least twenty (20) days before the effective time of cancellation.
3. Notice of cancellation shall state the effective time of cancellation. The **Policy Period** shall end at that time.
4. If this Policy is cancelled, the Insurer shall send the **Policyholder** any premium refund as soon as practicable. If the **Policyholder** cancels, the refund shall be on the customary short rate basis. The return or tender of a return premium is not a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.
5. If the Insurer decides not to renew this Policy, the Insurer shall provide written notice to the **Policyholder** at least sixty (60) days prior to the end of the **Policy Period**.
6. If any controlling law requires a longer period of notice by the Insurer, the Insurer shall give such longer notice.

For purposes of this Subsection VIII.C., **Policyholder** shall not include any **Subsidiary**.

D. Other Insurance

If any **Loss** arising from any **Claim** is insured by any other valid and collectible policy(ies) of insurance, prior or current, then this Policy shall apply only in excess of and will not contribute with the amount of any deductibles, retentions, and limits of liability under such other policy(ies) whether such policy(ies) is stated to be primary, contributory, excess, contingent or otherwise, unless such policy(ies) is written to be specifically excess of this Policy by reference in such other policy(ies) to this Policy's Policy Number indicated in the Declarations.

E. Territory

This Policy shall apply to **Claims** made against the **Insured(s)** anywhere in the world.

F. Subrogation

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)** rights of recovery, and the **Insured(s)** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured(s)**.

G. No Action Against Insurer

No action shall lie against the Insurer unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the **Insured(s)** to determine the **Insured(s)** liability, nor shall the Insurer be impleaded by the **Insured(s)** or their legal representatives.

H. Bankruptcy

Bankruptcy or insolvency of the **Policyholder** or of any **Insured Individual(s)** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

I. Authorization

By acceptance of this Policy, the **Policyholder**, but not including any **Subsidiary**, agrees to act on behalf of the **Insured(s)** with respect to the giving and receiving of any notice provided for in this Policy (except the giving of notice to apply for any Extended Reporting Period), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insured(s)** agree that the **Policyholder** shall act on their behalf.

J. Alteration and Assignment of Interest

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Insurer. The **Insured(s)** agree that this Policy constitutes the entire agreement between the **Insured(s)** and the Insurer, or any of their agents or brokers. Notice to or knowledge possessed by the Insurer, the **Insured(s)** or any agent, broker or other person acting on behalf of the **Insured(s)** or Insurer shall not effect a waiver of or estop the Insurer or the **Insured(s)** from asserting any rights under this Policy.

K. Headings

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