

THE VANGUARD FIDUCIARY LIABILITY INSURANCE POLICY

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



NOTICE:

THIS IS A CLAIMS-MADE AND REPORTED POLICY THAT APPLIES ONLY TO THOSE **CLAIMS** FIRST MADE AGAINST THE **INSURED** DURING THE **POLICY PERIOD** THAT ARE REPORTED TO THE INSURER DURING THE **POLICY PERIOD**. **CLAIM EXPENSES** ARE INCLUDED IN THE LIMITS OF LIABILITY. THE LIMIT OF LIABILITY AVAILABLE TO PAY **LOSS** SHALL BE REDUCED OR TOTALLY EXHAUSTED BY PAYMENT OF **CLAIM EXPENSES**.

PLEASE READ YOUR POLICY CAREFULLY



The Vanguard
Fiduciary Liability Insurance
Policy Certificate

Policy Number: SFD31210381-04 Issuing Carrier: Hudson Insurance Company
Renewal of: SFD31210381-03 (hereinafter the "Insurer")

ITEM 1. Insurance Representative: Aon Financial Services Group
Address: 199 Water Street, 32nd Floor
New York, NY 10038

ITEM 2. Plan (or Plans): Educational Employees Supplemental Retirement System of Fairfax
County
Address: 8001 Forbes Place
Springfield, VA 22151

ITEM 3. Policy Period:
Effective Date: 07/01/2018 (12:01 a.m. local time)
Expiration Date: 07/01/2019 (12:01 a.m. local time)

ITEM 4. Limits of Liability:

Table with 2 columns: Description of sublimit and Amount. Rows include (a) Aggregate Limit of Liability (\$15,000,000), (b) Trustee Claim Expenses Sublimit (\$2,000,000), (c) Voluntary Compliance Program Expenditures Sublimit (\$250,000), (d) ERISA 502(c) Civil Penalties Sublimit (\$250,000), (e) HIPAA and HITECH Fines and Penalties Sublimit (\$15,000,000), (f) PPACA Fines and Penalties Sublimit (\$15,000,000), (g) Section 4975 Penalties Sublimit (\$15,000,000), (h) ERISA Section 502(a)(3) Relief Sublimit (\$15,000,000), and (i) Benefit Overpayment Sublimit (\$100,000).

included within and not in addition to the maximum aggregate limit of liability above	
(j) Cyber Essentials Sublimit: included within and not in addition to the maximum aggregate limit of liability above	\$100,000

ITEM 5. Retention: \$100,000 each **Claim**

ITEM 6. Pending or Prior Proceeding Date: 10/01/2000

ITEM 7. Premium:

Basic Premium:	\$83,328.00
Waiver of Recourse Premium:	\$0.00
Tax/Surcharge:	\$0.00
Total Premium:	\$83,328.00

ITEM 8. Extended Reporting Period: Twelve (12) month extended reporting period is available for 100% of the total annual premium, subject to Section IV.B of the policy

ITEM 9. Endorsements: Endorsement Schedule

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 should be reviewed to determine its effect on coverage:

<u>Endorsement Number</u>	<u>Endorsement Name</u>
1. ESF-31230037	Virginia Amendatory Endorsement
2. ESF-31220060B	Public Entity Fiduciary Liability Endorsement
3. ESF-31220066	Vanguard Elite Endorsement
4. ESF-31220069	Additional Named Plan(s) Endorsement

This Policy Certificate, together with the Policy Form ESF-31210001 (09/2012), 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.

July 5, 2018
Date


Authorized Representative



The Vanguard Fiduciary Liability Insurance Policy Form

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, 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.
- C. The Insurer will pay on behalf of the **Insureds** those **Content Restoration Expenditures** and **Crisis Notification Expenditures** directly resulting from a covered **Information Breach** in the **Plan's** business operations.

II. DEFINITIONS

The following terms in bold-face type, when used in this policy, shall 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 monetary damages, non-monetary damages or injunctive relief;
 - 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 U.S. Department of Labor or the U.S. 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. **Content Restoration Expenditures** means reasonable and necessary costs that are extraordinary and beyond the **Plan's** normal expenditures and that are incurred by the **Plan**, subject to the Insurer's prior consent, to restore or recreate content when such content was:
1. maintained in the **Insured's** care or the care of a trusted party; and
 2. damaged or destroyed as a result of an **Information Breach**.

If the content cannot be restored or recreated, the **Content Restoration Expenditures** will be the actual expenses incurred to reach that determination. The **Insured** must secure written consent from the Insurer before incurring any **Content Restoration Expenditures**.

Content Restoration Expenditures does not include:

1. the cost to restore or recreate content to a level greater than that which existed immediately before the **Information Breach**; or
 2. costs incurred by the **Insured** more than twelve (12) months after the **Insured's** first discovery of an **Information Breach**.
- F. **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 ERISA, or pursuant to any other provision of ERISA that was amended by the multiemployer plan provisions of the PPA;
 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 HIPAA and HITECH;
 5. civil fines and penalties imposed pursuant to PPACA;
 6. the fifteen percent (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.
- G. **Crisis Notification Expenditures** means reasonable and necessary costs that are extraordinary and beyond the **Plan's** normal expenditures and are paid by, subject to the Insurer's prior written consent, the **Insured** within twelve (12) months of the **Insured's** first discovery of the **Information Breach** for any of the following:
1. the cost of any **Insured** to notify persons of a breach of the privacy of their personally identifiable information that was in the **Insured's** care, custody or control or in the care, custody or control of a trusted party;
 2. an **Insured's** public relations activities that are solely intended to mitigate a material impact to any **Insured** arising out of an **Information Breach** which has become substantially publicized through the news media;
 3. costs, including forensic and investigative expenses, billed to an **Insured** by others an **Insured** engages to determine the origin, extent and duration of an **Information Breach**; and

4. costs an **Insured** incurs for the credit monitoring services to affected persons because of an **Information Breach**.

Except for costs of efforts incurred within the first twenty-four (24) hours of the **Insured's** first discovery of an **Information Breach**, all **Crisis Notification Expenditures**, including, but not limited to, the costs to re-secure the personally identifiable information of affected persons and corporate confidential information, require the Insurer's prior written approval.

- H. **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.

Claim 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.

- I. **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 (PPA), and the Patient Protection and Affordable Care Act (PPACA);
2. 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.

- J. **Information Breach** means the following when allegedly or actually done by the **Insured** or on behalf of the **Insured**:
1. failure to prevent exposure of, unauthorized access use of, repudiation of access to, tampering with or introduction of malicious code into data, software, firmware, systems or networks;
 2. failure to prevent identity theft or credit/debit card fraud;
 3. failure to prevent the theft, unauthorized or illegal exposure of a person's personally identifiable information or commercial confidential information that resides in or on an **Insured's** laptop(s), device(s) or other media containing content or in on a trusted party's laptop(s), device(s) or other media containing content; and
 4. failure to prevent unauthorized access to or unauthorized use of commercial confidential information.
- K. **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.
- L. **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**; and
 3. any other entity or natural person designated as an additional **Insured** by written endorsement to this policy.
- M. **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.
- N. **Plan** means each plan or trust enumerated in ITEM 2 of the Policy Certificate of this policy.
- O. **Related Claims** means all **Claims** based upon, arising from or in consequence of causally connected **Wrongful Acts**.
- P. **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.
- Q. **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**.

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**; or
3. with respect to **Claim 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, retention, 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 shall not be liable for **Loss** on account of any **Claim** made against an **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 an **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;
3. 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 **Claim Expenses** incurred in the defense of a **Claim** for a violation of an **Employee Benefit Law** by an **Insured**;
4. 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;
5. 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;
6. alleging, or resulting in, an **Information Breach** arising out of or in any way related to any actual or alleged:
 - a. refunds, credits, redemptions, discounts, coupons, offsets, rebates or returns, including, but not limited to licensing fees, subscription charges, access fees, royalties or any other type of fee or charge;
 - b. the cost to create a proof of **Loss** or to document a **Loss**; or
 - c. expenses the **Plan** incurs to upgrade, enhance or improve content, data, software, firmware, systems or networks to a state better than that which existed prior to the **Information Breach**.

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 exclusion in Section V.A above

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 PPA, 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 to HITECH, 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 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 a 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. Related Information Breaches

All **Information Breaches** that result in **Loss** covered by this policy that are the same, continuous, repeated or in a series of interrelated **Information Breaches** or are temporally, logically or causally connected by facts, circumstances, situations, transactions, events, utterances or decisions shall be deemed to be a single **Information Breach** happening at the time of the earliest of those **Information Breaches** during the policy period.

F. 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.

G. 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.

H. 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.

I. Subrogation; Waiver 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.

J. 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 **Insured** or 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.

K. 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.

L. 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**.

M. 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.

N. 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**, of the **Insureds'** intent to participate in a **Voluntary Compliance Program** or any other notice required under the policy must be given in writing to the attention of the Claims Department via mail, fax or email.

Mail notices to: Euclid Specialty Managers, LLC
234 Spring Lake Drive
Itasca, IL 60143

Fax notices to: 571.730.4813

Email notices to: professionalclaims@euclidspecialty.com

O. 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

P. 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 the **Insured** and the Insurer or any of its agents relating to this insurance.

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

Policy Number: SFD31210381-04
Endorsement Number: 1
Endorsement Effective Date: 07/01/2018 (12:01 a.m. local time)

Virginia Amendatory Endorsement

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

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

1. This policy may be canceled by the Insurer by mailing or delivering to the **Insured** shown in ITEM 2 of the Policy Certificate written notice of cancellation, stating the reason(s) for cancellation, at least:
 - a. Fifteen (15) days prior to the effective date of cancellation if the policy is canceled for non-payment of premium; or
 - b. Forty-five (45) days prior to the effective date of cancellation if the policy is canceled for any other reason.

If notice is mailed, it will be via regular, registered or certified mail. Proof of mailing will be sufficient proof of notice.

2. In the event the Insurer elects not to renew this policy it will mail or deliver written notice stating the reason for non-renewal, to the last known address of the **Insured** shown in ITEM 2 of the Policy Certificate, at least:
 - a. Fifteen (15) days prior to the expiration date if the policy is non-renewed for non-payment of premium; or
 - b. Forty-five (45) days prior to the expiration date if the policy is non-renewed for any other reason.

If notice is mailed, it will be via regular, registered or certified mail. Proof of mailing will be sufficient proof of notice.

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


Authorized Representative

Policy Number: SFD31210381-04
Endorsement Number: 2
Endorsement Effective Date: 07/01/2018 (12:01 a.m. local time)

Public Entity Fiduciary Liability Endorsement

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

1. Section II. Definitions C. **Claim** is deleted in its entirety and replaced with the following wording:

C. **Claim** means:

1. a written demand for monetary damages, non-monetary damages or injunctive relief;
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; or
4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, other than an administrative or dispute resolution proceeding handled internally by a governmental entity, body, agency or subdivision;

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.

2. Section II. Definitions A. **Administration** is deleted in its entirety and replaced with the follow wording:

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; activities relating to enrollment, termination or cancellation of participants or beneficiaries under a **Plan**; 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**.

3. ITEM 5 of the Policy Certificate is amended as follows:

Retention (each **Claim**):

- (a) Non-Indemnifiable **Loss**: \$0
- (b) Indemnifiable **Loss**: Amount indicated on 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** is not permitted or required to indemnify, or is permitted or required to indemnify but does not do so by reason of financial impairment. The **Insured** shall be deemed permitted or required to indemnify any natural person **Insured**. The retention 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**.

4. 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 constitutes the return to any employer, public entity or governmental authority of any contributions if such amounts are or could be chargeable to a **Plan**.
5. Section VI. Conditions I. Subrogation; Waiver of Recourse is deleted in its entirety and replaced with the following wording:
 - A. In the event of payment under this policy, the Insurer will be subrogated to, and will be entitled to an assignment of, all 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**.
 - B. In consideration of payment by the **Plan** of the premium, the Insurer agrees to waive its right of recourse against the **Insureds**. Notwithstanding this provision, the Insurer still maintains the right to seek recovery against an **Insured** of any **Loss** paid out under the policy if Section V. Exclusions 1(a) and/or 1(b) is established by any final, non-appealable adjudication.

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



Authorized Representative

Policy Number: SFD31210381-04
Endorsement Number: 3
Endorsement Effective Date: 07/01/2018 (12:01 a.m. local time)

Vanguard Elite Endorsement

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

1. **Coverage Enhancements Including Additional Covered Penalties and Enhanced Definitions**

Section II. Definitions R. **Wrongful Act** 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 **Claim 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 subparagraphs (4) below; or
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**.

Section II. Definitions L. **Insured** is deleted in its entirety and replaced with the following:

L. **Insured** means:

1. any **Plan**;
2. any **Insured Person**;
3. any other entity or natural person designated as an additional **Insured** by written endorsement to this policy.

Section II. Definitions is amended by adding the following new definition:

Insured Person means any natural person serving as a past, present or future trustee, committee member, employee, director or officer of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary, settlor, trustee committee member or employee of a **Plan**. **Insured Person** does not include any independent contractors or third party service providers.

Section II. Definitions I. **Employee Benefit Law** is deleted in its entirety and replaced with the following:

I. **Employee Benefit Law** means:

1. the Employee Retirement Income Security Act of 1974, as amended (ERISA), or any other common or statutory law of the United States or any state or other jurisdiction therein concerning fiduciary standards of care with respect to a **Plan** or to which the **Plan** is subject, 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 (PPA), the Multiemployer Pension Reform Act of 2014 (MPRA), and the Patient Protection and Affordable Care Act (PPACA);
2. 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, including but not limited to any workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

Section II. Definitions F. **Covered Penalties** is deleted in its entirety and replaced with the following:

- F. **Covered Penalties** means, solely in connection with a **Plan**, and subject to the aggregate limit of liability under this policy and, if stated in the Policy Certificate, any applicable aggregate sublimit of liability:
1. civil penalties or any excise tax imposed pursuant to Section 502(c) of ERISA or pursuant to any other provision of ERISA that was amended by the multiemployer plan provisions of the PPA;
 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 HIPAA and HITECH;
 5. civil fines and penalties imposed pursuant to PPACA;
 6. the fifteen percent (15%) or less excise tax penalty imposed pursuant to Section 4975 of the Internal Revenue Code, with respect to covered judgments;
 7. relief arising under Section 502(a)(3) of ERISA; and
 8. civil penalties imposed pursuant to Section 203 of the Bipartisan Budget Act of 2013.

Section V. Exclusions A.(3.) is deleted in its entirety and replaced with the following:

3. 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: (i) **Claim Expenses** incurred in the defense of a **Claim** for a violation of an **Employee Benefit Law** by an **Insured**; and (ii) **Claims** asserting a violation of PPACA or Section 510 of ERISA.

2. **Benefit Overpayment Coverage**

Section VI. Conditions A.(11.) Limits of Liability and Retention is deleted in its entirety and replaced with the following:

11. The amount stated in ITEM 4(i) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for any negligent act, error or omission committed by the **Insured** solely in the miscalculation of **Benefits** which results in an overpayment of **Benefits** that would otherwise not be covered by the **Plan** and cannot be recovered by the **Plan** after reasonable effort, and for which no **Claim** as defined in Section II. Definitions C. **Claim** of the policy has been made against an **Insured**. 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.

Section II. Definitions H.(5.) **Damages** is deleted in its entirety and replaced with the following:

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**. Solely in the event a **Claim** as defined in Section II. Definitions C. **Claim** of the policy has been made against an **Insured**, **Damages** shall also include a monetary award in, or fund for settling, such **Claim** 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**. Solely in the event a **Claim** as defined in Section II. Definitions C. **Claim** of the policy has not been made against an **Insured**, the amount stated in ITEM 4(i) of the Policy Certificate will be the Insurer's maximum limit of liability under the policy for any negligent act, error or omission committed by the **Insured** solely in the miscalculation of **Benefits** which results in an overpayment of **Benefits** that would otherwise not be covered by the **Plan** and cannot be recovered by the **Plan** after reasonable effort.

3. Pre-Claim Investigation Coverage

Section III. Defense and Settlement is amended by adding the following:

- G. The Insurer shall pay on behalf of the **Insureds** any **Pre-Claim Investigation Expenses** incurred by the **Insureds** during the policy period. Prior to the payment of any **Pre-Claim Investigation Expenses**, the **Insureds** shall provide the Insurer with a copy of the written commencement of a **Pre-Claim Investigation** and any other requested communication between the **Insureds** and an **Enforcement Unit**. No payment for **Pre-Claim Investigation Expenses** will be made without the prior written consent of the Insurer, and such consent shall not be unreasonably withheld.

The Insurer shall not be liable for any **Pre-Claim Investigation Expenses**: (1) based upon, arising from or in consequence of any prior or pending suit or proceeding against any **Insureds** as of the Pending or Prior Proceeding Date in ITEM 6 of the Policy Certificate, or the same or any substantially similar fact, circumstance or situation underlying or alleged in such suit or proceeding; or (2) based upon, arising from or in consequence of 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 policy is a renewal or replacement.

Section II. Definitions C. **Claim** is deleted in its entirety and replaced with the following:

C. **Claim** means:

1. a written demand for:
 - a. monetary or non-monetary (including injunctive) relief; or
 - b. arbitration, mediation or other alternative dispute resolution against an **Insured** for a **Wrongful Act**, commenced by the first receipt of such demand by an **Insured**;
2. a 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. a written notice of commencement of a fact-finding investigation by an **Enforcement Unit** against an **Insured** for a **Wrongful Act**;
4. a written notice of commencement of a **Pre-Claim Investigation**;
5. written notice of commencement of a **Benefit Claim Denial**, if, at the **Insured's** option, it is reported to the Insurer in writing during the policy period;

6. a notice of participation in a **Voluntary Compliance Program**, solely with respect to the **Voluntary Compliance Program** coverage in Insuring Agreement I.B.;

Section II. Definitions D. **Claim Expenses** is amended by adding the following:

Claim Expenses also includes **Pre-Claim Investigation Expenses** paid due to a **Pre-Claim Investigation**.

Section II. Definitions Q. **Voluntary Compliance Program Expenditures** is amended by adding the following:

3. **Pre-Claim Investigation Expenses** paid due to a **Pre-Claim Investigation** which directly results in an **Insured's** participation in a **Voluntary Compliance Program**.

Section II. Definitions is amended by adding the following new definitions:

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.

Enforcement Unit means any federal, state, or local law enforcement or governmental authority, including but not limited to the United States Department of Health & Human Services, Department of Justice, Department of Labor, Internal Revenue Service, Securities and Exchange Commission, and any attorney general; however, **Enforcement Unit** shall not include any similar governmental authority located outside the United States.

Pre-Claim Investigation means a written notice or demand to an **Insured** and commenced by an **Enforcement Unit** which does not yet allege a **Wrongful Act**, but requests an **Insured Person** to attend interviews or meetings, produce a sworn statement or correspondence, records or other similar documentation; provided, however, that such request of an **Insured Person** is in connection with such **Insured Person** acting in his or her capacity as an **Insured Person**.

Pre-Claim Investigation Expenses means the reasonable and necessary legal fees and expenses (other than regular or overtime wages, salaries, fees or benefits of an **Insured Person**) which are incurred in connection with a **Pre-Claim Investigation** first made during the **Policy Period**.

4. Amend Notice Section

Section VI. Conditions B.(4.) Notice is deleted in its entirety and replaced with the following:

4. If during the policy period or, if exercised, the extended reporting period, an **Insured**:
 - a. becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Insurer;
 - b. receives a written request to toll or waive a statute of limitations applicable to **Wrongful Acts** committed, attempted or allegedly committed or attempted before or during the policy period and gives written notice of such request of such alleged **Wrongful Acts** to the Insurer;
 - c. gives written notice to the Insurer of participation in a **Voluntary Compliance Program**;
 - d. gives written notice to the Insurer of a **Pre-Claim Investigation**; or
 - e. gives written notice to the Insurer of a **Benefit Claim Denial**;

then any **Claim** subsequently arising from the circumstances referred to in (a) above, from the **Wrongful Acts** referred to in (b) above, from the **Voluntary Compliance Program** notice referred to in (c) above, from a **Pre-Claim Investigation** referred to in (d) above, or from a **Benefit Claim Denial** referred to in

(e) above, shall be deemed to have been first made during the policy period in which the written notice described in (a), (b), (c), (d), or (e) above was first given by an **Insured** to the Insurer, provided any such subsequent **Claim** is reported to the Insurer as soon as practicable, but in no event later than ninety (90) days after an **Insured** becomes aware of such **Claim**. With respect to any such subsequent **Claim**, no coverage under this policy shall apply to loss incurred prior to the date such subsequent **Claim** is actually made.

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

A handwritten signature in black ink that reads "Daniel Amonowitz". The signature is written in a cursive style with a horizontal line underneath the name.

Authorized Representative

Policy Number: SFD31210381-04
Endorsement Number: 4
Endorsement Effective Date: 07/01/2018 (12:01 a.m. local time)

Additional Named Plan(s) Endorsement

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

ITEM 2 of the Policy Certificate is amended to include the following **Plan(s)** as of the Endorsement Effective Date shown above:

ERFC; ERFC 2001

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



Authorized Representative



September 4, 2018

The Educational Employees' Supplementary Retirement System of Fairfax County
8001 Forbes Place, Suite 300
SPRINGFIELD, VA 22151

Re: Important Information about **Claims Information Line**

Dear **The Educational Employees' Supplementary Retirement System of Fairfax County**

Travelers Bond & Specialty Insurance is pleased to announce its **1-800-842-8496** Claims Information Line. This line is designed to provide insureds with an additional resource on how to report claims or those circumstances or events which may become claims.

Policyholders will be able to obtain assistance on the following topics from the Claims Information Line:

- The information that needs to be included with the claim notice
- The address, electronic mail address and/or facsimile number to which the policyholder can send claims related information
- Get questions on the claim process answered

The Declarations Page of your policy sets forth where you should report claims and claims related information. You should also review the policy's reporting requirements to be aware of how much time you have to report a claim to Travelers. The sooner Travelers is notified, the sooner we can become involved in the process and offer assistance to our policyholder. A delay in reporting may result in all or part of a matter to fall outside of the coverage provided.

The Claims Information Line should streamline the claim reporting process and allow policyholders to ask questions on what information is needed as well as other questions which will assist them in working with Travelers. While the Claims Information Line provides policyholders a valuable resource by answering questions and providing information, the line does not replace the reporting requirements contained in the Policy.

We hope this improvement to customer service is something our policyholders will find helps them understand the claim process and provides them a resource for reporting.

Best regards,
Patrick S Byrnes

IMPORTANT NOTICE REGARDING INDEPENDENT AGENT AND BROKER COMPENSATION

For information on how Travelers compensates independent agents, brokers, or other insurance producers, please visit this website: www.travelers.com/w3c/legal/Producer_Compensation_Disclosure.html

If you prefer, you can call the following toll-free number: 1-866-904-8348. Or you can write to us at Travelers, Agency Compensation, One Tower Square, Hartford, CT 06183.

VIRGINIA POLICYHOLDERS NOTICE - IMPORTANT CONTACT INFORMATION

Should you need to contact anyone about this insurance for any reason, please contact your agent. If you have additional questions you may contact Travelers at:

WASHINGTON, D.C. OFFICE
14048 Parkeast Circle
Chantilly, Virginia 20151
(800) 328-2189

Travelers.com

If you have been unable to contact or obtain satisfaction from Travelers or your agent, you may contact the Virginia State Corporate Commission's Bureau of Insurance at:

Property and Casualty Consumer Outreach
PO Box 1157
Richmond, VA 23218
Toll free: 1-877-310-6560
Richmond, VA area: 804-371-9092

Email: PCOutreach@scc.virginia.gov

Written correspondence is preferable so that a record of your inquiry is maintained. When contacting your agent, company or the Bureau of Insurance, have your policy number available.

**VIRGINIA IMPORTANT NOTICE
ATTENTION VIRGINIA INSUREDS**

EXTENDED REPORTING PERIOD OPTIONS

You have purchased a claims-made liability insurance policy. Please read this policy carefully to understand your coverage. There are certain circumstances in which you must be provided the opportunity to purchase an Extended Reporting Period for reporting claims. These are explained in your policy. If you have any questions regarding the cost of an Extended Reporting Period or the available options under the Extended Reporting Period, please contact your insurance company or your insurance agent.

Standard Extended Reporting Period lengths are three (3), six (6), and twelve (12) months. State laws and regulations regarding minimum Extended Reporting Periods must be followed.

Virginia insureds have additional optional Extended Reporting Period choices: 1) The Virginia insured has the option to purchase any available optional Extended Reporting Period with or without a reinstated limit of liability. 2) One of the available optional Extended Reporting Periods is a two (2) year Extended Reporting Period with or without a reinstated limit of liability.

If you have any questions regarding the cost of an extended reporting period or the available options under the extended reporting period, please contact your insurance agent.

This notice is for information only and does not become a part or condition of the attached document.



Wrap⁺[®]

**EXCESS POLICY
DECLARATIONS**

POLICY NO. 106125990

**Travelers Casualty and Surety Company of America
Hartford, Connecticut**
(A Stock Insurance Company, herein called the Company)

PLEASE READ THIS POLICY CAREFULLY. THIS POLICY IS WRITTEN ON A CLAIMS-MADE BASIS WHEN EXCESS OF A LIABILITY COVERAGE AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR, IF EXERCISED, ANY EXTENDED DISCOVERY PERIOD. THIS POLICY IS WRITTEN ON A LOSS FIRST DISCOVERED BASIS WHEN EXCESS OF A BOND OR CRIME POLICY AND COVERS ONLY LOSS FIRST DISCOVERED DURING THE POLICY PERIOD OR, IF EXERCISED, ANY EXTENDED DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS.

ITEM 1	INSURED AND INSURED'S ADDRESS: The Educational Employees' Supplementary Retirement System of Fairfax County 8001 Forbes Place, Suite 300 SPRINGFIELD, VA 22151 Policy Number: 106125990 Prior Policy Number: Not Applicable												
ITEM 2	POLICY PERIOD: From: 12:01 A.M July 01, 2018 To: 12:01 A.M July 01, 2019 Local time at the address shown in ITEM 1.												
ITEM 3	LIMIT OF LIABILITY: \$6,000,000												
ITEM 4	FOLLOWED POLICY: Insurer: Hudson Insurance Company Policy Number: SFD31210381-04 Coverage Sections: Designated Benefit Plan Fiduciary												
ITEM 5	SCHEDULE OF UNDERLYING INSURANCE: <table border="1" data-bbox="305 1793 1433 1885"> <thead> <tr> <th data-bbox="305 1793 500 1885"></th> <th data-bbox="500 1793 708 1885"><u>Coverage Sections</u></th> <th data-bbox="708 1793 873 1885"><u>Policy Number</u></th> <th data-bbox="873 1793 1060 1885"><u>Policy Period</u></th> <th data-bbox="1060 1793 1247 1885"><u>Limit of Liability</u></th> <th data-bbox="1247 1793 1433 1885"><u>Retention Amount</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="305 1885 500 1890"></td> <td data-bbox="500 1885 708 1890"></td> <td data-bbox="708 1885 873 1890"></td> <td data-bbox="873 1885 1060 1890"></td> <td data-bbox="1060 1885 1247 1890"></td> <td data-bbox="1247 1885 1433 1890"></td> </tr> </tbody> </table>		<u>Coverage Sections</u>	<u>Policy Number</u>	<u>Policy Period</u>	<u>Limit of Liability</u>	<u>Retention Amount</u>						
	<u>Coverage Sections</u>	<u>Policy Number</u>	<u>Policy Period</u>	<u>Limit of Liability</u>	<u>Retention Amount</u>								

(A) Issuer of Primary Policy:					
Hudson Insurance Company	Designated Benefit Plan Fiduciary	SFD312103 81-04	07/01/2018 to 07/01/2019	\$15,000,000	\$100,000
(B) Other Underlying Insurers:					
(C) Total Amount of Underlying Limit of Liability \$15,000,000 plus any applicable retentions or deductibles under the Primary Policy.					
ITEM 6	PREMIUM FOR THE POLICY PERIOD:				
	\$24,075.00 Policy Premium				
ITEM 7	EXTENDED DISCOVERY PERIOD:				
	(a) Additional Premium: 100 % of Premium indicated in Item 6				
	(b) Additional Months: 12				
ITEM 8	ENDORSEMENTS EFFECTIVE AT INCEPTION:				
	AFE-19008-0115; XP001-0205; XP041-0205; XP121-0205; XP-19022-0612; XP094-1209				
ITEM 9	ALL NOTICES OF CLAIM OR LOSS MUST BE SENT TO THE COMPANY BY EMAIL, FACSIMILE, OR MAIL AS SET FORTH BELOW:				
	Email:BSIclaims@travelers.com FAX:(888) 460-6622 Mail:Travelers Bond & Specialty Insurance Claim 385 Washington St. – Mail Code 9275-NB03F St Paul, MN 55102				

Countersigned By _____

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its authorized officers.

Thomas M. Hummel

President, Bond & Specialty Insurance

Wendy C. Skj

Corporate Secretary

FEDERAL TERRORISM RISK INSURANCE ACT DISCLOSURE ENDORSEMENT

This endorsement applies to the insurance provided under any Coverage Part or coverage Form included in this policy that is subject to the federal Terrorism Risk Insurance Act of 2002 as amended.

The federal Terrorism Risk Insurance Act of 2002 as amended ("TRIA"), establishes a program under which the Federal Government may partially reimburse "Insured Losses" (as defined in TRIA) caused by "Acts Of Terrorism" (as defined in TRIA). Act Of Terrorism is defined in Section 102(1) of TRIA to mean any act that is certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The Federal Government's share of compensation for such Insured Losses is established by TRIA and is a percentage of the amount of such Insured Losses in excess of each Insurer's "Insurer Deductible" (as defined in TRIA), subject to the "Program Trigger" (as defined in TRIA). Through 2020, that percentage is established by TRIA as follows:

- 85% with respect to such Insured Losses occurring in calendar year 2015.
- 84% with respect to such Insured Losses occurring in calendar year 2016.
- 83% with respect to such Insured Losses occurring in calendar year 2017.
- 82% with respect to such Insured Losses occurring in calendar year 2018.
- 81% with respect to such Insured Losses occurring in calendar year 2019.
- 80% with respect to such Insured Losses occurring in calendar year 2020.

In no event, however, will the Federal Government be required to pay any portion of the amount of such Insured Losses occurring in a calendar year that in the aggregate exceeds \$100 billion, nor will any Insurer be required to pay any portion of such amount provided that such Insurer has met its Insurer Deductible. Therefore, if such Insured Losses occurring in a calendar year exceed \$100 billion in the aggregate, the amount of any payments by the Federal Government and any coverage provided by this policy for losses caused by Acts Of Terrorism may be reduced.

For each coverage provided by this policy that applies to such Insured Losses, the charge for such Insured Losses is no more than one percent of your premium, and does not include any charge for the portion of such Insured Losses covered by the Federal Government under TRIA. Please note that no separate additional premium charge has been made for the terrorism coverage required by TRIA. The premium charge that is allocable to such coverage is inseparable from and imbedded in your overall premium.

IMPORTANT NOTE: PLEASE READ THIS POLICY CAREFULLY. THIS POLICY IS WRITTEN ON A CLAIMS-MADE BASIS WHEN EXCESS OF A LIABILITY COVERAGE AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR, IF EXERCISED, ANY EXTENDED DISCOVERY PERIOD. THIS POLICY IS WRITTEN ON A LOSS FIRST DISCOVERED BASIS WHEN EXCESS OF A BOND OR CRIME POLICY AND COVERS ONLY LOSS FIRST DISCOVERED DURING THE POLICY PERIOD OR, IF EXERCISED, ANY EXTENDED DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. THIS POLICY IS NOT COMPLETE UNLESS A DECLARATIONS PAGE IS ATTACHED.

INSURING AGREEMENT

In consideration of the payment of the premium, and in reliance upon the completeness and accuracy of the statements and disclosures made to the Insurer and any issuer of Underlying Insurance by application, including all attachments, the Insurer agrees that this policy incorporates by reference, and affords coverage in accordance with and subject to, the insuring clauses, warranties, definitions, terms, conditions, exclusions and other provisions contained in the Followed Policy and to the extent coverage is further limited or restricted thereby, in any other Underlying Insurance, except as regards the premium, the limit of liability, the policy period, and except as otherwise provided herein. In no event shall this policy grant broader coverage than would be provided by the most restrictive Underlying Insurance.

To the extent the insuring clauses, warranties, definitions, terms, conditions, exclusions or other provisions of the Followed Policy or other Underlying Insurance are changed to limit or restrict coverage, this policy shall become subject to such changes upon the effective date of the change in the Followed Policy or such other Underlying Insurance. To the extent the insuring clauses, warranties, definitions, terms, conditions, exclusions or other provisions of the Followed Policy are changed to expand or broaden coverage, this policy shall become subject to such changes only if: (i) the Insurer has received written notice from the Insured(s) of such changes; (ii) the Insurer has given the Insured(s) its written consent to such changes; and (iii) the Insured(s) has paid any required additional premium.

TERMS, CONDITIONS AND LIMITATIONS

SECTION 1. DEFINITIONS

Wherever used in this policy:

- A.** Excess Policy Limit of Liability means the Limit of Liability of this policy as stated in Item 3 of the Declarations.
- B.** Followed Policy means the policy or bond listed in Item 4 of the Declarations, but only for the coverage sections listed.
- C.** Insured Event means:
 - 1. with respect to any Underlying Insurance that is a bond or crime coverage, a loss first discovered during the Policy Period stated in Item 2 of the Declarations by an Insured(s); and
 - 2. with respect to any other Underlying Insurance that is a liability coverage, a claim first made during the Policy Period stated in Item 2 of the Declarations against an Insured(s).
- D.** Insured(s) means the individuals and organizations for whom coverage is afforded hereunder.
- E.** Insurer means the undersigned entity issuing this policy.
- F.** Primary Policy means all of the policies or bonds identified in Item 5 (A) of the Declarations for the applicable coverage section.
- G.** Underlying Insurance means all of the policies or bonds scheduled in Item 5 of the Declarations.
- H.** Underlying Limits of Liability means the combined limits of liability of the Underlying Insurance as stated in Item 5(C) of the Declarations for the applicable coverage section, plus any applicable

retention or deductible under the applicable Primary Policy, less any reduction or exhaustion of such limits of liability as provided in Section 3(B) below.

- I. Sublimit means any limit of liability of any Underlying Insurance which:
 - 1. applies only to a particular type of claim, loss or coverage under such Underlying Insurance; and
 - 2. is part of, and not in addition to, the applicable aggregate or other limits of liability of such Underlying Insurance.

SECTION 2. UNDERLYING INSURANCE

- A. It is a condition precedent to the rights of the Insured(s) under this policy that the Insured(s) notify the Insurer, as soon as practicable in writing, of a failure to maintain in full force and effect, except as provided for under Section 3(B), and without alteration of any insuring clause, warranty, definition, term, condition, exclusion or other provision, limit of liability or retention amount, any Underlying Insurance.
- B. Failure to maintain any of the Underlying Insurance, except as provided for under Section 3(B), shall not invalidate this policy, but the Insurer shall only be liable for covered loss under this policy to the same extent it would have been liable had the Underlying Insurance been maintained.

SECTION 3. ATTACHMENT AND LIMIT OF LIABILITY

- A. The Insurer shall only be liable to make payment under this policy after the total amount of all Underlying Limits of Liability has been paid in legal currency by the issuers of all Underlying Insurance as covered loss thereunder.
- B. In the event of the reduction or exhaustion of the total amount of all Underlying Limits of Liability solely by reason of the payment by the issuers of the Underlying Insurance of covered loss, this policy shall:
 - 1. in the event of such reduction, pay covered loss excess of the reduced amount of such Underlying Limits of Liability, such amount not to exceed the Excess Policy Limit of Liability; or
 - 2. in the event of such exhaustion, continue in force as primary insurance, provided always that this policy shall only pay covered loss excess over any retention or deductible amount otherwise applicable under the Primary Policy, such amount not to exceed the remaining Excess Policy Limit of Liability.
- C. Any claim, loss or coverage that is subject to any Sublimit shall not be considered covered loss under this policy, but shall, for purposes of this policy, reduce or exhaust the Underlying Limit of liability to the extent such payment reduces or exhausts the aggregate limit(s) of liability of such Underlying Insurance.
- D. Regardless of the number of:
 - 1. Insured Events;
 - 2. Insured(s); or
 - 3. claimants who make a claim against any Insured(s);the amount set forth in Item 3 of the Declarations will be the maximum limit of liability of the Insurer, and will be the maximum amount payable by the Insurer under this policy for all covered loss (including defense costs and expenses).
- E. Notwithstanding any of the terms of this policy which might be construed otherwise, the policy shall drop down only in the event of reduction or exhaustion of the Underlying Insurance as described above, and shall not drop down for any other reason including uncollectability or nonpayment, in whole or in part, of any Underlying Insurance.
- F. The risk of uncollectability of any Underlying Insurance, in whole or in part, whether because of financial impairment or insolvency of any issuer of Underlying Insurance or for any other reason, is expressly retained by the Insured(s) and is not in any way, or under any circumstances, insured or assumed by the Insurer.

SECTION 4. DISCOVERY PERIOD

The Insured(s) shall be entitled to a discovery period (which may also be called an extended reporting period, or such similar term, in the Followed Policy) pursuant to the terms and conditions in the Followed Policy. Following the cancellation or nonrenewal of this policy, the Insured(s) shall pay to the Insurer the additional premium set forth in Item 7(a) of the Declarations for the period set forth in Item 7(b) in accordance with the Followed Policy. Such discovery period is not available unless the Insured has elected the discovery period in all Underlying Insurance. The additional premium for the discovery period shall be deemed fully earned at the inception of such discovery period. The discovery period is not cancelable except for nonpayment of the additional premium. The limit of liability for such discovery period, if exercised, shall be part of, and not in addition to, the Excess Policy Limit of Liability for the Policy Period stated in Item 2 of the Declarations. The purchase of such discovery period shall not increase or reinstate the Excess Policy Limit of Liability.

SECTION 5. APPLICATION OF RECOVERIES

All recoveries or payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured(s) and the Insurer, provided always that the foregoing shall not affect the time when loss under the policy shall be payable.

SECTION 6. NOTICE

- A.** The Insured(s) shall, as a condition precedent to their rights under this policy, give the Insurer notice in writing of any claim or loss in the same time and manner required by the terms and conditions of the Followed Policy. Notice given under the Followed Policy or Underlying Insurance shall not constitute notice under this policy.
- B.** Notice to the Insurer of any claim, loss or circumstance shall be given as set forth in Item 9 of the Declarations.

SECTION 7. TERMINATION OF POLICY

This policy shall terminate upon the earliest of the following times:

- A.** the effective date of termination specified in a prior written notice from the Insurer to the Insured in accordance with conditions and limitations of the applicable Followed Policy;
- B.** the effective date of termination specified in a prior written notice from the Insured to the Insurer; or
- C.** the expiration of the Policy Period stated in Item 2 of the Declarations.

SECTION 8. NON-ACCUMULATION OF LIABILITY

The Limit of Liability stated in Item 3 of the Declarations shall not be cumulative regardless of the number of periods this policy has been in force, the number of renewals of this policy by the Insurer, any extensions of the Policy Period of this Policy as stated in Item 2 of the Declarations by the Insurer, any election of a discovery period, the number of and amount of premiums paid by the Insured(s), the number of Insured Events, or the number of periods of this policy in which the acts giving rise to an Insured Event were committed or occurred.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIOR OR PENDING LITIGATION EXCLUSION

This endorsement modifies the following:

Excess Policy

In consideration of the premium charged, it is understood and agreed that the Insurer shall not be liable for loss on account of any claim made against any Insured(s) based upon, arising out of, or attributable to any prior or pending written demand, administrative or regulatory proceeding or litigation against any Insured(s) as of **10/01/2000**, as well as all future claims or litigation based upon, arising out of, or attributable to such prior or pending demand, proceeding or litigation, or derived from the same or essentially the same fact, circumstance, or situation underlying or alleged therein.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: **Travelers Casualty and Surety Company of America**

Policy Number: **106125990**

NOT FOLLOW FORM TO SPECIFIED COVERAGE OF THE FOLLOWED POLICY

This endorsement modifies the following:

Excess Policy

In consideration of the premium charged, it is hereby understood and agreed that:

- A. This policy shall not afford coverage in accordance with the "**(e) HIPAA and HITECH Fines and Penalties**" and/or "**(h) ERISA Section 502(a)(3) Relief**" coverage found in the Followed Policy and such coverage shall be inapplicable to this policy; and
- B. Notwithstanding paragraph (A) above, in the event of the reduction or exhaustion of the total amount of the Underlying Limit of Liability by reason of the payment of loss under the "**(e) HIPAA and HITECH Fines and Penalties**" and/or "**(h) ERISA Section 502(a)(3) Relief**" coverage found in the Followed Policy, this policy shall:
 - 1. in the event of such reduction pay excess of the reduced amount of the Underlying Limit of Liability but not to exceed the amount stated in Item 3 of the Declarations; or
 - 2. in the event of such exhaustion continue in force as primary insurance provided always that this policy shall only pay the excess over any retention amount otherwise applicable under the Followed Policy, but not to exceed the amount stated in Item 3 of the Declarations.

However in no event shall this policy afford coverage in accordance with the "**(e) HIPAA and HITECH Fines and Penalties**" and/or "**(h) ERISA Section 502(a)(3) Relief**" coverage found in the Followed Policy.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: **Travelers Casualty and Surety Company of America**

Policy Number: **106125990**

AMEND ATTACHMENT AND LIMIT OF LIABILITY SECTION ENDORSEMENT

This endorsement changes the following:

Excess Policy

It is agreed that:

The following replaces **SECTION 3. ATTACHMENT AND LIMIT OF LIABILITY, A. and B.** of the **TERMS, CONDITIONS AND LIMITATIONS**:

- A. The Insurer shall only be liable to make payment under this policy after the total amount of all Underlying Limits of Liability has been paid in legal currency by:
 - 1. the issuers of all Underlying Insurance as covered loss thereunder; or
 - 2. the Insured(s) as covered loss thereunder in the event an issuer of Underlying Insurance is unable to pay due to insolvency, as determined by a state insurance regulator, state court, or federal court.

- B. In the event of the reduction or exhaustion of the total amount of all Underlying Limits of Liability solely by reason of the payment by the issuers of the Underlying Insurance or the Insured(s) of covered loss in accordance with the above, this policy shall:
 - 1. in the event of such reduction, pay covered loss excess of the reduced amount of such Underlying Limits of Liability, such amount not to exceed the Excess Policy Limit of Liability; or
 - 2. in the event of such exhaustion, continue in force as primary insurance, provided always that this policy shall only pay covered loss excess over any retention or deductible amount otherwise applicable under the Primary Policy, such amount not to exceed the remaining Excess Policy Limit of Liability.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: **Travelers Casualty and Surety Company of America**
Policy Number: **106125990**

VIRGINIA NOTICE

IT IS UNDERSTOOD THAT THE FOLLOWING STATEMENT IN THIS APPLICATION:

The undersigned authorized representative of the applicant represents, after inquiry, that the statements and representations set forth herein are true and shall be deemed material to the acceptance of the risk or hazard assumed by the Insurer under this policy.

IS DELETED AND REPLACED WITH THE FOLLOWING STATEMENT:

The undersigned authorized representative of the Parent Company represents, after inquiry, that the statements and representations set forth herein are true.

NOTE: This notice shall be attached to all Excess Policy Applications provided to Virginia Insureds.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.

Issuing Company: **Travelers Casualty and Surety Company of America**
Policy Number: **106125990**

VIRGINIA AMENDATORY ENDORSEMENT

This endorsement modifies the following:

Excess Policy

It is agreed that:

1. The following replaces **SECTION 4. DISCOVERY PERIOD** of the **TERMS, CONDITIONS AND LIMITATIONS**:

SECTION 4. DISCOVERY PERIOD

At any time prior to or within thirty (30) days after:

1. the effective date of termination or cancellation of the policy for any reason other than nonpayment of premium;
2. any applicable prior acts date or continuity date is advanced;
3. this policy is renewed on a basis other than claims made, or
4. this policy is non-renewed, or any existing coverage is excluded from the policy when the policy remains in effect or is renewed.

the Insured(s) shall be entitled to a discovery period (which may also be called an extended reporting period, or such similar term, in the Followed Policy) for a period of twenty-four (24) months or for a lesser or greater period as may be negotiated with the Insurer.

Following the termination, cancellation or any other act previously stated in this section, the Insured(s) shall pay to the Insurer the additional premium set forth in Item 7(a). of the Declarations for the period set forth in Item 7(b) in accordance with the Followed Policy. The Insured(s) as set forth in Item 1 of the Declarations will act on behalf of all Insured(s) with respect to the exercising or declining to exercise any right to the discovery period.

Such discovery period is not available unless the Insured has elected the discovery period in all Underlying Insurance. The additional premium for the discovery period shall be deemed fully earned at the inception of such discovery period. The discovery period is not cancelable by the Insured(s) or the Insurer. The limit of liability for such discovery period, if exercised, shall be part of, and not in addition to, the Excess Policy Limit of Liability for the Policy Period stated in Item 2 of the Declarations.

The Insured(s) shall not be entitled to a discovery period after the effective date of termination or cancellation of the policy after:

1. nonpayment of premium;
 2. any Insured(s) failure to comply to the terms, conditions and limitations of this policy; or
 3. any Insured(s) fraud.
2. The following replaces **SECTION 7. TERMINATION OF POLICY** of the **TERMS, CONDITIONS AND LIMITATIONS**:

SECTION 7. TERMINATION OF POLICY

This policy shall terminate upon the earliest of the following times:

- A. the expiration of the Policy Period stated in Item 2 of the Declarations;
- B. the effective date of termination specified in a prior written notice by the Insured to the Insurer;
- C. fifteen (15) days after receipt by the Insured of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such fifteen (15) day period. Such written notice will advise the Insured of the right to request, in writing, within 15 days of the receipt of the notice, a review by the Commission of Insurance; or
- D. at such other time as may be agreed upon by the Insurer and the Insured, provided that such time of termination shall be forty-five (45) days after receipt by the Insured of written notice of termination from the Insurer.

The Insurer may not terminate this policy prior to expiration of the Policy Period, except as provided above for non-payment of premium. The Insurer shall refund the unearned premium computed at customary short rates if this policy is terminated by the 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.

Nonrenewal

This policy may be nonrenewed by the Insurer by mailing to the Insured, written notice of the nonrenewal not less than forty five (45) days prior to the expiration of the Policy Period. Such written notice will state the specific reason for nonrenewal and will advise the Insured of the right to request, in writing, within 15 days of the receipt of the notice, a review by the Commissioner of Insurance.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the above-mentioned policy, except as expressly stated herein. This endorsement is part of such policy and incorporated therein.