

FIDUCIARY LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, in reliance on all statements made in the **Application** for this Policy and all information provided to the Insurer, and subject to all of the provisions of this Policy, the Insurer and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

I. INSURING CLAUSES

- A. The Insurer shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** for a **Wrongful Act** first made against the **Insureds**, provided such **Claim** is first made during the **Policy Period** or, if applicable, the **Extended Reporting Period** and reported in writing to the Insurer as soon as practicable after any of the **Insureds** first becomes aware of such **Claim**. Without negating the foregoing requirements, such notice of **Claim** must also be reported no later than sixty (60) days after the end of the **Policy Period** or, if applicable, the **Extended Reporting Period**.
- B. The Insurer shall pay on behalf of the **Insureds** in an amount not to exceed \$100,000 any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice** given as soon as practicable to the Insurer during the **Policy Period** or, if applicable, the **Extended Reporting Period**, but in no event later than sixty (60) days after the end of the **Policy Period** or, if applicable, the **Extended Reporting Period**. Such amount shall be subject to the Retention set forth in Item 4. of the Declarations and shall be part of and not in addition to the Limit of Liability set forth in Item 3.a. of the Declarations. This Insuring Clause shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the Inception Date of this Policy.

II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

- A. “**Administration**” means one or more of the following administrative duties or activities with respect to a **Plan**:
1. counseling or advising participants or beneficiaries;
 2. providing interpretations;
 3. handling of records; or

4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B.** “**Administrator**” means a natural person with responsibility for **Administration** and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C.** “**Application**” means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other fiduciary liability policy issued by the Insurer, of which this Policy is a renewal, replacement or which succeed it in time; and any publicly available documents that are filed by the **Parent Company** or **Plan** prior to the inception date of this Policy with the Internal Revenue Service (“IRS”), Department of Labor or Pension Benefit Guaranty Corporation (or for any similar federal, state, local or foreign regulatory agency).
- D.** “**Benefits**” means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.
- E.** “**Claim**” means any of the following initiated against an **Insured**:
1. a written demand for monetary damages or non-monetary relief;
 2. a written request to toll a statute of limitations;
 3. a civil, arbitration, administrative, or regulatory proceeding commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the filing of a notice of charge, investigative order or similar document; or
 - (c) written notice or subpoena from an authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 4. a criminal proceeding commenced by:
 - (a) the return of an indictment, information, notice of charges or similar pleading;
 - (b) written notice or subpoena from an authority identifying such **Insureds** as an individual against whom a formal proceeding may be commenced;

5. any fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States; or
 6. solely for the purpose of coverage afforded under Insuring Clause I. B., a **Voluntary Compliance Notice**.
- F.** “**Company**” means the **Parent Company** identified in Item 1. of the Declarations and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- G.** “**Defense Costs**” means reasonable and necessary legal fees and expenses incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds. **Defense Costs** shall not include the following:
1. salaries, regular or overtime wages, fees or benefits of the **Insured Individuals** or the **Company’s** overhead expenses; or
 2. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- H.** “**ERISA**” means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), and any amendment or revision thereto, or any similar common or statutory law of the United States, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject. **ERISA** shall not include any law concerning worker's compensation, unemployment insurance, social security, government mandated disability benefits or similar law.
- I.** “**ESOP**” means any employee stock ownership plan as defined in **ERISA** or any **Plan** under which investments are made primarily in securities of the **Company**.
- J.** “**ESOP Administration**” means one of more of the following administrative duties or activities with respect to an **ESOP**:
1. giving notice to employees, participants or beneficiaries;
 2. interpreting **ESOP** benefits;
 3. handling records; or
 4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries;

Provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Company**.

- K.** “**Executive Officer**” means any duly elected officer, director, natural person partner, principal, **Manager**, in-house general counsel or member of the **Company’s** legal department, trustee or **Administrator** or individual acting in a similar capacity with the **Company**.
- L.** “**Extended Reporting Period**” means the period described in Clause VIII.
- M.** “**Fiduciary**” means a fiduciary of a **Plan** as defined in **ERISA**.
- N.** “**Financial Impairment**” means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**.
- O.** “**Indemnity Amounts**” means the amount which the **Insureds** become legally obligated to pay on account of a **Claim**, other than a **Voluntary Compliance Notice**, including damages, punitive damages, the multiple portion of any multiplied damage award, judgments, any award of pre-judgment or post-judgment interest, costs and fees awarded pursuant to judgments and settlement amounts but shall not include:
1. **Defense Costs**;
 2. taxes or the loss of tax benefits, or civil or criminal fines or penalties imposed by law except for:
 - (a) the five (5) percent or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
 - (b) the twenty (20) percent or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**;
 - (c) **Voluntary Compliance Fees**; or
 - (d) penalties or other awards imposed by the Pension Ombudsman of England or Occupational Pensions Regulatory Authority of England pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the UK Pensions Act 2004, as amended, and any rules and regulations promulgated thereunder, provided always that no part of the premium for this Policy attributable to this exception has been funded, paid or reimbursed from the funds or assets of any pension scheme insured under this Policy;
 3. **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured** because of such natural person **Insured’s Wrongful Act**;

4. any amounts for which the **Insureds** are legally or financially absolved from payment;
or
5. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

P. “**Insured**” means any **Insured Individual**, the **Company** and any **Plan**.

Q. “**Insured Individual**” means:

1. any one or more natural persons who are a past, present or future employee of the **Company** or a **Plan**; or any one or more natural persons who are a past, present or future duly elected or appointed director, officer, trustee or **Manager** of the **Company** or a **Plan**; or
2. the functional equivalent of any such position if serving in such a position outside the United States of America;

in his or her capacity as a **Fiduciary** or **Administrator** of a **Plan**, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

Insured Individual also means the lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America, of any **Insured Individual**, but solely by reason of such spousal status or such spouse’s ownership interest in property or assets that are sought as recovery for **Wrongful Acts**; provided, however, coverage afforded under this Policy to a spouse of any **Insured Individual** by reason of his or her status as such does not apply to any **Claim** alleging any act, error or omission by such spouse.

R. “**Interrelated Wrongful Acts**” means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, decision, cause or series of causally or logically connected facts, circumstances, situations, events, transactions, decisions or causes.

S. “**Loss**” means **Defense Costs** and **Indemnity Amounts**.

T. “**Manager**” means any one or more natural persons who are a past, present or future manager, managing member, member of the board of managers or equivalent executive of a company that is a limited liability corporation.

U. “**Parent Company**” means the company designated in Item 1. of the Declarations.

V. “**Plan**” means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:

1. a welfare plan as defined in **ERISA** sponsored solely by the **Company** or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause VII.B.1.;
 2. a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Company** or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause VII.B.1.;
 3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** (subject to 7. below) sponsored solely by the **Company** or sponsored jointly by the **Company** and a labor organization solely for the benefit of the employees of the **Company**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy pursuant to Clause VII.B.1.;
 4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for employees of the **Company**;
 5. any other plan, fund or program which is included in the definition of **Plan** by written endorsement attached hereto;
 6. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the **Company** exclusively for the benefit of employees of the **Company**; or
 7. an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.
- W.** “**Policy Period**” means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination, if any.
- X.** “**Pollutants**” means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product,

infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.

Y. “**Subsidiary**” means any corporate entity, while more than 50% of the outstanding voting securities representing the present right to vote for the election of such entity's directors are owned by the **Parent Company** directly or indirectly, or a limited liability company while the right to elect or otherwise appoint or designate more than 50% of such limited liability company's **Managers** is owned or controlled by the **Parent Company**, directly or indirectly, in any combination, if such entity:

1. was so owned or controlled prior to the Inception Date of this Policy and was insured under a policy issued by the Insurer of which this Policy is a renewal;
2. was so owned or controlled on the Inception Date of this Policy; or
3. becomes so owned or controlled after the Inception Date of this Policy pursuant to Clause VII.B.1.

Subsidiary also means any joint venture: (a) in which the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled, directly or indirectly, in any combination by the **Company**; or (b) for which the **Parent Company** has managerial control.

Z. “**Voluntary Compliance Fees**” means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Policy shall be construed.

AA. “**Voluntary Compliance Notice**” means a written notice given to the Insurer indicating an **Insured's** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.

BB. “**Voluntary Compliance Program**” means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.

CC. “**Wrongful Act**” means:

1. as respects a **Fiduciary**, a **Plan** or the **Company**:

- (a) any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or
 - (b) any matter claimed against an **Insured** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
2. as respects an **Administrator**:
- (a) any actual or alleged act, error or omission in the performance of **Administration**; or
 - (b) any matter claimed against an **Administrator** by reason of his or her status as such;
3. as respects an **Insured Individual**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Company**; or
4. any actual or alleged act, error or omission in the performance of **ESOP Administration** of:
- (a) any one or more natural persons who are a past, present, or future duly elected or appointed director, officer, trustee or **Manager** of the **Company** or an **ESOP** or any one or more natural persons who are a past, present or future employee of the **Company** or an **ESOP**; or
 - (b) the functional equivalent of any position listed in subparagraph (a) above if serving in such a position outside the United States of America;

in his or her capacity as an administrator of an **ESOP** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** or **Voluntary Compliance Fees** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 - 1. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of a potential **Claim** given prior to the **Policy Period** under any other policy,

2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**, or
 3. any **Wrongful Act** or **Claim** alleging a **Wrongful Act** of which any **Executive Officer** was aware by actual knowledge of the facts or circumstances of such **Wrongful Act** or **Claim** alleging a **Wrongful Act** prior to the Prior Knowledge Date as shown in Item 8. of the Declarations;
- B.** to the extent it is insured under any other existing valid policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy unless such other insurance is specifically stated to be in excess of this policy; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any Retention and the Limit of Liability of such other policy where such **Claim** is otherwise covered by this Policy;
- C.** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including, but not limited to, any **Claim** alleging damage to the **Company** or the **Plan** or any of their security holders, purchasers or sellers;

Provided, however, that this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Company** which are owned by the **Plan**;

- D.** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act;
- E.** for liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
- F.** for bodily injury, mental anguish, emotional distress, sickness, loss of consortium, disease, or death of any person or damage to or destruction of any tangible property including loss of use thereof;

- G.** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan** as defined in this Policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- H.** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Wrongful Act** as respects a **Plan** taking place at any time when the **Company** did not sponsor such **Plan**;
- I.** against any of the **Insured Individuals** of any **Subsidiary** or any **Plan** of such **Subsidiary** or against any **Subsidiary** or any **Plan** of such **Subsidiary** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

 - 1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
 - 2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- J.** for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any law concerning workers' compensation, unemployment insurance, Social Security, or disability insurance, the Worker Adjustment and Retraining Notification Act (WARN), the Fair Labor Standards Act, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law other than COBRA;
- K.**

 - 1. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**; or
 - 2. for **Benefits**, which are or may become due except to the extent that such sums are payable as a personal obligation of a natural person **Insured**;
- L.** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

1. any dishonest, fraudulent or criminal act, error or omission by any of the **Insureds**; or
2. any profit, remuneration or advantage gained by any of the **Insureds** to which they were not legally entitled;

as determined by a plea agreement, an alternative dispute resolution proceeding, a judgment or a final adjudication in the underlying action or in a separate action or proceeding.

Provided, however, Exclusions III. K. and L. shall not apply to **Defense Costs**.

No **Wrongful Act** shall be imputed to any of the other **Insureds** for the purpose of determining the applicability of any of the Exclusions.

IV. **LIMIT OF LIABILITY AND RETENTIONS**

A. **Limit of Liability**

The amount shown in Item 3.a. of the Declarations shall be the maximum Aggregate Limit of Liability of the Insurer for all **Loss** arising from all **Claims** first made under the Policy. The Insurer's maximum aggregate liability for **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to a **Voluntary Compliance Notice** shall be \$100,000, which amount shall be part of and not in addition to the Limit of Liability set forth in Item 3.a. of the Declarations.

The amount shown in Item 3.b. of the Declarations is the Additional Defense Costs Limit the Insurer will pay for **Defense Costs** incurred in the defense of **Claims**. **Defense Costs** shall apply first to and reduce the Additional Defense Costs Limit which shall be in addition to, and not part of, the Aggregate Limit of Liability. The Additional Defense Costs Limit is applicable to **Defense Costs** only and upon exhaustion of the Additional Defense Costs Limit, **Defense Costs** incurred thereafter shall be part of and not in addition to the Aggregate Limit of Liability and payment of **Defense Costs** shall reduce and may exhaust the Aggregate Limit of Liability. Notwithstanding the foregoing, if the Aggregate Limit of Liability is exhausted by the payment of **Indemnity Amounts**, or tendered to the **Insured**, the Additional Defense Costs Limit shall also be deemed exhausted and no further **Defense Costs** will be paid. The Additional Defense Costs Limit set forth in Item 3.b. of the Declarations shall not apply to **Defense Costs** in connection with a **Voluntary Compliance Notice**.

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

Coverage under this Policy shall apply only with respect to **Claims** deemed to have been first made during the **Policy Period** and reported in writing to the Insurer in accordance with the terms herein.

More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:

1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VI.B.

B. Retention

The Insurer shall be liable for only that part of **Loss** and **Voluntary Compliance Fees** arising from a **Claim** which is excess of the Retention set forth in Item 4. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk; provided however that the Retention shall not apply to an **Insured Individual** if indemnification by the **Company** is not permitted by law or if the **Company** is not able to indemnify solely by reason of its **Financial Impairment**.

V. SETTLEMENT AND DEFENSE

- A.** The Insurer shall have both the right and the duty to defend and appoint counsel with respect to any **Claim** made against the **Insureds** alleging a **Wrongful Act**, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Insurer will give consideration to **Insured's** choice of counsel, however, the final decision will be made by the Insurer. The **Insureds** shall have the right, at their own expense, to associate with the Insurer in the defense of any **Claim**, including but not limited to negotiating a settlement. However, the Insurer shall not be obligated to defend any **Claim** after the Limit of Liability set forth in Item 3.a. of the Declarations has been exhausted.
- B.** The **Insureds** shall not settle any **Claim**, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment, or otherwise assume any contractual obligation, without the Insurer's prior consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated. The **Insureds** will provide the Insurer with all information, assistance and cooperation that the Insurer reasonably requests. The **Insureds** shall not knowingly take any action which increases the Insurer's exposure for **Loss** and **Voluntary Compliance Fees** under this Policy. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** for an amount, inclusive of all **Loss** and **Voluntary Compliance Fees** not exceeding the Retention amount set forth in Item 4. of the Declarations, then the Insurer's consent shall not be required for such disposition.

- C. If the **Insureds** withhold consent to a settlement acceptable to the claimant and the Insurer, then the Insurer's liability for such **Claim** shall not exceed:
1. the amount for which the **Claim** could have settled and the **Defense Costs** incurred as of the date such settlement was proposed to the **Insureds**; and
 2. 70% of any settlement amounts and **Defense Costs** in excess of the amounts detailed in C. 1. above so long as the other 30% of such settlement amounts and **Defense Costs** are borne by the **Insureds** at their own risk and uninsured;

This provision shall not apply unless the total amount of **Loss** and, if applicable, **Voluntary Compliance Fees**, including the settlement proposed to the **Insureds**, would exceed the Retention amount set forth in Item 4. of the Declarations.

VI. NOTIFICATION

- A. With respect to coverage under Clause I.A., the **Insureds** shall, as a condition precedent to their right to payment under this Policy, give to the Insurer notice in writing of any **Claim** as soon as practicable after any of the **Insureds** first becomes aware of such **Claim** but in no event later than sixty (60) days after the end of the **Policy Period** or, if applicable, the **Extended Reporting Period**.

A **Claim**, other than a **Voluntary Compliance Notice**, will be deemed first made when any **Insured** first becomes aware of the **Claim**.

- B. If during the **Policy Period**, the **Insureds** first become aware of a specific **Wrongful Act**, and if the **Insureds** during the **Policy Period**, give written notice to the Insurer as soon as practicable of:

1. the specific **Wrongful Act**;
2. the consequences which have resulted or may result therefrom; and
3. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

No coverage shall be afforded under this Policy for fees and expenses incurred prior to the time such circumstances result in a **Claim**.

- C. Notice of **Claims** to the Insurer shall be given to the firm shown under Item 7.a. of the Declarations. Except with respect to notices from the Insurer as provided in Clause VII. **GENERAL CONDITIONS** C., all notices must be made in writing and delivered by prepaid

express courier, certified mail or fax. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

VII. GENERAL CONDITIONS

A. Representations and Severability With Respect To Application

This Policy is issued and the premium computed on the basis of the information submitted to the Insurer as part of the **Application**.

In granting coverage to any one of the **Insureds**, the Insurer has relied upon the statements made in the written **Application** for this Policy and all information provided to the Insurer and upon the statements in the original written application submitted to another insurer with respect to prior coverage incepting as of the Prior Knowledge Date, if any, set forth in Item 8. of the Declarations. All such statements are the basis of this Policy and shall be incorporated in and constitute part of this Policy.

In order to determine if coverage is available, no declaration or statement in the **Application** or knowledge possessed by any **Insured** shall be imputed to any other **Insured** with the exception of the declarations or statements made by or knowledge possessed by the person who signed the **Application** for this Policy whose declarations, statements or knowledge shall be imputed to the **Company** and all **Plans**.

Except as provided in this Clause VII.A., this Policy shall be deemed to be a single unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each of the **Insureds**.

B. Adjustment Clause

1. Sponsorship of Another Plan

In the event the **Company** becomes a sponsor of a plan, other than an **ESOP**, after the inception date of this Policy, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Company** is the surviving entity or by its own creation, and the total assets of such newly sponsored plan do not exceed twenty-five (25) percent of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements, coverage shall be afforded for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Individuals** until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Company**. Coverage for such **Subsidiary** or entity, such **Subsidiary's** or entity's **Plan** and its **Insured Individuals** for such **Plans** whose total assets do exceed twenty-five (25) percent of the total consolidated assets of the existing **Plans** as set forth in the most recent audited financial statements shall be afforded for a period of ninety (90) days,

but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such sponsorship by the **Company**. Coverage beyond such ninety (90) days shall only be available if:

- (a) written notice of such sponsorship is given to the Insurer by the **Company**;
- (b) the **Company** provides the Insurer with such information in connection therewith as the Insurer may deem necessary;
- (c) the **Insureds** accept any special terms, conditions, exclusions or additional premium as may be required by the Insurer; and
- (d) the Insurer, at its sole discretion, agrees to provide such coverage.

Notwithstanding the foregoing, with respect to an **ESOP**, coverage shall be granted pursuant to this Clause only for **Claims** relating to **ESOP Administration** and no coverage shall be granted for **Claims** alleging any other **Wrongful Acts** unless such **ESOP** is included in the definition of **Plan** by a written endorsement to this Policy and any related additional premium required by the Insurer has been paid.

2. **Cessation of Subsidiary**

In the event any entity ceases to be a **Subsidiary** as defined herein after the Inception Date of this Policy, or of any policy issued by the Insurer of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Insureds** who were covered under this Policy because of their service with such entity and to such **Subsidiary** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the time such entity ceased to be a **Subsidiary**.

3. **Cessation of Plan Sponsorship and Termination, Sale or Spin-off of Plan**

In the event a **Plan** ceases to be sponsored by the **Company** or ceases to be sponsored jointly by the **Company** and a labor organization after the Inception Date of this Policy, or in the event the **Company** terminates, sells or spins off any **Plan** before or after the inception date of this Policy; or of any policy issued by the Insurer of which this Policy is a renewal or replacement, coverage under this Policy with respect to such **Plan** and its **Insured Individuals** shall continue until the end of the **Policy Period** for those who were **Insureds** at the time such **Plan** ceased to be sponsored by the **Company**, or jointly by the **Company** and a labor organization, or who were **Insureds** at the time of such **Plan** termination, sale or spin-off or who would have been **Insureds** at the time of **Plan** termination, sale or spin-off if this Policy had been in effect, but only with respect to **Wrongful Acts** committed or allegedly committed prior to the date such **Plan** ceased to be sponsored by the **Company**, or jointly by the **Company** and a labor

organization, or such **Plan** termination, sale or spin-off. The **Insureds** shall give notice to the Insurer of cessation of sponsorship as soon as practicable together with such information as the Insurer may require.

4. **Acquisition of Parent Company**

In the event:

- (a) the **Parent Company** merges into or consolidates with another entity such that the **Parent Company** is not the surviving entity;
- (b) another entity or person, or a group of entities or persons acting in concert, acquires more than 50% ownership of the **Parent Company**; or
- (c) more than 50% of the assets of the **Parent Company** are sold;

after the Inception Date of this Policy, coverage under this Policy shall continue until the end of the **Policy Period**, but only with respect to **Wrongful Acts** committed or allegedly committed prior to such merger, consolidation, acquisition or sale.

The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall not be considered an acquisition within the meaning of this Clause.

5. **Merged Plans**

In the event a **Plan** is merged with another **Plan** during the **Policy Period**, this Policy shall continue to provide coverage for both **Plans** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy.

In the event a **Plan** is merged with another plan for which coverage is not provided under this Policy, this Policy shall continue to provide coverage only for the covered **Plan** for as long as this Policy shall remain in effect and subject to all the terms and conditions of this Policy for **Claims** with regard to **Wrongful Acts** which took place prior to the date the plans merged.

C. **Cancellation/Nonrenewal**

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Parent Company**. Such entity may

cancel this Policy by surrender thereof to the Insurer, or by mailing to the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

2. The Insurer may cancel this Policy only for nonpayment of premium by mailing to the **Parent Company** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Insurer shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, the Insurer shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to 2. hereinabove, the Insurer shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation.
4. If the Insurer decides not to renew this Policy, the Insurer shall mail or deliver written notice to the **Parent Company** at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

VIII. EXTENDED REPORTING PERIOD

- A. If this Policy is not renewed by the **Parent Company** or by the Insurer, or if the **Parent Company** cancels this Policy, then the **Parent Company** has the right, upon payment of an additional premium calculated at that percentage shown in Item 6.a. of the Declarations of the total premium for this Policy, to purchase an **Extended Reporting Period** equal to the period of time set forth in Item 6.b. of the Declarations. The reporting extension afforded by the **Extended Reporting Period** applies to **Claims** first made against an **Insured** during the **Policy Period** or the **Extended Reporting Period**, but only with respect to **Wrongful Acts** committed prior to the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Extended Reporting Period**, the total premium for this Policy must have been paid. The right to purchase the **Extended Reporting Period** shall terminate unless written notice together with full payment of the premium for the **Extended Reporting Period** is given to the Insurer within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to the Insurer, there shall be no right to purchase the **Extended Reporting Period**.

- C. In the event of the purchase of the **Extended Reporting Period**, the entire premium for the **Extended Reporting Period** shall be deemed earned at its commencement.
- D. The exercise of the **Extended Reporting Period** shall not in any way increase the Limit of Liability of the Insurer.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause VIII.

IX. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide the Insurer with such information, assistance and cooperation as the Insurer or its counsel may reasonably request, and they further agree that they shall not take any action which in any way increases the Insurer's exposure under this Policy.

In the event of any payment under this Policy, the Insurer shall be subrogated to all the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable the Insurer effectively to bring suit in their name, and shall provide all other assistance and cooperation which the Insurer may reasonably require.

X. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Insurer. Nothing contained herein shall give any person or organization any right to join the Insurer as a party to any action against the **Insureds** to determine their liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representative in any **Claim**.

XI. ENTIRE AGREEMENT

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and the Insurer or any of their agents relating to this Insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the Insurer to form a part of this Policy.

XII. TERRITORY

This Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

XIII. VALUATION AND CURRENCY

All premiums, limits, Retention, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

XIV. BANKRUPTCY

Bankruptcy or insolvency of the **Company** or of any of the **Insured Individuals** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

XV. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Parent Company** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XVI. HEADINGS

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