

RLI Insurance Company

Fiduciary Liability Coverage Section

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the Application forming a part hereof and its attachments and the material incorporated therein, RLI Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

INSURING CLAUSES

1. The Insurer will pay on behalf of the **Insureds**, **Loss** which the **Insureds** are legally obligated to pay as a result of **Claims** first made during the **Policy Period**, or during the Discovery Period (if purchased), against the **Insureds** for a **Wrongful Act** by the **Insureds** or by any natural person for whose **Wrongful Act** the **Insureds** are legally responsible.
2. The Insurer shall pay on behalf of the **Insureds** any **Voluntary Settlement** and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a **Settlement Program Notice** first given to the Insurer during the **Policy Period**, provided such **Voluntary Settlement** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the Insurer.

DEFINITIONS

3. When used in this coverage section:

"**Administration**" means one or more of the following administrative duties or activities, but only with respect to an **Insured Plan**:

- a. counseling employees, participants and beneficiaries; or
- b. providing interpretations; or
- c. affecting enrollment, termination or cancellation of employees, participants and beneficiaries; or
- d. handling of records.

"**Claim**" means:

- a. a written demand for monetary, non-monetary or injunctive relief against any **Insured**;
- b. a civil, criminal or arbitration proceeding against any **Insured** commenced by the service of a complaint or similar pleading, a return of an indictment, information or similar document, or a demand for arbitration;
- c. a formal civil administrative or civil regulatory proceeding against any **Insured** commenced by the filing of a notice of charges, or similar document, or by the entry of a formal investigative order or similar document;
- d. a written notice of the commencement of a fact-finding investigation by the United States Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental authority which is located outside of the United States, including, but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority; or
- e. a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in a. through d. above;

including any appeal thereof.

Solely for purposes of coverage under Insuring Clause 2., **Claim** means a **Settlement Program Notice**.

"**Clean Up Costs**" means expenses, including, but not limited to, legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

"**Defense Expenses**" means reasonable and necessary fees, charges and expenses (including without limitation attorneys' fees and experts' fees and the premium for any appeal, attachment or similar bond, provided that the Insurer has no obligation to apply for, furnish or secure any such bond) incurred in the defense or appeal of a **Claim** after notice of such **Claim** is given to the Insurer. **Defense Expenses** shall not include salaries, fees, regular or overtime wages, overhead or benefit expenses of any trustee, director, officer or employee of the **Entity** or **Insured Plan**.

"**Employee Benefit Law**" means **ERISA** or any similar common or statutory law anywhere in the world to which an **Insured Plan** is subject (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Except with respect to any **Wrongful Act** described in item c. of the definition of **Wrongful Act**, **Employee Benefit Law** shall not include any law concerning workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

"**Entity**" means the organization(s) designated in Item 5. of the Declarations for this coverage section.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, including, but not limited to, amendments thereto by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998, all as amended.

"**ESOP**" means any employee stock ownership plan as defined in an **Employee Benefit Law**, or any other employee welfare benefit plan or employee pension plan under which investments are made primarily in securities of the **Entity**, or whose assets at the inception date of this coverage section were comprised of twenty percent (20%) or more of securities of the **Entity**.

"**Fiduciary**" means a fiduciary (as defined in an **Employee Benefit Law**) of an **Insured Plan**, or a person or organization who exercises discretionary control with respect to the management of an **Insured Plan** or the disposition of its assets.

"**Financial Impairment**" means the status of the **Entity** resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Entity**, or the **Entity** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

"**Insured**," either in the singular or plural, means:

- a. the **Entity**;
- b. the **Insured Plan(s)**;
- c. the **Insured Person(s)**; and
- d. any other organization, plan or natural person added by specific written endorsement to this coverage section.

"**Insured Person**," either in the singular or plural, means:

- a. any natural persons who were, now are, or shall become duly elected or appointed trustees (excluding bankruptcy trustees), directors, officers, general counsel, governors, general partners, management committee members, member of the board of managers, or employees of the **Entity** or of any **Insured Plan**, in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**;
- b. any natural persons who were, now are or shall become a holder of a title, position or capacity comparable or equivalent to a position described in a. above of any **Entity** chartered in any jurisdiction outside of the United States of America, in his or her capacity as a **Fiduciary** or trustee of an **Insured Plan** or as a person performing **Administration** of an **Insured Plan**; and
- c. any other natural person who was, now is, or shall become a **Fiduciary** of an **Insured Plan** and is added by specific written endorsement to this coverage section.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heir, legal representative or assign of such **Insured Person**, or against a trust which holds assets contributed by such **Insured Person** identified above, for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

"**Insured Plan**," either in the singular or plural, means:

- a. any employee benefit plan, as defined by **Employee Benefit Law** (including without limitation any plan from which participants may choose among two or more benefits consisting of cash and qualified benefits, and any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended) other than any **ESOP**, which is operated solely by the **Entity** or jointly by the **Entity** and a labor organization solely for the benefit of any natural persons who were, now are, or shall become employees, directors, officers, governors, management committee members, members of the board of managers or general partners of the **Entity** located anywhere in the world, if such plan existed as of the inception date of the **Policy Period** or is afforded coverage pursuant to subsection 10. of this coverage section;
- b. any other employee benefit plan not subject to Title 1 of **ERISA** sponsored solely by the **Entity** for the benefit of any natural persons who were, now are, or shall become employees, directors, officers, governors, management committee members, members of the board of managers or general partners of the **Entity** located anywhere in the world, if such plan existed as of the inception date of the **Policy Period** or is afforded coverage pursuant to subsection 10. of this coverage section;
- c. any other plan or program otherwise described in items a. or b. above while such plan or program is being actively developed, formed or proposed by the **Entity** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this coverage section for any **Claim** against an **Insured** in a settlor capacity with respect to any plan or program;
- d. any government-mandated insurance for workers' compensation, unemployment, Social Security or disability benefits for employees of the **Entity**, but solely for a **Wrongful Act** as defined in item c. of the definition of **Wrongful Act**; or
- e. any other plan, fund, trust or program specifically included in the definition of **Insured Plan** pursuant to an endorsement to this coverage section.

Provided, however, **Insured Plan** shall not include any multiemployer plan as defined in any **Employee Benefit Law**.

"**Loss**" means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements, including, but not limited to, punitive, exemplary or multiple damages where insurable under applicable law, and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a covered **Claim** under Insuring Clause 1.

The law of the jurisdiction most favorable to the insurability of those punitive, exemplary or multiple damages shall control whether such damages are insurable, provided that such jurisdiction is where:

- a. those damages were awarded or imposed;
- b. any **Wrongful Act** occurred for which such damages were awarded or imposed;
- c. the **Entity** is incorporated or has its principal place of business; or
- d. the Insurer is incorporated or has its principal place of business.

Loss under Insuring Clause 1. shall not include the following, other than covered **Defense Expenses** attributable thereto:

- (i) civil or criminal fines or penalties imposed by law, except (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 Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties is subject to the other terms, conditions and exclusions of this coverage section and applies only if the funds or assets of the subject **Insured Plan** are not used to fund, pay or reimburse the premium for this coverage section, or (3) any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the Company's maximum aggregate liability for all such HIPAA civil money penalties on account of all **Claims** first made during the **Policy Period** shall be \$25,000, which is a sublimit that further limits and does not increase the Insurer's maximum liability under this coverage section;

- (ii) taxes or tax penalties;
- (iii) fees, costs or expenses to amend, restructure, administer or terminate an **Insured Plan** or any remedial fees, costs, expenses or other remedial payment(s);
- (iv) stock options;
- (v) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**;
- (vi) matters uninsurable under the law pursuant to which this coverage section shall be construed, except as provided above.

Solely for purposes of coverage under Insuring Clause 2., **Loss** means a **Voluntary Settlement** and **Defense Expenses**.

"Pollutants" means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, but not be limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic fields.

"Related Claims" means all **Claims** for **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

"Securities Claim" means a **Claim** which in whole or in part is based upon, arises out of, directly or indirectly results from, or is in consequence of any actual or alleged purchase or sale, or failure to purchase or sell, any securities issued by the **Entity** or any actual or alleged misrepresentation or omission of information in connection with such securities.

"Settlement Program" means any voluntary compliance program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

"Settlement Program Notice" means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter a **Settlement Program**.

"Subsidiary" means any:

- a. for-profit organization; or
- b. any not-for-profit organization which is sponsored exclusively by the **Entity**;

with respect to which the **Entity**, on or before the inception date of this coverage section, either directly or indirectly through one or more of its **Subsidiaries**, owns or controls by reason of stock ownership, a written agreement, by-laws, charter or similar document the present right to select more than fifty percent (50%) of the directors, trustees, governors, general partners, or members of the management committee or board of managers of the organization.

Subject to subsection 10. of this coverage section, coverage afforded under this coverage section with respect to **Claims** made against a **Subsidiary** or any **Insured Person** or **Insured Plan** thereof shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time such **Subsidiary** became a **Subsidiary** and prior to the time such **Subsidiary** ceased to be a **Subsidiary**.

"**Voluntary Settlement**" means any fees, fines, penalties or sanctions paid or agreed to be paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by an **Insured Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties or sanctions relating to an **Insured Plan** which, as of the earlier of the inception date of this coverage section or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this coverage section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

"**Wrongful Act**" means:

- a. any actual or alleged breach of the responsibilities, obligations or duties imposed upon **Fiduciaries** of any **Insured Plan** by any **Employee Benefit Law** or by the common or statutory law of the United States or any state or other jurisdiction anywhere in the world;
- b. any other matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Insured Plan**, or the **Entity**, but solely with respect to an **Insured Plan**;
- c. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of any **Insured Plan**; and
- d. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Entity** and such multiemployer plan is added by specific written endorsement to this coverage section, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this coverage section extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

EXCLUSIONS

4. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
 - a. for the failure to collect contributions owed to an **Insured Plan** or the failure to fund an **Insured Plan** in accordance with any **Employee Benefit Law** or the **Insured Plan** instrument; however, this exclusion shall not apply to **Defense Expenses** or to the extent such failure is attributable solely to the **Insured's** negligence;
 - b. for bodily injury, sickness, disease, death, mental anguish or emotional distress of any person, or damage to or destruction of any tangible property, including the loss of use thereof; however, this exclusion shall not apply to **Defense Expenses** incurred in the defense of a **Claim** for violation of the responsibilities, obligations or duties imposed upon an **Insured** as a **Fiduciary** under **Employee Benefit Law**;
 - c. for discrimination in violation of any law other than any **Employee Benefit Law**; or
 - d. for an actual or alleged obligation of any **Insured** under any law governing workers compensation, unemployment insurance, social security, disability benefits or similar law, except the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996, all as amended.
5. The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any of the **Insureds** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
 - a. liability of others assumed by the **Insureds** under any contract or agreement; however, this exclusion shall not apply: (i) to **Defense Expenses**; and (ii) to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement, or (iii) to the extent the liability was assumed in accordance with or under the **Insured Plan's** declaration of trust or equivalent document pursuant to which the **Insured Plan** was established;
 - b. any fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given under any prior policy or coverage section for fiduciary liability or other similar insurance;

- c. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, neutralize, detoxify or assess **Pollutants**, or any voluntary decision to do so; however, this exclusion shall not apply to (i) **Loss**, other than **Clean Up Costs**, incurred by **Insured Persons** if and to the extent the **Entity** does not indemnify the **Insured Persons** for such **Loss** either because the **Entity** is neither permitted nor required to grant such indemnification or because of the **Financial Impairment** of the **Entity**, or (ii) any **Claim** by or on behalf of a beneficiary of or participant in an **Insured Plan** based upon, arising out of, directly or indirectly resulting from, or in consequence of the diminution in value of any securities which are owned by the **Insured Plan** and which are in any organization other than the **Entity**, if such diminution in value is allegedly as a result of the matters described in this exclusion;
 - d. any litigation or administrative or regulatory proceeding against any **Insured** pending on or before the Prior or Pending Date set forth in Item 7. of the Declarations for this coverage section, or any actual or alleged fact, circumstance, situation, transaction, event or the same or substantially the same **Wrongful Act** underlying or alleged therein;
 - e. any **Wrongful Act** committed or allegedly committed by any **Insured** with respect to an **Insured Plan**, if when such **Wrongful Act** occurred no **Entity** sponsored, was a **Fiduciary** of or was responsible for the **Administration** of, the **Insured Plan**;
 - f. alleging, based on, arising out of or attributable to such **Insured** gaining in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled; however, this exclusion shall not apply unless a final judgment or other final adjudication adverse to such **Insured** establishes such illegal profit, remuneration or advantage; or
 - g. any deliberately fraudulent or dishonest act or omission or any willful violation of any statute or regulation by such **Insured**; however, this exclusion shall not apply unless a final judgment or other final adjudication adverse to such **Insured** establishes such a deliberately fraudulent or dishonest act or omission or willful violation.
6. The Insurer shall not be liable to make any payment for **Loss** which constitutes any obligation under an **Insured Plan** to pay to a participant or beneficiary of an **Insured Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation which would exist under an **Insured Plan** if the **Insured Plan** complied with all applicable laws, or that portion of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**; however, this exclusion shall not apply to (i) **Defense Expenses**, or (ii) 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 an **Insured Plan's** assets or a participant's account in an **Insured Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with a participant's investment directions.

To determine the applicability of the foregoing Exclusions:

- a. no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**;
- b. only **Wrongful Acts** of any past, present or future president, chief executive officer, chief financial officer or in-house general counsel of an **Entity** will be imputed to the **Entity**; and
- c. only **Wrongful Acts** of any past, present or future trustee or equivalent executive of an **Insured Plan** will be imputed to the **Insured Plan**.

CONDITIONS

7. Notice/Claim Reporting Provisions

If, during the **Policy Period**, or the Discovery Period (if purchased):

- a. an **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**;
- b. the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and

c. the **Insureds** request coverage under this coverage section for any subsequent **Claim** arising from such **Wrongful Act**;

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the **Policy Period**.

As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after the president, chief executive officer, chief financial officer, in-house general counsel or risk manager of an **Entity** first learns of such **Claim**.

8. **Defense Coverage**

If Duty to Defend coverage is granted pursuant to Item 8. of the Declarations for this coverage section, the Insurer shall have the right and duty to defend any **Claim** covered under Insuring Clause 1. of this coverage section, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend shall cease upon exhaustion of the applicable Limit of Liability set forth in Item 2. of the Declarations for this coverage section.

If Duty to Defend coverage is not granted pursuant to Item 8. of the Declarations for this coverage section, it shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claims**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by this coverage section.

If Duty to Defend coverage is not granted pursuant to Item 8. of the Declarations for this coverage section, the Insurer shall, upon request, advance on a current basis covered **Defense Expenses** on behalf of the **Insureds** prior to the final disposition of the **Claim**. Any advancement of **Defense Expenses** shall be subject to, and conditioned upon, receipt by the Insurer of a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent any such **Insured** shall not be entitled under the terms and conditions of this coverage section to coverage for such **Defense Expenses**.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests, including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings. In the event of a **Claim** the **Insureds** will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

9. **Limit of Liability and Retention**

The amount stated in Item 2(a). of the Declarations for this coverage section shall be the maximum aggregate liability of the Insurer under this coverage section for all **Loss** from all **Claims** for which this coverage section provides coverage, regardless of the time of payment by the Insurer, and regardless of whether such **Claims** are made or initiated during the **Policy Period** or during any Discovery Period (if purchased). The amount stated in Item 2(b). of the Declarations for this coverage section will be the maximum aggregate liability of the Insurer for all **Voluntary Settlements** and **Defense Expenses** covered under Insuring Clause 2. which are incurred by the **Insureds** as a result of all **Settlement Program Notices** for which this coverage section provides coverage, regardless of the time of payment by the Insurer. The amount stated in Item 2(b). of the Declarations for this coverage section is a sublimit which further limits and does not increase the Insurer's maximum liability under this coverage section.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, regardless of whether such date is before or during the **Policy Period**. The applicable Retention shall apply only once to each such single **Claim**.

The Insurer's liability with respect to all **Loss** resulting from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 3. or Item 4. of the Declarations for this coverage section, which shall be borne by the **Entity** uninsured and at its own risk.

No Retention shall apply to (i) **Loss** under Insuring Clause 1 incurred by any **Insured Person** for which the **Entity** or **Insured Plan** is not permitted or required by common or statutory law to indemnify or is permitted or required by law to indemnify but does not do so by reason of **Financial Impairment**, (ii) any HIPAA civil money penalty covered by reason of subparagraph (i)(3) of the definition of **Loss** above, or (iii) **Voluntary Settlement** or **Defense Expenses** under Insuring Clause 2. The respective Retention for Indemnifiable **Loss** set forth in Items 3. and 4. of the Declarations for this coverage section shall apply to all other **Loss**, except as otherwise provided in the next succeeding paragraph. For purposes of this subsection 9. the resolutions of the **Entity** or **Insured Plan** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by common or statutory law.

If the **Entity** or **Insured Plan** is permitted or required by common or statutory law to indemnify the **Insured Persons** for any **Loss**, or to advance **Defense Expenses** on their behalf, and does not in fact do so other than for reasons of **Financial Impairment**, then any payment of such **Loss** or any advancement of such **Defense Expenses** by the Insurer under Insuring Clause 1 shall not be subject to any Retention amount, but the **Entity** shall reimburse and hold harmless the Insurer for such **Loss** up to the applicable Retention amount set forth in Item 3. or Item 4. of the Declarations for this coverage section.

If **Loss** resulting from a **Claim** is subject in part to no Retention and in part to the Retention for Indemnifiable **Loss**, the Retention for Indemnified **Loss** shall be applied only to that part of the **Loss** otherwise subject to such Retention.

Defense Expenses will be part of and not in addition to the Limit of Liability, and payment of **Defense Expenses** by the Insurer will reduce its Limit of Liability.

If the Limit of Liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this coverage section will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this coverage section.

10. Acquisition or Creation of Another Organization or Plan

If during the **Policy Period** the **Entity** creates or acquires a **Subsidiary** or **Insured Plan** or otherwise becomes a **Fiduciary** of or responsible for the **Administration** of any **Insured Plan** ("Event"), then coverage shall be afforded, subject to the terms and conditions of this coverage section, from the date of the Event for such **Subsidiary**, **Insured Plan**, and its **Insureds**, but only for **Wrongful Acts** occurring after the Event, unless the Insurer agrees by endorsement to provide coverage for **Wrongful Acts** occurring prior to such date.

If: (1) the total assets of the acquired or created **Subsidiary** are more than twenty-five percent (25%) of the consolidated total assets of the **Parent Company** as of the inception date of this coverage section as reflected in the **Parent Company's** then most recent consolidated financial statement; or (2) the total assets of the acquired or created **Insured Plan(s)** exceed twenty-five percent (25%) of the consolidated assets of all **Insured Plans** as of the inception date of this coverage section as reflected in the **Insured Plans'** then most recent consolidated financial statements, then as a condition precedent to the coverage afforded pursuant to this subsection 10.:

- a. the **Entity** shall give written notice to the Insurer of the Event within ninety (90) days of such Event together with such information the Insurer may require; and
- b. the **Entity** shall pay any reasonable additional premium required by the Insurer.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this subsection 10. with respect to any **ESOP** or any **Insured Persons** or **Entity** with respect thereto unless the Insurer, by specific endorsement hereto, agrees to afford such coverage. Any such coverage shall be at the terms and conditions and for the premium set forth in such endorsement.

11. Change of Control

If, during the **Policy Period**:

- a. the **Parent Company** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert; or

- b. any person or organization or group of persons or organizations acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for the election of directors of the **Entity**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then this coverage section shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this coverage section for any **Wrongful Act** occurring after the effective time of the Transaction and the entire premium for this coverage section shall be deemed fully earned as of such time. The **Parent Company** shall also then have the right to elect a Discovery Period described in subsection 14. of this coverage section or a greater period as may be negotiated with the Insurer.

The **Parent Company** shall give the Insurer written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

12. Termination of Insured Plan

If the **Entity** terminates any **Insured Plan** before or after the inception date of the **Policy Period**, coverage under this coverage section with respect to such terminated **Insured Plan** shall continue until termination of this coverage section for those who were **Insureds** at the time of such **Insured Plan** termination, or who would have been **Insureds** at the time of such termination if this coverage section had been in effect, with respect to **Wrongful Acts** occurring prior to or after the date of such **Insured Plan** termination. The **Insureds** shall give written notice to the Insurer of such **Insured Plan** termination as soon as is practicable together with such information as the Insurer may require.

13. Marital or Domestic Partner Extension

Subject otherwise to the terms and conditions hereof, this coverage section shall cover **Loss** arising from any **Claim** made against the lawful spouse or domestic partner (whether such stature is derived by reason of statutory law, common law, or any other applicable law of any jurisdiction in the world) of an **Insured Person** for **Claims** arising solely out of his or her capacity as the spouse or domestic partner of an **Insured Person**, including such **Claims** that seek damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner; or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, this extension shall not afford coverage for **Wrongful Acts** of the spouse or domestic partner. All terms, conditions and other provisions of this coverage section, inclusive of any provision relative to the applicable retention, which would be applicable to **Loss** incurred by the **Insured Person** in such **Claim** shall also apply to **Loss** incurred by the spouse or domestic partner in such **Claim**.

14. Discovery Period

If: a. the **Parent Company** cancels this coverage section, b. either the Insurer or the **Parent Company** refuses or declines to renew this coverage section for any reason, or c. a Transaction described in subsection 11. occurs, and, within thirty (30) days after the end of the **Policy Period** the **Parent Company** elects to purchase the Discovery Period by paying the additional premium set forth in Item 6. (a) of the Declarations for this coverage section, then the coverage otherwise afforded by this coverage section will be extended for the period set forth in Item 6. (b) of the Declarations for this coverage section but only for **Wrongful Acts** occurring before the end of the **Policy Period** or the date of any Transaction under subsection 11., whichever is earlier. The Limit of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**.

As a condition precedent to the right to exercise the Discovery Period, the total premium for this coverage section must have been paid in full.

If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.

Subject to all the terms and conditions of this subsection 14., the Insurer shall, upon request, provide the **Parent Company** with a quotation for a three (3) year Discovery Period.

15. Representations; Severability

The **Insureds** represent the particulars and statements contained in the Application are true, accurate and complete, and agree that this coverage section is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this coverage section, are the basis of this coverage section.

In the event any of the particulars or statements in the Application are untrue, this coverage section shall not afford coverage for any **Claim** based upon, arising out of, directly or indirectly resulting from, or in consequence of any matters which were not truthfully disclosed in the Application to the extent such **Claim** is against:

- a. any **Insured Person** who knew the facts which were not truthfully disclosed in the Application;
- b. the **Entity** if the president, chief executive officer, chief financial officer or in-house general counsel of the **Entity** knew the facts which were not truthfully disclosed in the Application;
- c. the **Insured Plan** if a trustee or equivalent executive knew the facts which were not truthfully disclosed in the Application;

whether or not such **Insured Person**, officer or executive knew the Application contained the untruthful disclosure.

The Insurer agrees that it shall not rescind or seek to rescind this coverage section with respect to any **Insured**.

16. Recourse/Waiver


If this coverage section is purchased by an **Insured Plan** and if the Insurer pays **Loss** under this coverage section, then the Insurer shall have a right of recourse for such **Loss** against any **Insured**, other than an **Insured Plan**, that caused or contributed to such **Loss**. However, if this coverage section is purchased by an **Insured** other than an **Insured Plan**, the Insurer shall have no right of recourse against an **Insured**.

17. Payment Priority

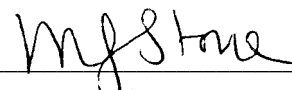
If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this coverage section exceeds the then remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- a. First, the Insurer shall pay any such covered **Loss** incurred by **Insured Persons**;
- b. Second, only if and to the extent the payment under subparagraph a. above does not exhaust the applicable Limit of Liability, the Insurer shall pay any such covered **Loss** incurred by other **Insureds**.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.



Corporate Secretary



President & COO