



AICA Services Inc.  
Les SACA Inc.

## **Group Professional Liability Insurance Plan for Chartered Accountants of Québec**

THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE. THE POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO AICA SERVICES INC. IN WRITING DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD. PLEASE READ THE ENTIRE POLICY CAREFULLY.

This Policy is the contract between the INSURED and the INSURER and was issued in consideration of the premium which the INSURED has agreed to pay. This Policy was issued in reliance upon the representations which the INSURED has made and upon the insurance application and premium self assessment form, which forms part of this contract.

Throughout this Policy, certain words have been capitalized to indicate that they have a specific meaning. (See Part I - Definitions).

### **PART I DEFINITIONS**

#### **CA FIRM:**

A general partnership or an undeclared partnership within the meaning of the Civil Code of Québec or a duly constituted joint stock company or limited liability partnership within the meaning of the *Professional Code* (R.S.Q. c. C-26), including entities that are, or can be perceived as being, under common control, ownership or management with it, but only for PROFESSIONAL ACTIVITIES performed by or on behalf of members of the POLICYHOLDER. However, this definition excludes any multi-disciplinary firm that offers services other than PROFESSIONAL ACTIVITIES, except with respect to PROFESSIONAL ACTIVITIES performed by the PARTICIPATING MEMBER personally in his capacity as a member of the POLICYHOLDER. This definition also excludes any NON-PARTICIPATING CA FIRM and FORMER NON-PARTICIPATING CA FIRM.

#### **CLAIM:**

- 1.(a) A written or oral allegation of breach in rendering or failure to render PROFESSIONAL ACTIVITIES; or
- (b) A written or oral demand for money or services arising from a breach in the rendering or failure to render PROFESSIONAL ACTIVITIES

received by the INSURED and reported to the INSURER during the POLICY PERIOD or during the EXTENDED REPORTING PERIOD.

2. If during the POLICY PERIOD circumstances which any reasonable person would expect to give rise to a CLAIM are reported to the INSURER, then the INSURER will consider these a CLAIM even if a formal demand is advanced against the INSURED only after the POLICY PERIOD.

All demands or allegations arising from a common set of circumstances shall be considered a single CLAIM regardless of the number of INSUREDS, the number of persons or organizations making demands or allegations, or whether all such demands are made concurrently.

Any such CLAIM shall be subject to the Limit of Liability and DEDUCTIBLE in effect at the time the INSURED first gave notice to the INSURER, through AICA Services Inc., in accordance with this Policy. Only one Limit of Liability shall be available per CLAIM, and the Limit of Liability set out in the certificates issued to INSUREDS will not be cumulated, no matter how many INSUREDS are involved in the CLAIM or have given notice of the CLAIM to the INSURER.

However, if:

- (a) the INSURED is involved in the same CLAIM as one or more other member(s) of the POLICYHOLDER who provided PROFESSIONAL ACTIVITIES and was also a partner, principal or employee of the same CA FIRM as the Certificate-holder, then the Limit of Liability for that CLAIM will be increased to \$2,000,000, for the benefit of all INSUREDS with respect to PROFESSIONAL ACTIVITIES performed on behalf of that CA FIRM. In that case, two DEDUCTIBLES will apply;
- (b) one or more demands or allegations arising from such a common set of circumstances are made against the INSURED and other members of the POLICYHOLDER who never worked in the same CA FIRM as the INSURED, and were never employed or subcontracted by or employed or subcontracted the INSURED, then the INSURED shall not share limits or the DEDUCTIBLE with those other members.

**CLAIM EXPENSE(S):**

All expenses the INSURER incurs to investigate, defend, settle, arbitrate or litigate a CLAIM covered by this Policy. This includes but is not limited to costs and fees for hiring of investigators, adjusters, experts, consultants, arbitrators, mediators and lawyers, and costs for the attendance of witnesses other than the INSURED.

**DEDUCTIBLE:**

The first portion of the DAMAGES payable under the Policy, for each CLAIM, as indicated on the Certificate, which amount the INSURED has agreed to pay.

**DAMAGES:**

Compensatory damages payable to claimants, but does not include fines, penalties (whether contractual or other), punitive or exemplary damages, or fees, commissions or other compensation which has either not been paid to the INSURED or which the INSURED has been asked to return.

Damages may include interest and penalties levied by tax authorities as a result of a reassessment.

**EMPLOYEE:**

A person who is actually an employee and a person who has performed PROFESSIONAL ACTIVITIES on a per diem basis or on a sub-contract basis for a CA FIRM or a PARTICIPATING MEMBER.

**FORMER MEMBER:**

A member who had died, has ceased to be a member or had his membership in the POLICYHOLDER terminated for whatever reason within the five (5) years prior to the entry into force of the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008, but only on the restricted terms and conditions set out herein and in his Certificate. More specifically, such a member is only covered for those PROFESSIONAL ACTIVITIES in respect of which the member would not have been refused a policy in accordance with the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008.

**FORMER NON-PARTICIPATING CA FIRM:**

A partnership or company no longer in existence at the time of the entry into force of the Policy, but which, during its existence, would have been denied participation in the group insurance plan in accordance with the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008 such that it would have been a NON-PARTICIPATING CA FIRM.

**INSURED(S):**

1. The PARTICIPATING MEMBER, and
2. any CA FIRM in which the PARTICIPATING MEMBER carries on or has carried on PROFESSIONAL ACTIVITIES as a member of the POLICYHOLDER.
3. any present partner, shareholder, officer, executive director, principal or EMPLOYEE of the PARTICIPATING MEMBER or the CA FIRM which is otherwise covered by paragraph 2 above and who is not himself a member of the POLICYHOLDER, while acting within the scope of that person's duties for the PARTICIPATING MEMBER or CA FIRM, and only then with respect to PROFESSIONAL ACTIVITIES performed under the supervision of a member of the POLICYHOLDER.
4. any NON-PARTICIPATING MEMBER, but only for PROFESSIONAL ACTIVITIES he performed while he was a PARTICIPATING MEMBER. In the case of members of the POLICYHOLDER who are NON-PARTICIPATING MEMBERS on the day this Policy comes into force, but who worked at a CA FIRM or was a sole practitioner prior to the entry into force of this Policy, then the coverage available to him under his CERTIFICATE is limited to PROFESSIONAL ACTIVITIES performed as a member of the CA FIRM or as a sole practitioner.
5. any FORMER MEMBER, but only for PROFESSIONAL ACTIVITIES he performed while he was a member of the POLICYHOLDER and only for CLAIMS made during the Policy Period referred to in his Certificate, which period shall never exceed four (4) years.
6. the heirs, executors, administrators and assigns of each INSURED in their capacity as such and for acts of that INSURED allegedly committed, as long as they were PROFESSIONAL ACTIVITIES by or on behalf of a member of the POLICYHOLDER.

**INSURER:**

The insurer is as shown on the Certificate.

**NON-PARTICIPATING CA FIRM:**

A partnership or joint stock company whose members are NON-PARTICIPATING MEMBERS.

**NON-PARTICIPATING MEMBER:**

A member of the POLICYHOLDER who has been denied participation in the group insurance plan in accordance with the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008.

**PARTICIPATING MEMBER:**

A member of the POLICYHOLDER who has to be Insured by the INSURER under the group liability insurance plan as set out in the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008.

**POLICYHOLDER:**

*Ordre des Comptables Agréés du Québec.*

**POLICY PERIOD:**

The period commencing on the Policy's Inception Date and ending on the Policy's Expiration Date, both as shown on the Certificate. In the case of Certificate cancellation, the POLICY PERIOD shall expire upon the effective date of the Certificate's cancellation.

**POLICY TERRITORY:**

The POLICY TERRITORY is Canada, Bermuda and the United States of America, their respective territories or possessions always provided that any suit is brought within the territory so described.

**PROFESSIONAL ACTIVITIES:**

Those activities, including rendering (or failing to render) opinions and giving (or failure to give) advice, within the scope of professional activities of a Chartered Accountant.

**WRONGFUL ACT:**

Any breach of duty, neglect, error, misstatement, misleading statement, omission or other act done or wrongfully attempted by the Directors or Officers while acting within the scope of their duties as Directors or Officers or any other matter claimed against them solely by reason of their being Directors or Officers.

**PART II  
INSURANCE COVERAGE**

- A. The INSURER is obliged to fulfill the three (3) following obligations for the INSURED'S benefit. The DEDUCTIBLE applies to the first obligation only.

1(a). DAMAGES

Subject to the DEDUCTIBLE and Limit of Liability stated in the Certificate, the INSURER will pay on the INSURED'S behalf all sums which the INSURED becomes liable to pay as DAMAGES arising out of a CLAIM made within the POLICY TERRITORY provided that the INSURED's liability is the result of an error, omission or negligent act in the performance of PROFESSIONAL ACTIVITIES for others by or on behalf of a member of the POLICYHOLDER, in his capacity as such, and that the CLAIM is first made against the INSURED during the POLICY PERIOD and reported to AICA SERVICES Inc. during the POLICY PERIOD or during the EXTENDED REPORTING PERIOD.

(b) CIVIL PENALTIES

Subject to the DEDUCTIBLE and sub-limits stated below, the INSURER will pay on the INSURED's behalf all sums which the INSURED becomes liable to pay for penalties levied to the INSURED pursuant to the *Income Tax Act (Canada)* Section 163.2, *Excise Tax Act* Section 285.1, any provincial legislation relating to the misrepresentation of a tax matter by a third party, and any successor provision thereto, if such liability arises as a result of an error, omission or negligent act in the performance of PROFESSIONAL ACTIVITIES for others by or on behalf of a member of the POLICYHOLDER, in his capacity as such.

This Civil Penalties coverage is limited to \$100,000 per CLAIM where the Québec Minister of Revenue levies the penalty.

This Civil Penalties coverage is limited to \$100,000 per CLAIM where CRA and/or any other provincial authority levy the penalty.

(c) DIRECTORS & OFFICERS LIABILITY EXTENSION

If so stated on the Certificate as "Included", the INSURER agrees to fulfill the obligations set out above, for any CLAIM made within the POLICY TERRITORY against the INSURED for a WRONGFUL ACT while acting as a director or officer of a corporation without share capital, constituted for purposes of carrying on, without pecuniary gain to its members, objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character or like object, provided that the CLAIM is first made against the INSURED during the POLICY PERIOD and reported to AICA SERVICES Inc. during the POLICY PERIOD or during the EXTENDED REPORTING PERIOD.

## 2. DEFENCE

- (a) The INSURER will defend the INSURED in any civil suit or arbitration proceedings within the POLICY TERRITORY resulting from a CLAIM for which coverage is provided by this Policy, even if the allegations against the INSURED are groundless, false or fraudulent. The INSURER will conduct such investigations and negotiations as it deems expedient.
- (b) The INSURER will defend the INSURED in any civil suit or countersuit against the INSURED within the POLICY TERRITORY arising out of a CLAIM and alleging:
  - (i) any dishonest, fraudulent, criminal or malicious act, omission or misrepresentation made or committed by the INSURED with affirmative dishonesty or actual intent to deceive or defraud; or
  - (ii) breach of contract or inducement of breach of contract committed with affirmative dishonesty, actual intent to deceive or defraud; or
  - (iii) libel, slander or defamation of character committed by the INSURED in bad faith or in wilful violation of any statute or ordinance

but the INSURER shall not be liable for any DAMAGES or SUPPLEMENTARY PAYMENTS awarded in any such suits or countersuits which are based on such allegations.

- (c) The INSURER'S obligation to defend the INSURED ceases as soon as the INSURER's Limit of Liability per CLAIM has been exhausted by payment of judgments or settlements.

## 3. SUPPLEMENTARY PAYMENTS

The INSURER will pay, for each CLAIM, in addition to its LIMIT OF LIABILITY, the following:

- (a) CLAIM EXPENSES;
- (b) all premiums on appeal bonds or bonds to release attachments to the extent of coverage provided. (The INSURER has no obligation to furnish bonds but only to pay the premiums thereon); and
- (c) all costs taxed or assessed against the INSURED, all court and arbitration costs owed by the INSURED, and all interest upon that part of judgment which falls within the remaining LIMIT OF LIABILITY at the time

but the INSURER will not pay or reimburse the INSURED for any expenses so incurred unless specifically authorized in advance by the INSURER.

## B. THE INSURER'S LIMIT OF LIABILITY

Subject to the possibility of a CLAIM being made against two unrelated sole practitioners or CA FIRMS or their members as more fully described in the definition of CLAIM, the maximum amount the INSURER will pay as DAMAGES per CLAIM is as shown on the Certificate no matter how many INSUREDS there are under this Policy or how many persons or organizations make a CLAIM.

The INSURER'S obligations to defend and to make supplementary payments are in addition to its Limit of Liability as spelled out in the Policy.

### PART III THE EXCLUSIONS TO THE INSURED'S COVERAGE

#### THIS POLICY DOES NOT APPLY TO:

1. DAMAGES arising out of any dishonest, fraudulent, criminal or malicious act, omission or misrepresentation of the INSURED, however, this exclusion shall not apply to any INSURED who is neither the author of the said act, omission or misrepresentation nor an accomplice to it;
2. any CLAIM arising out of a circumstance in which any INSURED has, either directly or indirectly, gained any profit or advantage to which that INSURED was not legally entitled, received a loan which has not been repaid, or received a finder's fee or commission other than for the purchase of Guaranteed Investment Certificates or Canada Savings Bonds, whether or not the claimant has alleged such profit or advantage;
3. any CLAIM made against the INSURED:
  - (a) by a business enterprise
    - (i) in which the INSURED either directly or indirectly has an interest; or
    - (ii) that directly or indirectly has an interest in the INSURED; or
    - (iii) that has common ownership with the INSURED;
  - (b) by employers of the INSURED described in the Resolution of the Bureau of the POLICYHOLDER dated October 18, 2007 Establishing Member Categories and Insurance Premiums to Cover the Cost of the Group Plan, section 2 (a) (b) or (c), which comprises:
    - (i) the Government of Québec, the Government of Canada or a body to which one or other of these governments, the Parliament of Canada or the Québec National Assembly appoints a majority of the members or whose capital forms part of their domain;
    - (ii) a municipality, a mandatory body of a municipality or a supramunicipal body within the meaning of the *Act respecting the Pension Plan of Elected Municipal Officers* (R.S.Q., c. R-9.3);
    - (iii) any employer other than an employer providing professional services included in practice of the chartered accountancy profession.
  - (c) by any employee, director, partner or officer of any entity described in 3(a) or 3(b) above;
4. any CLAIM arising out of the provision of property management services except those provided by the INSURED as Receiver and/or Manager, agent of secured creditor(s) or Trustee in Bankruptcy/Liquidator/Insolvency Practitioner, Power of Attorney or Executor of Estate;
5. any CLAIM arising out of the INSURED's insolvency or bankruptcy, or the INSURED undergoing receivership or liquidation;
6. any CLAIM arising out of the sale, provision, installation or maintenance, failure or non-performance of hardware equipment, programming of packaged accounting software or programming of custom accounting systems or the development and/or maintenance of client websites;

7. any CLAIM directly or indirectly resulting from:
- (a) any actual or alleged failure, malfunction or inadequacy of any of the following:
- electronic data processing equipment, or other equipment, including micro-chips embedded therein;
  - computer program;
  - software;
  - media;
  - data;
  - memory storage system;
  - memory storage device;
  - real time clock;
  - date calculator; or
  - any other related component, system, process or device
- to correctly read, recognize, interpret or process any embedded, abbreviated or encrypted date, time or combined date/time data or data field. Such failure or alleged failure shall include any error in original or modified data entry or programming;
- (b) any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or which should have been provided or done to determine, rectify or test for any potential or actual problems described in paragraph (a) above.
8. any CLAIM or portion of a CLAIM arising out of an INSURED's status as:
- (a) a company officer, including the status of a CFO, whether the INSURED holds the actual title or is liable because he is deemed in fact to have held the office;
- (b) a member of any Board of Directors, Committee of a Board of Directors, Advisory Board or similar oversight body.
9. any CLAIM or portion of a CLAIM arising out of an INSURED's status as a professional or deemed to be a professional other than a member entered on the roll of the POLICYHOLDER, unless he is sued for PROFESSIONAL ACTIVITIES that were performed under the supervision of a member entered on the roll of the POLICYHOLDER;
10. any CLAIM arising out of services performed while the PARTICIPATING MEMBER was a partner, shareholder, officer, executive director, principal or EMPLOYEE of a NON-PARTICIPATING CA FIRM or FORMER NON-PARTICIPATING CA FIRM;
11. any CLAIM arising out of services whereby an INSURED is controlling funds in an amount which exceeds \$25,000 or has sole cheque-signing authority on behalf of clients or third parties, except those provided by the INSURED as Receiver and/or Manager, Agent of Secured Creditor(s), Trustee in Bankruptcy/Liquidator/Insolvency Practitioner, Power of Attorney, Executor of Estate or Administrator of property under article 2166 of the Civil Code of Québec;
12. any CLAIM arising out of any situation reported to a previous insurer, or any CLAIM made or pending against the INSURED or any of his partners, employers or EMPLOYEES, or any mistake or error, actual or alleged, of which the INSURED had knowledge prior to the entry into force of the Certificate;
13. any CLAIM arising out of human resources services;

14. any CLAIM arising out of the INSURED's activities as an author;
15. any CLAIM arising out of the INSURED's failure to act in good faith, where the INSURED benefits from statutory immunity for acts committed in good faith;
16. any CLAIM for which an INSURED benefits from insurance coverage or an undertaking from a NON-PARTICIPATING CA FIRM in accordance with the *Regulation Respecting Professional Liability Insurance for Members of the Ordre des Comptables Agréés du Québec* that came into force on April 1, 2008.

#### **PART IV GENERAL CONDITIONS**

##### THE INSURED'S DUTIES IN THE EVENT OF A CLAIM

###### WHAT THE INSURED MUST DO:

1. NOTICE

As soon as the INSURED becomes aware of a CLAIM or any mistake or error, actual or alleged, the INSURED must immediately notify the INSURER, in writing, giving all pertinent details as to the circumstances surrounding the CLAIM or mistake or error, and identifying the PARTICIPATING MEMBER, NON-PARTICIPATING MEMBER or FORMER MEMBER whose PROFESSIONAL ACTIVITIES are involved. As events unfold which may have an effect on the CLAIM or reported mistake or error, the INSURED must continue to keep the INSURER informed.

The written notice shall be sent by the INSURED to the head office of AICA Services Inc. The INSURER shall be entitled to deny coverage for any CLAIM not notified in accordance herewith, if the INSURER has suffered prejudice. Failure to give the above notice will not affect the right of any INSURED who did not have knowledge of the CLAIM, mistake or error, on the condition that such failure to give notice be corrected during the POLICY PERIOD.

2. CO-OPERATION

The INSURED must co-operate with the INSURER and, upon request, provide written statements, submit to examinations and questioning, assist in affecting settlement, secure and give evidence and assist in any reasonable way the INSURER deems necessary. The INSURED must give this co-operation at its own cost.

3. DEDUCTIBLE

The INSURED must pay the DEDUCTIBLE promptly upon request.

###### WHAT THE INSURED MUST NOT DO:

1. ADMISSIONS

The INSURED must not admit responsibility, assume any obligation or make any commitment of money or services without the INSURER'S consent, even if the INSURED believes there may have been an error, omission, or negligent act on the INSURED'S part. Any such admission, obligation or commitments will vitiate this Policy as far as that particular CLAIM is concerned.



## 2. RECOVERIES

The INSURED must not do anything which might imperil the INSURER's rights of recovery against any other party.

### INSURED'S CONSENT TO SETTLE

The INSURER will not settle any CLAIM without the consent of the INSURED. If the INSURED fails or refuses to consent to the settlement of a CLAIM as recommended by the INSURER, then all the INSURER'S obligations with respect to that CLAIM shall cease and the INSURED will then be responsible for conducting his own defence. If later the INSURED settles the CLAIM, or if the matter is resolved through arbitration or litigation, then the INSURER'S liability for that CLAIM shall not exceed the amount of the offer or demand plus the CLAIM EXPENSES incurred up to the date of the failure or refusal of consent.

### OTHER INSURANCE

Subject to Exclusion 16, this insurance is in excess of all other valid and collectible insurance and shall not be called upon in contribution.

### THE INSURER'S RIGHTS TO RECOVER FROM OTHERS

If the INSURED has rights to recover all or any part of any payment the INSURER has already made, those rights are automatically transferred to the INSURER to the extent of the payment(s) it has made. The INSURED shall do everything needed to assist the INSURER and the INSURED must not prejudice its rights of recovery.

The INSURER waives any right of subrogation against any INSURED except the author or accomplice to any dishonest, fraudulent, criminal or malicious act or misrepresentation for any amounts paid, pursuant to the provisions of the Policy.

### ASSIGNMENT OF POLICY

The INSURED cannot assign the INSURED'S rights under this Policy to anyone else without the INSURER'S consent. If the INSURED should be adjudged bankrupt, insolvent, incompetent or die during the POLICY PERIOD, this Policy will cover the INSURED'S legal representatives in the same manner as it presently covers the INSURED.

### THE INSURER'S RIGHTS OF AUDIT

During the POLICY PERIOD, during any extension thereof, and for one year thereafter, the INSURER has the right to inspect the INSURED'S premises and operations and to examine and audit the INSURED'S books and files, but strictly as they relate to this insurance or to the calculation of the premium of this Policy.

For CLAIMS investigation and settlement purposes, the INSURER may exercise this right of audit and inspection until the delivery of final releases by all interested parties.

The INSURER assumes no responsibility whatsoever by exercising or declining to exercise these rights.

## CHANGES

Only the POLICYHOLDER is authorized to make changes in the terms of this Policy with the INSURER'S consent. Policy terms can be amended or waived only by endorsement issued by the INSURER and made part of this Policy.

## CANCELLATION OR AMENDMENT BY THE INSURER

The INSURER may cancel or amend this Policy by giving the POLICYHOLDER one hundred and twenty (120) days notice of the amendment or cancellation in writing stating the date on which the amendment or cancellation is to take effect.

If the INSURER cancels a Certificate because the entire premium has not been paid, the date of cancellation shall be at least fifteen (15) days after the date on which the notice was received by the INSURED at his last known address.

If the INSURER cancels this Policy, the INSURER shall be entitled to the earned premium computed pro rata. If following cancellation, there is return premium payable, the INSURER'S cheque will be sent to the INSURED as soon as possible but the cancellation is not contingent upon this.



## PART V POLICY EXTENSIONS

### EXTENDED REPORTING PERIOD

There are two circumstances in which an extended reporting period applies:

1. In the event of the death, withdrawal from the POLICYHOLDER or termination of the PARTICIPATING MEMBER or NON-PARTICIPATING MEMBER's membership in the POLICYHOLDER for any reason, such PARTICIPATING MEMBER or NON-PARTICIPATING MEMBER and any INSURED whose rights derive from his Certificate shall automatically be entitled to a Six (6) Year Extended Reporting Period for no additional premium. Except as may be otherwise provided herein, this extension of coverage granted hereunder shall be subject to all the terms and conditions of this Policy and shall apply to CLAIMS first made against the INSURED and reported to AICA Services Inc., in writing, during the six (6) years immediately following the death or effective date of withdrawal or termination of membership in the POLICYHOLDER, for acts committed prior to that date.
2. In the event that an INSURED's first knowledge of a CLAIM or any mistake or error, actual or alleged, is acquired during the last 29 days of the POLICY PERIOD, the INSURED shall be entitled to report that CLAIM or mistake or error within 30 days of such knowledge.

The fact that the period during which CLAIMS may be first made against the INSURED and reported to the INSURER, in writing, under this Policy is extended by virtue of the Extended Reporting Period shall not in any way increase the Limit of Liability of the Policy that was in force at the time of the death, withdrawal from the POLICYHOLDER or termination of the PARTICIPATING MEMBER or NON-PARTICIPATING MEMBER's membership in the POLICYHOLDER.