

RLI Insurance Company

Governmental Plans Fiduciary Liability Policy

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 will indemnify the **Insureds** for all **Compliance Fees** incurred by the **Insureds** as a result of any **Voluntary Compliance Program** initiated during the **Policy Period**.

DEFINITIONS

3. When used in this Policy:

"**Administered Plan**" means any employee benefit plan, pension benefit plan, or welfare benefit plan which is not an **Insured Plan** and for which the **Insured Persons** perform **Administration** in their capacity as such.

"**Administration**" means:

- a. handling records, giving advice, counsel or interpretation to participants regarding an **Insured Plan**; or
- b. affecting enrollment, termination, or cancellation of participants under an **Insured Plan**; or
- c. complying with the privacy provisions of **HIPAA** regarding an **Insured Plan**; or
- d. any matter claimed against an **Insured** solely by reason of serving as an administrator of an **Insured Plan**.

"**Claim**" means:

- a. a written demand for monetary, non-monetary or injunctive relief against any **Insured**; or
- 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; or
- 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; or
- 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 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 **Voluntary Compliance Program** initiated by or against an **Insured**.

“**Cleanup 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**.

“**Compliance Fees**” means:

- a. any fees, fines or penalties paid by an **Insured** to a governmental authority in connection with any **Voluntary Compliance Program** involving the actual or alleged inadvertent noncompliance by any **Insured Plan** with any statute, rule or regulation; and
- b. reasonable and necessary legal, accounting, actuary or other advisory or expert fees and expenses incurred by the **Insureds** as a result of participation in any covered **Voluntary Compliance Program**.

Compliance Fees does not include any other costs, charges, fees, penalties, sanctions, assessments, taxes or damages, including without limitation any costs or fees to amend, restructure, correct, administer or terminate any **Insured Plan**.

“**Defense Expenses**” means reasonable and necessary fees and expenses (including without limitation attorneys’ fees, experts’ fees and professional fees) 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, wages, overhead or benefit expenses of any trustee, director, officer or employee of any **Insured Plan** or other entity **Insured**.

“**Employee Benefit Law**” means any applicable common, constitutional or statutory law or regulations thereunder of the United States, Canada, or any state or province thereof (including but not limited to the Federal Employees’ Retirement System Act of 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), the Newborns and Mothers Health Protection Act of 1996, and the Women’s Health and Cancer Rights Act of 1998), setting forth the obligations, responsibilities, or duties imposed upon **Fiduciaries of Insured Plans** sponsored by public entities or governmental entities and to which the **Insured Plan** is subject. **Employee Benefit Law** shall not include any law concerning fair employment, workers’ compensation, unemployment insurance, Social Security, statutorily or administratively-mandated disability benefits or similar law.

“**Fiduciary**” means a fiduciary as defined by **Employee Benefit Law** (if applicable) with respect to an **Insured Plan**, or a person or entity who exercises discretionary control as respects the management of an **Insured Plan** or the disposition of its assets.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended.

“**Insured**” either in the singular or plural, means:

- a. the **Insured Plan(s)**;
- b. the **Insured Person(s)**;
- c. the **Named Insured**; and
- d. any other organization, plan or natural person listed in Item 6. of the Declarations for this Policy;

provided “**Insured**” does not include any governmental entity, agency or subdivision.

“**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, members of the board of managers, or employees of any **Insured Plan** or the organization sponsoring or offering such **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 **Insured Plan** 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 Policy.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns 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 only those plans or trusts specifically enumerated in Item 6. of the Declarations or those plans or trusts specifically enumerated by endorsement to this Policy.

“Loss” means damages, including but not limited to punitive, exemplary or multiple damages where insurable under applicable law, judgments (including pre and post-judgment interest on a covered judgment), settlements, 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; or
- c. 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** attributed 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 502(l), respectively, or Section 502(c) of the Employee Retirement Income Security Act of 1974 (“ERISA”) or any comparable civil penalty under any other **Employee Benefit Law**; (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 promulgated thereunder; provided any coverage for such civil penalties described in (1) or (2) above is subject to the other terms, conditions and exclusions of this Policy 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 Policy; or (3) any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of **HIPAA**; provided the Insurer’s maximum aggregate liability for all such **HIPAA** civil money penalties on account of all **Claims** first made during the **Policy Period** or during the Discovery Period (if purchased) shall be \$250,000, which is a sublimit that further limits and does not increase the Insurer’s maximum liability under this Policy;
- (ii) taxes;
- (iii) fees, costs or expenses to amend, restructure, administer or terminate an **Insured Plan** or any remedial fees, costs, expenses or other remedial payments;
- (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 Policy shall be construed, except as provided above.

Solely for purposes of coverage under Insuring Clause 2., **Loss** means **Compliance Fees**.

“Named Insured” means the organization or plan designated in Item 5. of the Declarations.

“Non-Indemnifiable Loss” means **Loss** incurred by an **Insured Person** for which the **Named Insured** or any governmental body, agency, or subdivision has neither indemnified nor is permitted or required to indemnify such **Insured Person**.

“Policy Period” means the period of time specified in Item 2. of the Declarations for this Policy, subject to prior cancellation or termination. If this period is less than or greater than one (1) year, then the Limits of Liability specified in Item 3. of the Declarations for this Policy shall be the Insurer’s maximum limit of liability for the entire period.

"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 a state, county, municipality or locality counterpart thereof. 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 emissions, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electric or magnetic or electromagnetic fields and any noise.

"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.

"Voluntary Compliance Program" means any voluntary compliance resolution 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, including without limitation the Audit Closing Agreement Program (Audit CAP), the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, as described in the Employee Plans Compliance Resolution System, IRS Rev. Proc. 98-22, or the Tax Sheltered Annuity Voluntary Correction Program, as described in IRS Rev. Proc. 95-24, all as amended.

"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**;
- b. any other matter claimed against an **Insured Person** solely because of his or her service as **Fiduciary** of any **Insured Plan**;
or
- c. any negligent act, error or omission solely in the **Administration** of any **Insured Plan** or **Administered Plan**.

EXCLUSIONS

4. The Insurer shall not be liable to make any payment for that part of **Loss**, other than **Defense Expenses**:
 - a. for the failure to collect any contributions owed to an **Insured Plan** or the failure to fund an **Insured Plan**, unless the failure is because of the negligence of an **Insured**; or
 - b. 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 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.
5. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
 - a. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or any damage to or destruction of any tangible property, including loss of use thereof; provided, however, that in connection with **Claims** made against any **Insureds** based solely on the performance of managed care services with respect to the selection of medical or health services providers, this Exclusion shall not apply to **Defense Expenses** incurred in the defense of such **Claims**;
 - b. for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement; however, this Exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Insured Plan** was established;
 - c. for 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 nonappealable judgment or other final nonappealable adjudication establishes such illegal profit, remuneration, or advantage; or
 - d. for discrimination in violation of any law other than an **Employee Benefit Law**.

6. 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. any fact, circumstance, situation, transaction, event or **Wrongful Act** which was the subject of any notice given under any prior policy for fiduciary liability or other similar insurance of which this Policy is a direct or indirect renewal or replacement;
 - b. 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 the **Insured** test for, monitor, cleanup, remove, contain, treat, assess, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including but not limited to any **Claim** for financial loss to any **Insured Plan**, its participants, beneficiaries, or creditors based upon, arising out of, directly or indirectly resulting from, or in consequence of, the matters described in this exclusion; however, this Exclusion shall not apply to (i) **Non-Indemnifiable Loss**, other than **Cleanup Costs**, incurred by **Insured Persons**, 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 owned by the **Insured Plan** in any organization other than the organization sponsoring or offering such **Insured Plan**, if such diminution in value is allegedly as a result of the matters described in this Exclusion;
 - c. any litigation or administrative or regulatory proceeding against any **Insured** pending on or before the Prior or Pending Date set forth in Item 8. of the Declarations for this Policy, or any actual or alleged fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - d. any **Wrongful Act** committed or allegedly committed by the **Insured** with respect to an **Insured Plan**, if when such **Wrongful Act** occurred no **Insured Person** was a **Fiduciary** of, or was responsible for the **Administration** of, the **Insured Plan**;
 - e. 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, as amended, or **HIPAA**; or
 - f. 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 nonappealable judgment or other final nonappealable adjudication adverse to such **Insured** establishes such a deliberately fraudulent or dishonest act or omission or willful violation.
7. The Insurer shall not be liable to make any payment for **Compliance Fees** on account of any matter relating to an **Insured 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 **Fiduciary** knew to be actually or allegedly noncompliant with any applicable statute, rule or regulation.

To determine the applicability of the foregoing Exclusions:

- a. no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**; and
- b. only **Wrongful Acts** of any past, present or future officer, director or trustee of any **Insured Plan** will be imputed to any **Insured Plan**.

CONDITIONS

8. 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 Policy 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 general counsel, risk manager, trustee or functional equivalent of the **Insured Plan** first learns of such **Claim**.

Notice to any **Insured** may be given at the address as shown in Item 5. of the Declarations.

All notices under this Policy of **Claims** or potential **Claims** shall be in writing and given by prepaid express courier, certified mail, e-mail, or fax properly addressed to the appropriate party at:

RLI Insurance Company
Attention: Claim Department
9025 North Lindbergh Drive
Peoria, Illinois 61615-1431
E-mail: new.claim@rlicorp.com
Fax: 1-866-692-6796

All other notices to the Insurer under this Policy shall be given to the same addressee but to the attention of the Underwriting Department. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

9. **Defense Coverage**

The Insurer shall have the right and duty to defend any **Claim** covered under Insuring Clause 1. of this Policy, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend shall cease upon exhaustion of the Limit of Liability set forth in Item 3. of the Declarations.

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.

10. **Limit of Liability and Retention**

The amount stated in Item 3. of the Declarations for this Policy shall be the maximum aggregate liability of the Insurer under this Policy for all **Loss**, including all **Compliance Fees**, from all **Claims** for which this Policy 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 9. of the Declarations for this Policy will be the maximum aggregate liability of the Insurer for all **Compliance Fees** covered under Insuring Clause 2. which are incurred by the **Insureds** as a result of all **Voluntary Compliance Programs** for which this Policy provides coverage, regardless of the time of payment by the Insurer, and regardless of whether such **Voluntary Compliance Programs** were initiated during the **Policy Period**. The amount stated in Item 9. of the Declarations for this Policy is a sublimit which further limits and does not increase the Insurer's maximum liability under this Policy.

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 4. of the Declarations for this Policy, which shall be borne by the **Insureds** uninsured and at their own risk. No Retention shall apply to **Non-Indemnified Loss** and **HIPAA** penalties under Insuring Clause 1. or to **Compliance Fees** under Insuring Clause 2.

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 Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this Policy.

11. Acquisition or Creation of Another Plan

If during the **Policy Period** the **Named Insured** acquires or creates an **Insured Plan** or the **Insureds** otherwise become a **Fiduciary** of or responsible for the **Administration** of a new **Insured Plan**, no coverage shall be afforded to said **Insured Plan** or its **Insureds** unless the Insurer, by specific endorsement, agrees to afford such coverage. Any such coverage shall be at the terms and conditions and for the premium set forth in such endorsement.

12. Change of Control

If an **Insured Plan** merges into or consolidates with another plan or trust not enumerated in Item 6. of the Declarations, coverage under this Policy for such **Insured Plan** or the **Insureds** thereof who were **Insureds** prior to such merger or consolidation shall continue until termination of this Policy but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to such merger or consolidation.

If the responsibilities for the **Administration** of, or the fiduciary responsibilities with respect to, an **Insured Plan** are fully assumed by one or more other persons or entities, coverage under this Policy for such **Insured Plan** and the **Insureds** thereof who were **Insureds** prior to such assumption of responsibilities shall continue until termination of this Policy but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to such assumption of responsibilities.

13. Termination of Insured Plan

If the **Insured(s)** terminate any **Insured Plan** before or after the inception date of the **Policy Period**, coverage under this Policy with respect to such terminated **Insured Plan** shall continue until termination of this Policy 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 Policy 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.

14. Marital Estate

Subject otherwise to the terms hereof, this Policy 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 Policy, 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**.

15. Discovery Period

If:

- a. the **Insured** cancels this Policy; or
- b. either the Insurer or the **Insured** refuses or declines to renew this Policy for any reason; and

within thirty (30) days after the effective date of such cancellation or nonrenewal the **Insured** elects to purchase the Discovery Period by paying the additional premium set forth in Item 7. (a) of the Declarations for this Policy, then the coverage otherwise afforded by this Policy will be extended for the period set forth in Item 7. (b) of the Declarations for this Policy but only for **Wrongful Acts** occurring before the effective date of such cancellation or nonrenewal. 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 Policy 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 Section 15., the Insurer shall, upon request, provide the **Insured** with a quotation for a three (3) year Discovery Period.

16. Representations; Severability

The **Insureds** represent that the particulars and statements contained in the Application are true, accurate and complete, and agree that this Policy 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 Policy, are the basis of this Policy. In the event any of the particulars or statements in the Application are untrue, this Policy 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 that such **Claim** is against:

- a. any **Insured Person** who knew the facts which were not truthfully disclosed in the Application;
- b. the **Named Insured** or **Insured Plan** if a trustee or equivalent executive thereof knew the facts which were not truthfully disclosed in the Application;

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

The Insurer shall not rescind or seek to rescind this Policy with respect to any **Insured**.

17. Action Against the Insurer

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of the estate of an **Insured** shall not relieve the Insurer of any of its obligations hereunder.

Only if requested by the **Insureds**, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

18. Cancellation and Nonrenewal

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

- a. the effective date of termination specified in a prior written notice by the **Insured** to the Insurer, provided this Policy may not be terminated by the **Insured** if the **Policy Period** is more than eighteen (18) months;
- b. ten (10) days after the receipt by the **Named Insured** of a written notice of termination from the Insurer based upon failure to pay premium due, unless such premium is received by the Insurer prior to such tenth (10th) date;
- c. at such other time as may be agreed upon by the Insurer and the **Named Insured**; or
- d. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations of this Policy.

The Insurer shall refund the unearned premium computed at customary short rates if this Policy is terminated by the **Insured**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable. If the **Policy Period** is more than eighteen (18) months, the premium charged for this Policy shall be fully earned at inception of the **Policy Period**.

The Insurer shall not be required to renew this Policy upon its expiration.

19. **Other Insurance**

If any **Loss** is insured under any other valid and collectible policy(ies), prior or current, then this Policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy. This Policy will not be subject to the terms of any other insurance.

20. **Assignment**

This Policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

21. **Investigation and Settlement**

The Insurer may make any investigation it deems necessary and may, with the written consent of the **Insureds**, make any settlement of a **Claim** the Insurer deems expedient. If the **Insureds** withhold consent to such settlement proposed by the Insurer and elect to contest the **Claim**, or continue any legal proceedings in connection with such **Claim**, the Insurer's liability for the **Claim** shall not exceed:

- a. the amount for which the Insurer could have settled such **Claim** plus **Defense Expenses** accrued as of the date such settlement was proposed in writing by the Insurer to the **Insureds**, plus
- b. seventy percent (70%) of any **Loss**, including **Defense Expenses**, in excess of the amount referenced in paragraph a. above which is incurred on account of any such **Claim**,

subject to the applicable Retention and available Limit of Liability under this Policy. The remaining thirty percent (30%) of any **Loss**, including **Defense Expenses**, in excess of the amount referenced in paragraph a. above shall be borne by the **Insured** uninsured and at its own risk.

22. **Subrogation and Waiver of Recourse**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery. If this Policy is purchased by the **Insured Plan** and if the Insurer pays **Loss** under this Policy, then the Insurer shall have a right of recovery for such **Loss** against any **Insured** other than an **Insured Plan** that caused or contributed to such **Loss**. However, if this Policy is purchased by an **Insured** other than an **Insured Plan**, the Insurer shall have no right of recovery against an **Insured**. The **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**.

23. **Changes**

The terms and conditions of this Policy shall not be waived or changed, except by endorsement issued to form a part of this Policy.

24. **Headings**

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

25. **Entire Agreement**

The **Insureds** agree this Policy, including the Application and any endorsements, constitutes the entire agreement between the **Insureds** and the **Insurer** or any of its agents relating to this insurance.

This Policy is signed for the Insurer by its authorized officers. It is countersigned on the Declarations, where required by law, by a duly authorized agent of the Insurer.

26. **Worldwide Territory**

Coverage under this Policy shall extend anywhere in the world.

27. **Valuation and Foreign Currency**

All premiums, limits, retentions/deductibles, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

28. **Authorization**


It is agreed that the **Named Insured** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or **Loss**, cancellation or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of any endorsements issued to form a part of this Policy, and the exercising or declining to exercise any right to a Discovery Period.

29. **Payment Priority**

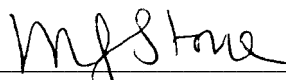
If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this Policy exceeds the then remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- a. first, the Insurer shall pay any such covered **Non-Indemnifiable Loss** incurred by **Insured Persons**;
- b. second, only if and to the extent the payment under paragraph a. above does not exhaust the applicable Limit of Liability, the Insurer shall pay any such other covered **Loss** incurred by the **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