

OLD REPUBLIC INSURANCE COMPANY

FIDUCIARY LIABILITY INSURANCE POLICY

Important Notice

This is a claims made policy that applies only to **Claims** first made during the **Policy Period** or the **Extended Reporting Period**, if exercised. **Defense Costs** shall be applied against the Retention, if applicable. **Defense Costs** paid by the Insurer shall reduce and may completely exhaust the Limit of Liability of the **Policy**.

Please read the entire Policy carefully.

In consideration of the payment of the premium and in reliance on all statements made and information furnished to Old Republic Insurance Company (herein, the "Insurer") in the **Application**, which is hereby made a part hereof, and subject to the Declarations and to all other terms of this **Policy**, the Insurer, the **Company** and the **Insured Persons** agree as follows:

I. INSURING CLAUSES

A. Fiduciary Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Wrongful Acts**.

B. Voluntary Compliance Settlement Program

The Insurer shall pay on behalf of the **Insureds Voluntary Compliance Program Loss** and **Defense Costs** for which the **Insureds** become legally obligated to pay by reason of a **Voluntary Compliance Program Notice** that is first given to the Insurer during the **Policy Period**, provided that the Insurer's maximum liability for all **Voluntary Compliance Program Loss** and **Defense Costs** covered pursuant to this Insuring Clause B. shall not exceed in an aggregate amount the **Voluntary Compliance Program Loss** Sublimit of Liability as set forth in Item 3. (b) (i) of the Declarations, which aggregate amount shall be part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 3. (a) of the Declarations.

II. COVERAGE EXTENSIONS

A. Extended Reporting Period

If the **Insureds** or the Insurer refuse to renew this **Policy**, or terminate this **Policy** for a reason other than non-payment of premium, the **Insureds** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Extended Reporting Period** set forth in Item 6. (b) of the Declarations immediately following the effective date of such nonrenewal or termination, but only with respect to **Claims** first made or deemed to be first made during the **Extended Reporting Period** for covered **Wrongful Acts** taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within sixty (60) days following the effective date of termination or nonrenewal.

The premium due for such **Extended Reporting Period** shall equal that percentage of the **Annual Premium** as set forth in Item 6. (a) of the Declarations. The entire premium for such **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment, and the **Extended Reporting Period** is not cancellable by the Insurer or the **Insureds** except for non-payment of premium.

The **Insureds** shall not be entitled to elect the **Extended Reporting Period** under this Section II. A. if an **Extended Reporting Period** is elected pursuant to Section V. G. 2. of this **Policy**.

B. Estates, Legal Representatives, Spouses and Domestic Partners

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this **Policy**, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

III. DEFINITIONS

When used in this **Policy** either in the singular or the plural:

- A. **Administration** means, with respect to any **Plan**, advising, counseling or giving notice to **Employees**, participants or beneficiaries, providing interpretations, or handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under the **Plan**.
- B. **Annual Premium** means the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the **Policy Period** with respect to this **Policy**.
- C. **Application** means (1) the signed application for this **Policy** and any written materials attached thereto or submitted to the Insurer in connection with underwriting this **Policy**, and (2) any representations or warranties provided to the Insurer by or on behalf of the **Insureds** during the three (3) years immediately preceding this **Policy** relating to any policy of which this **Policy** is a direct or indirect renewal or replacement.
- D. **Claim** means:
 - 1. a written demand against any **Insured** for monetary damages or other non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand;
 - 2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
 - 3. an arbitration, mediation or other alternative dispute resolution proceeding against any **Insured** commenced by the **Insured's** receipt of a demand for arbitration or mediation or similar document;
 - 4. a criminal proceeding against any **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**;
 - 5. a formal administrative or formal regulatory adjudicatory proceeding against any **Insured** commenced by the filing of a notice of charge, formal investigative order or similar document;
 - 6. a civil, criminal, administrative or regulatory investigation against an **Insured Person**, commenced by the service upon or other receipt by the **Insured Person** of a written notice, target letter or subpoena from the investigating authority identifying by name the **Insured Person** as an individual against whom a formal proceeding may be commenced, including without limitation a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or the Pensions Regulator or any successor thereto, or any similar governmental authority located within or outside the U.S.;
 - 7. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
 - 8. the arrest or confinement by an **Enforcement Authority** of any **Insured Person** to (i) a specified residence; or (ii) a secure custodial premises operated by or on behalf of an **Enforcement Authority**, in connection with the business of a **Company**;

9. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand;
 10. an **Inquiry**, if and when the **Insured Persons**, the **Plan** or the **Company** elect at their option to give to the Insurer written notice thereof pursuant to Section V. C. below; or
 11. solely for purposes of Insuring Clause B., a **Voluntary Compliance Program Notice**;

including any appeal therefrom.
- E. Committee** means any committee established by the **Company** with respect to a **Plan** and which solely consists of natural person members who otherwise are **Insured Persons**.
- F. Company** means, collectively, the **Parent Company** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- G. Defense Costs** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of the **Company**) incurred by the **Insureds** (1) in investigating, adjusting, defending or appealing **Claims** and the premium for appeal, attachment or similar bonds but without any obligation to apply for or furnish any such bonds, or (2) at the Insurer's request to assist the Insurer in investigating a **Claim**.
- H. Domestic Partner** means any natural person qualifying as a domestic partner under either (1) the provisions of any applicable federal, state or local law, or (2) the provisions of any formal program established by the **Company**.
- I. Employee** means (1) any natural person whose service or labor was, now is, or shall become engaged and directed by a **Company**, including any part-time, leased, seasonal or temporary employee, intern or volunteer, and (2) any other natural person who was, now is or shall become a duly elected or appointed director, trustee, **Manager**, regent, governor or officer of a **Company**.
- J. Enforcement Authority** means any federal, state, local or foreign law enforcement or governmental authority (including without limitation the U.S. Department of Justice and any federal or state attorney general) or the enforcement unit of any self-regulatory body.
- K. ERISA** means the Employee Retirement Income Security Act of 1974, as amended, or any rules and regulations promulgated thereunder, or any similar or related state, local or foreign statute, rule, regulation or common law.
- L. Executive Officers** means with respect to any **Company** its past, present and future chairperson, chief executive officer, chief financial officer and chief legal officer or equivalent.
- M. Extended Reporting Period** means the period for the extension of coverage, if exercised, described in Section II. A. or V. G. 2. of this **Policy**.
- N. Extradition** means any formal process (including without limitation an extradition proceeding pursuant to the U.K. Extradition Act of 2003 or the equivalent in any other jurisdiction) by which an **Insured Person** located in any country is surrendered or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- O. Financial Impairment** means the status of the **Company** resulting from (1) the appointment by any state or federal or foreign official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or (2) the **Company** becoming a debtor in possession.
- P. Inquiry** means any request, demand or subpoena by an **Enforcement Authority**, or by or on behalf of the **Company** (including a **Company's** Board of Directors or a committee of the Board of Directors), to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such, whether or not such **Insured Person** allegedly committed a **Wrongful Act**,

provided that such request, demand or subpoena (1) is not part of a routine or regularly scheduled audit, inspection or general oversight or compliance activity, and (2) shall not preclude coverage under this **Policy** for any related subsequent **Claim** first made during the **Policy Period** or any applicable **Extended Reporting Period** if the **Insured Persons**, a **Plan** and the **Company** do not give notice to the Insurer of such request, demand or subpoena. An **Inquiry** is commenced by the **Insured Person's** receipt of such request, demand or subpoena.

Q. Insured Persons means:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, **Manager**, regent, governor, officer, in-house general counsel, controller, risk manager, director of human resources or their functional equivalent of the **Company**;
2. any **Employee** not described in subparagraph 1. above;
3. any one or more natural persons who were, now are, or shall become an employee or trustee of a **Plan**; and
4. any other past, present or future natural person fiduciary of a **Plan**, provided that such natural person fiduciary is added as an **Insured Person** by written endorsement to this **Policy**.

R. Insureds means the **Company**, any **Plan**, any **Committee**, and any **Insured Persons**.

S. Interrelated Wrongful Acts means all **Wrongful Acts** based upon, arising out of, or attributable to the same or related facts, circumstances, situations, events, transactions or causes.

T. Loss means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for which coverage applies, including, but not limited to, (1) damages (including punitive, exemplary or multiple damages if insurable as provided below), (2) judgments, (3) any award of pre-judgment and post-judgment interest with respect to covered damages, (4) settlements, (5) **Defense Costs**, (6) claimant's attorney's fees and costs for which an **Insured** against whom the **Claim** is made is legally obligated to pay by reason of Section 502(g) of **ERISA** or a court order or settlement agreement to which the Insurer consents pursuant to Section V. D., and (7) the following civil penalties:

1. the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502 (i) or (l), respectively, of **ERISA**;
2. civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Work and Pensions or any successor thereto, or the Pensions Regulator or any successor thereto, or Ireland's Pensions Board or Pensions Ombudsman, but only if the funds or assets of the **Plan** are not used to pay, reimburse or fund the premium for this **Policy**;
3. civil penalties upon an **Insured** as a fiduciary pursuant to Section 502(c) of **ERISA**; provided that the Insurer's maximum limit of liability under this **Policy** for all such civil penalties resulting from all **Claims** first made during the **Policy Period** shall be the 502(c) Penalties Sublimit of Liability set forth in Item 3. (b) (ii) of the Declarations, which amount shall be part of, and not in addition to, the Aggregate Limit of Liability set forth in Item 3. (a) of the Declarations; or
4. civil money penalties imposed upon an **Insured** for the violation by such **Insured** of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended; provided that the Insurer's maximum limit of liability under this **Policy** for all such civil penalties resulting from all **Claims** first made during the **Policy Period** shall be the HIPAA Penalties Sublimit of Liability set forth in Item 3. (b) (ii) of the Declarations, which amount shall be part of, and not in addition to, the Aggregate Limit of Liability as set forth in Item 3. (a) of the Declarations.

Solely for the purposes of Insuring Clause B., **Loss** means **Voluntary Compliance Program Loss** and **Defense Costs** resulting from a **Voluntary Compliance Program Notice**.

Loss (other than **Defense Costs**) does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes imposed by law, (3) fines or penalties imposed by law, other than civil penalties expressly referenced above, (4) any costs incurred by the **Company** or a **Plan** to comply with any

injunctive or other non-monetary relief or any agreement to provide such relief, (5) cleanup costs relating to hazardous materials, pollution or product defects, or (6) matters uninsurable under the law pursuant to which this **Policy** is construed.

The insurability of punitive, exemplary or multiple damages or penalties otherwise included within this definition shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Parent Company**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim** is located.

U. Managers means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company.

V. Parent Company means the organization first named in Item 1. of the Declarations.

W. Plan means:

1. any employee benefit plan, welfare benefit plan, or pension benefit plan as defined under **ERISA**, including any **VEBA**, located anywhere in the world, which is operated solely by a **Company**, or operated jointly by a **Company** and a labor organization only for the benefit of the **Employees** of such **Company**; provided that any coverage under this **Policy** relating to an employee stock ownership plan created or acquired during the **Policy Period** shall be subject to Section V. G. 4. below;
2. any other employee benefit plan or program or fringe benefit or excess benefit plan not subject to **ERISA** located anywhere in the world which is operated solely by a **Company**, or operated jointly by a **Company** and a labor organization only for the benefit of the **Employees** of such **Company**;
3. any other plan, program or fund specifically included as a **Plan** by written endorsement to this **Policy**; and
4. solely with respect to a **Wrongful Act** described in Section III. EE. 2., any insurance for unemployment, workers compensation, social security or disability benefits for **Employees**, provided that such insurance is government-mandated.

Notwithstanding anything to the contrary set forth in this **Policy**, and except as otherwise provided in Section V. G. 4. below, **Plan** shall not include any employee stock ownership plan created or acquired by the **Company** during the **Policy Period**.

X. Policy means, collectively, the Declarations, the **Application**, this policy form and any endorsements hereto.

Y. Policy Period means the period of time specified in Item 2. of the Declarations, subject to prior termination in accordance with Section V. I. of this **Policy**.

Z. Subsidiary means:

1. any organization in which more than fifty percent (50%) of the outstanding voting securities representing the present right to vote for election of or to appoint or designate directors, **Managers** or equivalent executives is owned, directly or indirectly, in any combination, by one or more **Companies**;
2. any organization in which one or more **Companies**, in any combination, have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, **Managers** or equivalent executives of such organization; and
3. any foundation or charitable trust controlled or exclusively sponsored by one or more **Companies**;

on or before the inception of the **Policy Period**.

- AA. VEBA** means Voluntary Employees' Beneficiary Associations as set forth in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended. Such Associations may offer the following benefits for voluntary members who are **Employees**, their dependents or beneficiaries: life insurance, accident insurance, sick leave pay, supplemental unemployment or other benefits.
- BB. Voluntary Compliance Program** means any voluntary compliance resolution program, or any similar voluntary settlement program, administered by the U.S. Department of Labor, the U.S. Internal Revenue Service or any other governmental authority, including without limitation the Voluntary Fiduciary Correction Program, the Employee Plans Compliance Resolution System and the Delinquent Filer Voluntary Compliance Program.
- CC. Voluntary Compliance Program Loss** means fines, penalties, sanctions, or fees collected from an **Insured** by a governmental authority pursuant to a **Voluntary Compliance Program** resulting from unintentional non-compliance by a **Plan** with any statute, rule or regulation, provided that the **Voluntary Compliance Program Notice** relating thereto was given to the Insurer during the **Policy Period**.
- DD. Voluntary Compliance Program Notice** means prior written notice by the **Insured** to the Insurer that it is the **Insured's** intent to enter into a **Voluntary Compliance Program** with respect to any **Plan**, provided that no **Insured Person** had any knowledge that such **Plan** actually was or allegedly was not compliant as of (1) the inception date of this **Policy**; or (2) the inception of the first policy in an uninterrupted series of policies issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement, whichever is earlier.
- EE. Wrongful Act** means any actual or alleged:
1. error, misstatement, misleading statement, neglect, breach of duty, omission or act committed or attempted by an **Insured** in the discharge of duties as fiduciaries of any **Plan**;
 2. negligent act, error or omission committed or attempted by an **Insured** in the **Administration** of any **Plan**;
 3. other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Plan**; or
 4. negligent act, error or omission committed or attempted by an **Insured** in such **Insured's** settlor capacity with respect to establishing, amending, terminating or funding any **Plan**.

IV. EXCLUSIONS

- A.** The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured**:
1. Prior Notice
based upon, arising out of, or attributable to any fact, circumstance, situation, **Wrongful Act** or claim which has been the subject of any written notice under any other fiduciary liability insurance policy or coverage part if such notice is given under such other policy prior to the inception of the **Policy Period** and if the insurer of such other policy does not reject such notice as invalid;
 2. Prior Proceedings
based upon, arising out of, or attributable to any **Claim** or other litigation, arbitration or administrative or regulatory proceeding or investigation involving any **Insured**, pending on or before the applicable Prior Litigation Date set forth in Item 5. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 3. Bodily Injury/Property Damage
for bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof;

4. New Subsidiaries

for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary**, its **Plans** or their **Insured Persons** before the date such **Subsidiary** became an **Insured**;

5. Conduct

based upon, arising out of, or attributable to:

- a. any deliberately fraudulent act or omission or any willful violation of law by such **Insured**; or
- b. such **Insured** gaining any financial profit or financial advantage or receiving financial remuneration to which such **Insured** was not legally entitled;

if a final and non-appealable adjudication in an underlying proceeding establishes such **Insured** committed such fraudulent conduct or willful violation of law or received such profit, advantage or remuneration;

6. Statutory Benefits

for any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, rule or regulation governing workers' compensation, unemployment insurance, unemployment compensation, social security or disability benefits; provided this exclusion shall not apply with respect to any responsibilities, obligations or duties imposed by:

- a. the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and any rules or regulations promulgated thereunder; or
- b. the Health Insurance Portability and Accountability Act of 1996, as amended, and any rules or regulations promulgated thereunder; or

7. Contractually Assumed Liability

for any liability of others assumed by any **Insured** under any contract or agreement, provided this exclusion shall not apply to:

- a. any liability that would have attached to the **Insured** in the absence of such contract or agreement; or
- b. any liability assumed in accordance with or under the agreement or declaration of trust pursuant to which a **Plan** was established.

B. The Insurer shall not be liable for **Loss**, other than **Defense Costs**, that constitutes or is substantially equivalent to (1) benefits due or to become due under any **Plan**, (2) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (3) any plaintiff attorneys' fees based upon a percentage of such benefits or payable from a common fund established to pay such benefits; provided this exclusion shall not apply to:

1. benefits payable by a natural person **Insured** as a personal obligation, and recovery for such benefits is based upon a covered **Wrongful Act**; or
2. that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in the **Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with the participant's investment directions, even if the amounts sought or recovered by the plaintiff in such **Claim** are described by plaintiffs as "benefits" or determined by a court to be "benefits."

C. Severability of Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this **Policy**:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
2. only the **Wrongful Act** of any **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries** and **Plans**.

V. GENERAL TERMS AND CONDITIONS

A. Limit of Liability

For the purposes of this **Policy**, all **Claims** which in whole or in part arise out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

Subject to the Sublimits of Liability stated in Item 3. (b) of the Declarations, the amount stated in Item 3. (a) of the Declarations shall be the maximum aggregate liability of the Insurer under this **Policy** for all covered **Loss** resulting from all covered **Claims**, regardless of the number of **Claims** or the time of payment by the Insurer.

The Limit of Liability for the **Extended Reporting Period**, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the aggregate Limit of Liability or the Sublimits of Liability, which shall be the respective maximum liability of the Insurer for the **Policy Period** and **Extended Reporting Period**, combined.

Defense Costs shall be part of and not in addition to the aggregate Limit of Liability and Sublimits of Liability set forth in Item 3. of the Declarations, and **Defense Costs** shall reduce and may exhaust such Limit of Liability or Sublimits of Liability. If the Limit of Liability or Sublimit of Liability applicable to a **Loss** is exhausted by payment of **Loss**, the Insurer's obligations under this **Policy** (including any duty to defend a **Claim** which is only subject to such exhausted Limit of Liability or Sublimit of Liability) with respect to such **Loss** shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

B. Retention

Except as otherwise provided in this Section V. B., the Insurer's liability with respect to **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention amount set forth in Item 4. of the Declarations. If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention. The applicable Retention shall be eroded by paying covered **Loss** otherwise subject to such Retention.

If the **Company** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**, then any payment by the Insurer of such **Defense Costs** or other **Loss** shall not be reduced by the applicable Retention. However, if the Insurer pays such **Defense Costs** or such other **Loss**, the **Company** shall reimburse the Insurer for such amounts to the extent the applicable retention is not then exhausted, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the Insurer. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** all such **Defense Costs** and other **Loss** otherwise covered under this **Policy** to the fullest extent permitted or required by applicable law. For purposes of this paragraph, the shareholder, **Managers**, and Board of Director resolutions of the **Company** shall be deemed to provide indemnification for such **Defense Costs** or other **Loss** to the fullest extent permitted by law.

C. Notice

The **Insureds** shall give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after any **Executive Officer** or the **Company's** risk manager first learns of such **Claim**, but in no event later than (1) ninety (90) days after expiration of the **Policy Period**, if the **Extended Reporting Period** is not exercised, or (2) expiration of the **Extended Reporting Period**, if exercised. If a **Company**, a **Plan** or an **Insured Person**, in their sole and absolute discretion, elects to seek coverage for an **Inquiry**, the **Company**, **Plan** or **Insured Person** shall give written notice to the Insurer of such **Inquiry**. Any coverage under this **Policy** with respect to such **Inquiry** shall only apply to **Defense Costs** incurred after the date notice of the **Inquiry** is given to the Insurer.

If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insureds** first become aware of any circumstances which may reasonably give rise to a future **Claim** under this **Policy** and during such **Policy Period** or **Extended Reporting Period**, if exercised, give written notice to the Insurer of the circumstances, the anticipated **Wrongful Act** allegations, the reasons for anticipating such **Claim** and full particulars as to dates, persons and entities involved, then any **Claim** which arises out of such circumstances shall be deemed to have been first made during the **Policy Period** or the **Extended Reporting Period**, if exercised, in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred in connection with a potential **Claim** or **Voluntary Compliance Program Notice** prior to the time such potential **Claim** becomes an actual **Claim** or prior to the time such **Voluntary Compliance Program Notice** is reported to the Insurer.

All notices under any provision of this **Policy** shall be in writing and given by email, mail, prepaid express courier, or facsimile properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. Notice to the Insurer shall be given to the respective address set forth in Item 7. of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

D. Defense and Settlement

The Insurer shall have the right and duty to defend any **Claim** covered by this **Policy**, regardless of whether or not any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability or Sublimit of Liability. The Insurer may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.

The **Insureds** agree not to settle or offer to settle any **Claim**, select defense counsel, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent. Only those settlements, **Defense Costs**, assumed obligations or admissions to which the Insurer consents shall be recoverable **Loss** under this **Policy**. The **Insureds** shall promptly send to the Insurer all settlement demands or offers received by the **Insureds** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

The Insurer may, with the consent of the **Insured**, make any settlement of any **Claim** covered under this **Policy** which the Insurer deems expedient. If the **Insured** against whom the **Claim** is made withholds consent to any settlement acceptable to the claimant and recommended by the Insurer (a "Proposed Settlement"), the Insurer's liability for all **Loss**, including **Defense Costs**, incurred by such **Insured** on account of such **Claim** shall not exceed:

1. the amount of the Proposed Settlement plus covered **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement of such **Claim**; and
2. eighty-five percent (85%) of any covered **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph 1. above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limit of Liability. The remaining fifteen percent (15%) of any covered **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph 1. above will be borne by the **Insured**, notwithstanding anything to the contrary in this **Policy**.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** or **Loss** the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery.

The failure of any **Insured** to comply with this Section V. D. shall not impair the rights of any other **Insured Person** under this **Policy**.

The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this Section V. D.

E. Allocation

If in any **Claim** the **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including **Insureds**) who are not afforded coverage for such **Claim**, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss as follows:

1. **Defense Costs:** one hundred percent (100%) of **Defense Costs** incurred by such **Insured** resulting from such **Claim** shall be covered **Loss**; and
2. Loss other than **Defense Costs:** all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the parties to such matters and, in the event of a settlement, based also upon the relative benefits to the parties from settlement of the covered and uncovered matters.

F. Other Insurance

If any **Loss** under this **Policy** is insured under any other valid and collectible policy(ies), prior or current, then this **Policy** shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is (1) written only as specific excess insurance over the Limit of Liability provided in this **Policy**, or (2) a personal liability or umbrella insurance policy purchased by an **Insured Person**.

G. Transactions Changing Coverage

1. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Company**:

- a. acquires voting securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this **Policy**, such organization and its **Insureds** shall be covered under this **Policy** but only with respect to covered **Wrongful Acts** taking place after such acquisition or creation unless the Insurer agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the assets of such acquired organization exceed twenty-five percent (25%) of the total assets of the **Parent Company** as reflected in the **Parent Company's** then most recent consolidated financial statements, the **Parent Company**, as a condition precedent to coverage with respect to such **Insureds**, shall give written notice of such acquisition to the Insurer within ninety (90) days after the effective date of such acquisition and shall agree to any additional terms and conditions, and pay any reasonable additional premium, required by the Insurer.

2. Acquisition of **Parent Company**

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

- a. the acquisition of the **Parent Company**, or of all or substantially all of its assets, by any person, entity or group of persons or entities acting in concert, or the merger or consolidation of the **Parent Company** into or with another entity such that the **Parent Company** is not the surviving entity; or
- b. the obtaining by any person, entity or group of persons or entities acting in concert of securities or rights which results in such person, entity or group having the right to elect, appoint or designate at least fifty percent (50%) of the directors or **Managers** of the **Parent Company**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for covered **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

If such event occurs, the **Insureds** shall have the right, upon payment of the additional premium described below, to elect an extension of the coverage described in the preceding paragraph for a twelve (12) to seventy-two (72) month **Extended Reporting Period** following the termination of the **Policy Period**; but the Insurer may, in its sole discretion and subject to any additional terms, conditions and premiums required by the Insurer, agree by written endorsement to this **Policy** to any other **Extended Reporting Period** requested by the **Insureds**. This right to elect an extension of coverage shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within thirty (30) days following the effective date of such event.

Upon request from any **Insured** following notice to the Insurer of such event, the Insurer shall notify such **Insured** of the additional premium amount for this extension of coverage.

The **Insureds** shall not be entitled to elect this extension of coverage if an **Extended Reporting Period** is elected pursuant to Section II. A. of this **Policy**.

3. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall apply only with respect to **Claims** for covered **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

4. Acquisition or Creation of an ESOP

If during the **Policy Period** any **Company** directly or indirectly acquires or creates an employee stock ownership plan ("ESOP"), the **Company** shall give the Insurer written notice of such acquisition or creation, along with any other information the Insurer requests. The Insurer shall, at the **Company's** request, provide a quotation for coverage for **Claims** based upon, arising out of, or attributable to such ESOP, subject to any terms, conditions, limitation of coverage and additional premium as the Insurer, in its sole discretion, may require.

5. Plan Termination

- a. In the event a **Plan** is terminated by a **Company** before or after the inception date of this **Policy**, coverage under this **Policy** for such terminated **Plan** and its **Insureds** shall continue until termination of this **Policy** if and to the extent such **Plan** and its **Insureds**:
 - (i) were **Insureds** at the time of such termination of such **Plan**; or
 - (ii) would have been an **Insured** at the time of such termination of such **Plan** if this **Policy** had been in effect,

provided such coverage shall apply with respect to **Wrongful Acts** occurring prior to or after the date the **Plan** was terminated.

- b. In the event the Pension Benefit Guaranty Corporation ("PBGC") becomes the Trustee of a **Plan** before or after the inception date of this **Policy**, coverage under this **Policy** with respect to such **Plan** and its **Insureds** shall continue until termination of this **Policy**, but only with respect to **Wrongful Acts** which occurred prior to the effective date the PBGC became the Trustee of such **Plan**.

H. Representations and Severability

The **Insureds** acknowledge and agree that the statements and information contained in the **Application** are true and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. This **Policy** is issued in reliance upon the truth of such representations and warranties.

In the event the **Application** contains any misrepresentation or omission of material information, then coverage under this **Policy** may be voided *ab initio* only as described below:

1. coverage for any **Loss** which is incurred by **Insured Persons** and for which the **Company** is neither permitted nor required to indemnify shall not be rescinded or voided by the Insurer in whole or in part for any reason;
2. coverage may be voided *ab initio* for **Loss** which is incurred by an **Insured Person** and for which the **Company** is permitted or required to indemnify only if and to the extent such **Loss** is incurred by an **Insured Person** who had knowledge of the facts that were either omitted from or misrepresented in the **Application**, whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission; and
3. coverage for a **Company** and its **Subsidiaries** and **Plans** may be voided *ab initio* for **Loss** otherwise covered under this **Policy** only if any past or present **Executive Officer** of such **Company** had knowledge of the facts that were either omitted from or misrepresented in the **Application**, whether or not such **Executive Officer** knew the **Application** contained such misrepresentation or omission.

For purposes of this Section V. H., knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**, and only knowledge possessed by an **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries** and **Plans**.

I. Termination and Nonrenewal of Policy

This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Parent Company** to the Insurer, provided this **Policy** may not be terminated by the **Parent Company** after the effective date of an event described in Section V. G. 2. of this **Policy**;
2. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
3. twenty (20) days after receipt by the **Parent Company** of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such twenty (20) days; or
4. at such other time as may be agreed upon by the Insurer and the **Parent Company**.

The Insurer may only cancel this **Policy** for non-payment of premium as set forth in subparagraph 3. above and may not cancel for any other reason.

The Insurer shall refund the unearned premium, which shall be ninety (90%) of the pro rata unearned premium if this **Policy** is terminated by the **Parent Company**. 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.

If the Insurer decides to nonrenew this **Policy**, the Insurer will mail to the **Parent Company** written notice stating such intent at least sixty (60) days before the expiration date set forth in Item 2. of the Declarations.

If a financial strength rating for the Insurer is issued (1) below A- by A.M. Best Co., or (2) below BBB by Standard & Poor's Rating Services (hereinafter "Credit Rating Downgrade"), this **Policy** may be canceled by the **Parent Company** by mailing written prior notice to the Insurer of such cancellation or by surrender of this **Policy** to the Insurer. If this **Policy** is cancelled by the **Parent Company** within thirty (30) days after such Credit Rating Downgrade, the Insurer shall compute and refund to the **Parent Company** the unearned premium on a pro rata basis. If this **Policy** is cancelled by the **Parent Company** after such thirty (30) days, the Insurer shall compute and refund to the **Parent Company** the unearned premium at a rate of ninety percent (90%) of the pro rata unearned premium.

J. Bankruptcy

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

If a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insureds** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law, and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any such stay or injunction.

K. Territory and Valuation

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 another element of **Loss** under this **Policy** is stated in a currency other than United States of America 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 final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place, **Loss** incurred or **Claims** made anywhere in the world.

L. Subrogation

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, including without limitation the **Insured Person's** rights to indemnification or advancement from the **Company**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**. In no event shall the Insurer subrogate against an **Insured Person** unless and to the extent Exclusion A. 5. in Section IV. of this **Policy** applies to such **Insured Person**.

Any recoveries by the Insurer of **Loss** paid under this **Policy** shall be the sole property of the Insurer, but an amount equal to the amount of such recoveries, minus all costs incurred by the Insurer to obtain such recoveries, shall reinstate, in such amount and as of the date each recovery is received by the Insurer, the Limits of Liability and any Sublimit of Liability of this **Policy** that were eroded or exhausted by such payment.

M. Action Against the Insurer

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

N. Authorization Clause

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

O. Alteration, Assignment and Headings

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is issued by the Insurer.

The titles and headings to the various sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such sections, subsections or endorsements.