



FIDUCIARY LIABILITY SOLUTIONS

THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MUST BE REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION VI. DEFENSE COSTS ARE WITHIN THE LIMITS OF LIABILITY.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Terms in bold face type have the special meaning. See the definitions sections of this Policy.

The Insurer and the **Insureds** agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer."

I A. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds** that **Loss** resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by such **Insured** or by any natural person for whose **Wrongful Act** such **Insured** is legally responsible, provided that the **Claim** is reported in writing to the Insurer during the **Policy Period**, or the Extended Reporting Period, if applicable, pursuant to Section VI of this Policy.

I B. SUPPLEMENTARY PAYMENTS

The Insurer shall reimburse the **Insured**, subject to the aggregate Limit of Liability, up to \$100,000.00 for **Compliance Costs** during the **Policy Period** in connection with all **Voluntary Compliance Programs** provided the **Insured** gives prior notice to the Insurer of its intent to enter into such **Voluntary Compliance Program** during the **Policy Period**. This supplementary payment is part of and not in addition to the aggregate Limit of Liability stated in Item 6 of the Declarations.

II. DEFINITIONS

Administrator means an **Insured** who renders **Administration Services** in connection with a **Plan**.

Administration Services means any of the following services in connection with a **Plan**:

1. communicating with or providing information to **Employees** or **Plan** participants or beneficiaries regarding any **Plan**;
2. determining vesting and eligibility for **Plan** participation or benefits;
3. calculating benefits provided under the **Plan**;
4. processing applications and related forms required for the payment of benefits;
5. performing any record-keeping and data processing functions required by **ERISA** or any **Similar Act** or a **Plan**;
6. preparing and filing any necessary reports or returns required under **ERISA** or any **Similar Act** or the Internal Revenue Code, and the regulations thereunder;
7. effecting the payment of benefits or authorized administrative expenses;
8. enrolling, terminating or canceling **Employees** or **Plan** participants or beneficiaries.

Application means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct or indirect renewal or replacement.

Claim means:

1. any written demand for monetary or non-monetary relief;
2. any civil investigation by the United States Department of Labor or the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States;
3. any civil proceeding in a court of law or equity or arbitration;
4. any criminal proceeding; or
5. any regulatory proceeding (civil, criminal or administrative);



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alleging a **Wrongful Act**, including any appeal therefrom.

Compliance Costs means:

- a. **Consulting Fees** incurred in connection with, or
- b. any fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to:

a **Voluntary Compliance Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation if participation by the **Insured** in such **Voluntary Compliance Program** results in the **Insured** obtaining a "No Action" letter from the governmental authority; provided **Compliance Costs** shall not include (i) any costs to correct the non-compliance, or (ii) any **Consulting Fees**, fines, penalties or sanctions relating to a **Plan** which, as of the earlier of inception of this **Policy** or 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, any **Insured Person** knew to be actually or allegedly non-compliant.

Consulting Fees means reasonable and necessary fees, costs and expenses incurred by the **Insureds**, including the fees charged by a third party actuary, benefits consultant, accountant, or legal counsel, resulting solely from the correction of an actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. However, **Consulting Fees** shall not include fees, costs or expenses relating to a **Plan** audit or relating to finding, assessing or identifying such violation.

Defense Costs means reasonable and necessary fees, costs and expenses consented to by the Insurer and incurred by the **Insureds** in the investigation, adjustment, defense or appeal of any covered **Claim**, and includes premium for appeal bonds, attachment bonds or similar bonds arising out of a covered judgment. The Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, and employees of the **Insured Entity** or a **Plan**.

Domestic Partner means any person qualifying as such under any federal, state or local laws or under a **Plan**.

Employees mean all past, present or future full-time, part-time, seasonal and temporary individuals whose work is directed or controlled by the **Insured Entity** or any **Plan**. **Employee** does not include any independent contractor.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world, and any rules and regulations promulgated thereunder.

Executive means any past, present or future:

1. duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or manager of a limited liability company; or
2. official in an **Insured Entity** or **Plan** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in 1.

Fiduciary means any **Insured Person** who is described as a fiduciary with respect to a **Plan** in Section 3(21) (A) of **ERISA or any Similar Act**.

Financial Insolvency means, with respect to the **Insured Entity** or any **Plan**:

1. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured Entity** or **Plan**; or such **Insured Entity** or **Plan** becoming a debtor in possession; and
2. the inability of such **Insured Entity** or **Plan** financially or under applicable law to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**.

Foreign Jurisdiction means any jurisdiction, other than the United States or any of its territories or possessions.

Insureds mean the **Plans**, **Insured Persons** and the **Insured Entities**.

Insured Entity means the **Named Insured** and any **Subsidiary** including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.



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Insured Persons means all **Executives** and all **Employees** of the **Insured Entity** or any **Plan**.

Interrelated Wrongful Acts means any **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.

Loss means damages, judgments, settlements, and **Defense Costs** that any **Insured** becomes legally obligated to pay on account of a covered **Claim**. **Loss** shall also include punitive, exemplary or multiple damages if insurable to the fullest extent permitted by any applicable law. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.

However, **Loss** does not include:

1. any taxes, sanctions, criminal or civil fines, or penalties imposed by law other than:
 - a. the five percent or less or the twenty percent or less penalty imposed upon an **Insured** as a **Fiduciary** under Section 502(i) or 502(l) of **ERISA**;
 - b. the civil fines or penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the United Kingdom Pensions Act of 2004 or rules or regulations thereunder; provided any coverage for such civil fines or penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this coverage;
 - c. those civil fines or penalties imposed under 42 USC 1320d-5(a) the Health Insurance Portability and Accountability Act of 1996 provided however that the maximum limit of the Insurer's liability for all such fines and penalties shall be \$25,000 per **Claim** and \$250,000 in the aggregate, regardless of the number of **Claims** made or **Insureds** covered under this Policy. This sublimit of Liability is part of and not in addition to the Limit of Liability set forth in 6 of the Declarations.
2. any amount for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
3. any matters deemed uninsurable under the law pursuant to which this Policy is construed.

Management Control means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the entity, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Named Insured means the company named in Item 1 of the Declarations, including such company as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

Non-Indemnifiable Loss means **Loss** which an **Insured Entity** fails or refuses to indemnify an **Insured Person**:

1. because of **Financial Insolvency**; or
2. because it is not permitted to indemnify pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **Insured Entity** or **Plan**.

Pension Plan means any employee pension benefit plan, as defined in 29 U.S.C. §1002, subject to regulation under **ERISA** or any **Similar Act**. **Pension Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002 or an employee stock ownership plan as defined in 26 U.S.C. §4975.

Plan means:

1. any **Welfare Plan** or **Pension Plan** which was, on or prior to the effective date of this Policy, sponsored solely by any **Insured Entity**, or sponsored jointly by the **Insured Entity** and a labor organization, solely for the benefit of the **Employees** or **Executives** of the **Insured Entity**;
2. any **Welfare Plan** or **Pension Plan** which, after the effective date of this Policy, becomes sponsored solely by any **Insured Entity**, or sponsored jointly by the **Insured Entity** and a labor organization, solely



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for the benefit of the **Employees** or **Executives** of the **Insured Entity**, if and to the extent coverage with respect to the **Welfare Plan** or **Pension Plan** is afforded pursuant to Section XV of this Policy;

3. any other employee benefit plan or program not subject to **ERISA** or any **Similar Act** which is sponsored solely by the **Insured Entity** for the benefit of the **Employees** or **Executives**, including any fringe benefit or excess benefit plan;
4. any other plan or program otherwise described in paragraphs 1 through 3 above while such plan or program is being actively developed, formed or proposed by the **Insured Entity** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this Policy for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; or
5. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for **Employees**;

Plan does not include any multi-employer plan as defined in **ERISA** or any **Similar Act**.

Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.

Pollutants means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

Subsidiary means any entity, other than a not-for-profit entity or a partnership, in which the **Named Insured** has **Management Control**, directly or indirectly through one or more other **Subsidiaries**,

1. on or before the effective date of this Policy; or
2. after the effective date of this Policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XV of this Policy.

Takeover means:

1. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
 - a. the ownership or control of voting stock of the **Named Insured** resulting in such entity, person or group owning or controlling more than 50% of the voting stock of the **Named Insured**, or
 - b. assets of the **Named Insured** resulting in such entity, person or group owning more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;
2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
3. the consolidation of the **Named Insured** with another entity.

Voluntary Compliance Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor or other similar governmental authority located outside the United States, including without limitation:

1. the Employee Plans Compliance Resolution System consisting of the Self-Correction Program, the Voluntary Compliance Resolution Program and the Audit Closing Agreement Program all as set forth in IRS Revenue Procedure 2003-44 (as amended, modified, expanded or superseded by any successor Revenue Procedure); or
2. Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program administered by the Department of Labor.



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Welfare Plan means any employee welfare benefit plan as defined in 29 U.S.C. §1002 subject to regulation under **ERISA or any Similar Act**. **Welfare Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002.

Wrongful Act means:

1. any actual or alleged error, omission, negligent act, misstatement, misleading statement, neglect or breach of duty imposed upon an **Insured** by **ERISA or any Similar Act** or by the common or statutory law of the United States or any state or other applicable jurisdiction anywhere in the world, solely in such **Insured's** capacity as a **Fiduciary of a Plan**, or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary of a Plan**; and
2. any actual or alleged error, omission, negligent act, misstatement, misleading statement, neglect or breach of duty committed or attempted by the **Insureds**, including any violation of regulation 45 CFR, Subchapter C, Part 164, under the Health Insurance Portability and Accountability Act of 1996, solely in such **Insured's** capacity as an **Administrator**.

III. EXCLUSIONS

The Insurer shall not be liable to pay any **Loss** under this Policy in connection with any **Claim** made against the **Insureds**:

1. **Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or damage to or destruction of any tangible property including loss of use;

2. **Prior Notice**

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event notice of which was given by an **Insured** under this Policy or any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

3. **Prior or Pending**

based upon or arising out of or constituting any civil, criminal, administrative or regulatory proceeding, investigation or arbitration against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in Item 8 of the Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration;

4. **Pollution**

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
- c. any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity** or the **Plan**, their security holders, or their creditors resulting from any of the aforementioned matters.

However this exclusion shall not apply to:

- i. any **Claim** by or on behalf of a beneficiary of or participant in any **Plan** by reason of the diminution in value of any securities (other than the **Insured Entity's** securities) owned by the **Plan**, resulting from, or allegedly resulting from, any of the aforementioned matters; or
- ii. **Non-Indemnifiable Loss**.



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5. **Illegal Profits/Deliberate Acts**

based upon or arising out of:

- a. the gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled if a judgment, ruling or other finding of fact in any proceeding adverse to the **Insured** establishes the **Insured** was not legally entitled to such profit, remuneration or advantage; or
- b. the committing of any deliberate fraudulent or deliberate criminal act by the **Insured** as evidenced by any written statement or written document by any **Insured** or if a judgment, ruling or other finding of fact in any proceeding establishes that such act was committed;

For purposes of determining the applicability of this Exclusion:

- i. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- ii. only facts pertaining to and knowledge possessed by any past, present or future chair of the Board, president, chief executive officer, chief financial officer, chief operating officer or general counsel (or equivalent position) of an **Insured Entity** or **Plan** shall be imputed to the **Insured Entity** or **Plan**.

6. **Assumed Liability**

based upon, or arising out of liability of others assumed by any **Insured** under any contract or agreement; however, this exclusion shall not apply to the extent that:

- a. the **Insured** would have been liable in the absence of such contract or agreement; or
- b. the liability was assumed in accordance with or under the trust instrument or equivalent documents governing the assets of the **Plan**;

7. **Specified Legislation**

for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, social security, disability benefits or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world except the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996 or any amendments to such laws or any rules or regulations promulgated under such laws.

8. **Prior Wrongful Acts of Subsidiaries**

- a. for any **Wrongful Act** by **Insured Persons** or **Plans** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
- b. for any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

9. **Exclusions Applicable to Loss Other than Defense Costs**

In addition, the Insurer shall not be liable to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

- a. the return or reversion to the **Insured Entity** of any contribution or asset of any **Plan**;
- b. any costs incurred by an **Insured** to comply with any order for remedial, preventive, injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- c. benefits due or to become due under any **Plan**, or benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:
 - i. an **Insured Person** is legally obligated to pay such benefits as a personal obligation, and
 - ii. recovery for the benefits is based upon a covered **Wrongful Act**; or
- d. an employer's contributions owed to a **Plan** and other amounts for which the **Insureds** are legally obligated to pay by reason of the failure to collect such contributions.

IV. LIMIT OF LIABILITY/RETENTION/PRESUMPTIVE INDEMNIFICATION



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1. Aggregate Limit of Liability

The Limit of Liability stated in Item 6 of the Declarations is the aggregate limit of the Insurer's liability for:

- a. all **Loss** under this Policy arising out of all **Claims** first made against all **Insureds** during the **Policy Period** and the Extended Reporting Period (if applicable), and.
- b. all **Compliance Costs** incurred by the **Insured** in connection with all **Voluntary Compliance Programs** first noticed to the Insurer during the **Policy Period**.

The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the Limit of Liability for the **Policy Period**. Further, a **Claim** which is made subsequent to both the **Policy Period** and the Extended Reporting Period (if applicable) and which pursuant to Section VI. is considered made during the **Policy Period** or Extended Reporting Period shall also be subject to the one aggregate Limit of Liability stated in Item 6 of the Declarations.

Defense Costs are part of **Loss** and as such are subject to the Limit of Liability for **Loss**.

2. Retention

The Insurer shall only be liable for the amount of **Loss** arising from each **Claim** which is in excess of the applicable Retention amount stated in Item 7 of the Declarations. The Retention amount shall apply to **Loss** arising from each **Claim** and from all **Claims** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**. The Retention shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable retention. No retention applies with respect to **Non-Indemnifiable Loss**.

3. Presumptive Indemnification

If the **Insured Entity** fails or refuses to indemnify an **Insured Person** to the fullest extent permitted by law for **Loss**, other than **Non-Indemnifiable Loss**, then any payment by the Insurer of such **Loss**, shall be subject to the retention amount stated in Item 7 of the Declarations.

V. SETTLEMENT/PAYMENT OF RETENTION/ADVANCEMENT OF DEFENSE COSTS/ALLOCATION

1. Insurer's Duty to Defend

The Insurer shall have the right and duty to defend in the **Insured's** name and on the **Insured's** behalf a **Claim** covered by this Policy even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Insurer shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as is deemed necessary by the Insurer. If a **Claim** is subject to arbitration or mediation, the Insurer shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of an arbitration or mediation proceeding.

The **Insured** shall have the right to effectively associate with the Insurer in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this Section V. The Insurer shall not, however, be obligated to defend any **Claim** after either:

- a. the applicable limit of liability has been exhausted; or
- b. the **Insureds** reject a settlement offer recommended by the Insurer, as provided in paragraph 3 of this Section.

2. Insured's Defense of Claims

Notwithstanding paragraph 1 above, at the option of the **Named Insured**, the **Insureds** may assume the defense of any **Claim**. The **Named Insured** shall exercise this option on behalf of all **Insureds** by providing the Insurer with written notice within 60 days after the **Claim** has been reported pursuant to Section VI, paragraph 1. Once defense of such **Claim** has been assumed by the **Insured**, the Insurer will have no obligation to re-assume defense of such **Claim**, but shall be entitled to effectively associate in the defense and the negotiation of such **Claim**.



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3. Admission of Liability, Settlement, Consent

The **Insureds** shall not admit or assume any liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld.

The Insurer shall not be liable for any **Loss** incurred by an **Insured** to the extent the **Loss** results from such **Insured** admitting liability, consenting to any judgment, agreeing to any settlement or making any settlement offer without the Insurer's prior written consent. The **Insureds** agree that they shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy.

Notwithstanding the above, 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 **Claim**.

The Insurer may make any settlement of any **Claim** it deems expedient with respect to any **Insured**, subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, the Insurer's liability for all **Loss** on account of such **Claim** shall not exceed the amount for which the Insurer could have settled such **Claim**, plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the Insurer. Further, in the event the Insurer is defending the **Claim** pursuant to paragraph 1 above, then the Insurer shall tender the **Claim** to the **Insureds** who shall thereafter, at their own expense and on their own behalf, negotiate and defend such **Claim**.

4. Allocation of Loss

- a. Solely with respect to those **Claims** handled under Section V, **SETTLEMENT/PAYMENT OF RETENTION/ADVANCEMENT OF DEFENSE COSTS/ALLOCATION**, paragraph 1, **Insurer's Duty to Defend**, the following provision applies:

If the Insurer defends a **Claim** that is determined to not be covered, in whole or in part, under the terms of this policy, the Insurer specifically reserves the right to seek reimbursement of that portion of **Defense Costs** incurred in connection with the defense of the uncovered portion of such **Claim**.

- b. Solely with respect to those **Claims** handled under Section V, **SETTLEMENT/PAYMENT OF RETENTION/ADVANCEMENT OF DEFENSE COSTS/ALLOCATION**, paragraph 2, **Insureds Defense of Claims**, the following provision applies:

If a **Claim** made against the **Insureds** includes both covered and uncovered matters or if a **Claim** is made against **Insureds** who are extended coverage therefor and others who are not extended coverage therefor, the **Insureds** agree that there must be an allocation between insured and uninsured loss. The **Insureds** and the Insurer shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured loss.

5. Conditions for Advancement of Defense Costs

The Insurer, on behalf of the **Insureds**, shall advance **Defense Costs** no later than ninety (90) days after the receipt by the Insurer of such defense bills in excess of the applicable Retention. However, advancement of **Defense Costs** shall be subject to the following conditions:

- a. if the **Insureds** and the Insurer agree on an allocation of insured and uninsured **Defense Costs**, the Insurer shall advance the amount of insured **Defense Costs**;
- b. if the **Insureds** and the Insurer cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defense Costs**, the Insurer then shall advance the percentage of **Defense Costs** which the Insurer states to be fair and proper until a different allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law;
- c. the **Insureds** shall provide a written undertaking satisfactory to the Insurer to repay the Insurer any **Defense Costs** finally established not to be insured under this Policy; and



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- d. any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss**.

VI. REPORTING/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE

1. Notice of Claim

The **Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give written notice to the Insurer of a **Claim** made against the **Insureds** as soon as practicable after the Risk Manager or General Counsel (or equivalent position) of the **Insured Entity** or a **Plan** first become aware of such **Claim**, but in no event later than:

- a. the end of the **Policy Period**, or the Extended Reporting Period if applicable; or
- b. thirty (30) days after the end of the **Policy Period** or the Extended Reporting Period, if applicable, if such **Claim** is first made against the **Insureds** within the final thirty (30) days of the **Policy Period** or the Extended Reporting Period, if applicable.

2. Notice of Circumstance

If during the **Policy Period** the **Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** and during such period give written notice to the Insurer of:

- a. the names of any potential claimants and a description of the **Wrongful Act** which forms the basis of their potential **Claim**,
- b. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**,
- c. the consequences which have resulted or may result from such specific **Wrongful Act**,
- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
- e. the circumstances by which **Insureds** first became aware of such specific **Wrongful Act**,

then any **Claim** otherwise covered pursuant to this Policy which is subsequently made and which arises out of such **Wrongful Act** shall be deemed to have been first made and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

3. When a Claim is Deemed Made

Except as provided in 2 above, a **Claim** shall be deemed made:

- a. in the case of a written demand for monetary or non-monetary relief, on the earlier of the **Insured's** or Insurer's receipt of notice of such demand;
- b. in the case of any civil investigation by the United States Department of Labor or the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, on the date of receipt by any **Insured** of written notice from the investigating authority identifying the **Insured** as an individual or entity against whom a proceeding may be commenced;
- c. in the case of a criminal proceeding, by the return of an indictment, information or similar document against the **Insured**;
- d. in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint against the **Insured** in such proceeding or arbitration;
- e. in the case of a regulatory proceeding (civil, criminal or administrative) against any **Insured**, on the earliest of the date of service upon or other receipt by the **Insured** of a complaint, a notice of charges or similar document.

4. Interrelated Claims



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More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:

- a. the date on which the earliest such **Claim** was first made, whether such date is before or during the **Policy Period**, or
- b. the first date valid notice was given by the **Insureds** to the Insurer under this Policy or any prior policy of
 - i. any **Wrongful Act**, or
 - ii. any **Voluntary Compliance Program**, or
 - iii. any fact, circumstance, situation, event or transaction which underlies any such **Claim**.

5. To Whom Notices are Sent

The **Insureds** shall give written notice to the Insurer under this Policy as specified in Item 4 of the Declarations. If properly mailed, the date of mailing shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

VII. EXTENDED REPORTING PERIOD

1. Optional Extended Reporting Period

If the Insurer cancels or non-renews this Policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium determined as described in Item 5b of the Declarations, an extension of this Policy in which to report **Claims** first made during such extended reporting period, provided such reporting is done in accordance with paragraph VI 1 and 2, and provided further that such **Claim** or circumstance must arise out of a **Wrongful Act** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**.

This period shall be referred to as the Extended Reporting Period.

2. Payment of Extended Reported Premium

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 end unless the Insurer receives written notice and full payment of the premium for such period within 30 days after the end of the **Policy Period**.

3. Non-Cancellation/Premium fully Earned

If the Extended Reporting Period is purchased, it is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

4. No Separate Limit

There is no separate or additional Limit of Liability for the Extended Reporting Period.

VIII. CANCELLATION

1. Insurer's Right to Cancel

The Insurer may cancel this Policy for non-payment of any premium when due, by providing to the **Named Insured** written notice stating when, not less than 15 days thereafter, such cancellation shall be effective. However, this section does not apply to the non-payment of premium due at inception of this Policy. Non-payment of such premium on its due date will be deemed to be a rejection by the **Insured** of the Insurer's offer to insure and this Policy shall be of no force and effect.

2. Named Insured's Right to Cancel



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The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed in accordance with customary short rate provisions and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

IX. TERRITORY

Coverage shall apply worldwide.

X. APPLICATION

The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and: (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

1. In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, this Policy shall be void from inception as to the **Insured** who knew of the misrepresentation or omission as of effective date of the Policy, whether or not such person knew of the **Application** or the Policy, and
2. The Insurer agrees that it shall not seek to rescind the Policy with respect to any remaining **Insured** who did not know of the misrepresentation or omission as of effective date of the Policy.

With respect to 1 and 2 above:

- a. the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**; and
- b. the knowledge of an **Executive** shall be imputed to the **Insured Entity** or **Plan** if an **Executive** knew of the misrepresentation or omission as of effective date of the Policy, whether or not such person knew of the **Application** or this Policy.

XI. OTHER INSURANCE

If any **Loss** resulting from any **Claim** or any **Compliance Costs** is insured under any other insurance, this Policy shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the limit of liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

XII. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and any **Domestic Partner of Insured Persons** shall be considered **Insureds** under this Policy; provided, however, 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 act, error or omission 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**.

XIII. NO ACTION AGAINST INSURER



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1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.
2. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

XIV. ASSIGNMENT OF INTEREST

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

XV. COVERAGE FOR NEW SUBSIDIARIES OR PLANS

1. If, after the effective date of this Policy, (i) the **Insured Entity** first has **Management Control** of any entity or plan, then such entity or plan and any subsidiaries of such entity, or the directors, officers, trustees or employees of such entity or plan who otherwise would thereby become an **Insured** shall be covered under this Policy, subject to its terms and conditions:
 - a. only if the fair value of the assets of such entity or plan does not exceed ten percent (10%) of the combined total assets of each and every **Insured Entity** as of the inception date of this Policy; or
 - b. where the fair value of the assets of such entity exceeds ten percent (10%) of the combined total assets of each and every **Insured Entity** as of the inception date of this Policy, only if the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, agrees to provide coverage for such subsidiaries, plans, directors, officers or employees.
2. There shall be no coverage under this Policy for any **Wrongful Act** by such entity or plan, or by any persons, entities or plans considered to be **Insureds** pursuant to Section XV.1 above, where such **Wrongful Act** occurred in whole or in part before the effective date of such acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**.

XVI. CHANGE OF STATUS OF INSUREDS

1. Takeover of the Named Insured

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy with respect to all **Insureds** shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring, or **Voluntary Compliance Programs** noticed to the Insurer, before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring, or **Voluntary Compliance Programs** noticed to the Insurer, on or after such effective date, and (ii) the **Named Insured** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer. This Policy may not be canceled after the effective time of the **Takeover** and the entire premium for this Policy shall be deemed earned as of such time. The **Named Insured** shall also have the right to an offer by the Insurer of an Extended Reporting Period described in Section VII of this Policy.

2. Cessation or Takeover of Subsidiary

If any organization ceases to be a **Subsidiary** there shall be no coverage under this Policy for any **Wrongful Act** by such organization or any **Insured Person** of such organization occurring, or **Voluntary Compliance Programs** noticed to the Insurer in connection with such **Subsidiary**, after the date such organization ceased to be a **Subsidiary**.

In the event of a **Takeover** of a **Subsidiary**, coverage under this Policy with respect to such **Subsidiary** and its **Insureds** shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring, or **Voluntary Compliance Programs** noticed to the Insurer, before the



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effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring, or **Voluntary Compliance Programs** noticed to the Insurer, on or after such effective date, and (ii) the **Named Insured**, on behalf of all other **Insureds**, accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

3. Termination of the **Plan**

If an **Insured Entity** terminates a **Plan** before or after the inception date of this Policy, coverage with respect to such terminated **Plan** and its **Fiduciaries, Employees and Executives** shall continue until termination of this Policy for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** had this policy been in place. Such continuation of coverage shall apply with respect to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to or after the date the **Plan** was terminated, or **Voluntary Compliance Programs** noticed to the Insurer after the date the **Plan** was terminated .

XVII. ASSISTANCE AND COOPERATION

Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request. The **Insureds** shall do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.

XVIII. SUBROGATION, RECOVERY AND NON-RECOURSE

1. If the Insurer makes any payment under this Policy, the Insurer shall be subrogated, to the extent of that payment, to all the rights and remedies of the **Insureds** in respect of that payment, and the Insurer shall be entitled at its own expense to sue in the name of any **Insured**, including but not limited to the **Plan**. The **Insureds** shall take all reasonable action requested in writing by the Insurer to mitigate any **Loss** and to secure the rights and remedies of the Insurer in subrogation. Further upon request by the Insurer, the **Insureds** will assign to the Insurer any rights on behalf of whom he, she or it has to bring suit, or for the benefit of the **Plan**, whether under **ERISA** or **any Similar Act** or other applicable law.
2. The Insurer shall have the right to full recourse against **Insured Persons** who actually commits a **Wrongful Act**, provided however, that if the **Insured Persons** and/or the **Insured Entities** shall have paid the premium set forth in Item 3 of the **Declarations** and no part of such premium has been paid, directly or indirectly, from any assets of the **Plan**, then the Insurer shall have no such rights of recourse.

XIX. NOTICES TO THE NAMED INSURED

Any notices required under Section VIII, **CANCELLATION**, shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

XX. CHANGES

Notice to 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 stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

XXI. COMPANY AUTHORIZATION

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section VI.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXII. ENTIRE AGREEMENT



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The **Insureds** agree that this Policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

XXIII. BANKRUPTCY

Bankruptcy or insolvency of any **Insured Entity**, the **Plan** or any **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.

Coverage provided under this Policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding is commenced by the **Named Insured** and/or any other **Insured Entity** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "**Bankruptcy Law**") then, in regard to a covered **Claim** under this Policy, the **Insureds** hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such **Bankruptcy Law**; and
2. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

XXIV. ALTERNATIVE DISPUTE RESOLUTION PROCESS

All disputes or differences between the **Insured** or Insurer which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss** or **Compliance Costs**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured** may elect the type of **ADR** process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured's** choice of **ADR** process shall control.

The Insurer and each and every **Insured** agrees that there shall be two choices of **ADR** process: (1) non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Insured** is incorporated in the construction or interpretation of the provisions of this Policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Named Insured**.

XXV. HEADINGS

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

XXVI. VALUATION

All premiums, limits, retentions, **Loss**, **Compliance Costs** and other amounts under this policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Loss** or **Compliance Costs** is expressed or calculated in any other currency, payment of such **Loss** or **Compliance**



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Costs due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Loss** or **Compliance Costs** is established, or, if not published on that date, on the date of next publication.

XXVII. ORDER OF PAYMENTS

With respect to any **Loss, Compliance Costs** and other amounts due under the provisions of this policy, and subject to the available limit of liability, the Insurer:

1. first shall pay such amounts on behalf of any **Insured Person**; and
2. then, only after payment has been made pursuant to paragraph 1. above, shall pay such amounts on behalf of any **Plan**; and
3. then, only after payment has been made pursuant to paragraph 1. and 2. above, shall pay such amounts on behalf of any **Insured Entity**.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed by its Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.

Chairman

Secretary