

OLD REPUBLIC INSURANCE COMPANY

Non-Profit Organization and Management Liability Insurance Policy (Duty to Defend Outside Limit of Liability)

Policy Number: _____

This is a claims made Policy that applies only to **Claims** first made during the **Policy Period** or the Extended Reporting Period, if purchased. Except as otherwise provided in Section IX, the **Insurer** has the right and duty to defend covered **Claims**, and **Defense Costs** paid by the **Insurer** pursuant to such duty to defend shall not reduce the Limit of Liability of the Policy.

Please Read the Entire Policy Carefully.

In consideration of payment of the premium and in reliance upon the statements in the **Application**, which is deemed attached to and is a part of this Policy, and subject to all of the terms and conditions of this Policy, the Insurer designated in the Declarations (hereinafter called "the **Insurer**") and the **Insureds** agree as follows:

I. **INSURING AGREEMENT**

A. **MANAGEMENT LIABILITY**

The **Insurer** will pay on behalf of the **Insured Persons** any **Loss** for which the **Insured Persons** are not indemnified by the **Organization** and which the **Insured Persons** have become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Insured Persons** for a **Wrongful Act** taking place prior to the end of the **Policy Period**.

B. **ORGANIZATION INDEMNIFICATION**

The **Insurer** will pay on behalf of the **Organization** any **Loss** for which the **Organization** has, to the extent permitted or required by law, indemnified the **Insured Persons**, and which the **Insured Persons** have become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Insured Persons** for a **Wrongful Act** taking place prior to the end of the **Policy Period**.

C. **ORGANIZATION LIABILITY**

The **Insurer** will pay on behalf of the **Organization** any **Loss** for which the **Organization** has become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Organization** for a **Wrongful Act** taking place prior to the end of the **Policy Period**.

D. **NON-PROFIT OUTSIDE POSITION LIABILITY**

Subject to their other terms and conditions, Insuring Agreements A and B include coverage for any **Insured Person** while serving in a **Non-Profit Outside Position**. Any such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Non-Profit Outside Entity** in which the **Insured Person** serves in the **Outside Position**.

II. DEFINITIONS

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

- A. **"Application"** means all signed applications, including attachments and other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this Policy or the underwriting of any other similar liability policy issued by the **Insurer**, or any of its affiliates, of which this Policy is a direct or indirect renewal or replacement.
- B. **"Benefits"** means any perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other similar payment, provided **Benefits** shall not include salary or wages or non-deferred cash incentive compensation.
- C. **"Claim"** means:
1. a written demand against an **Insured** for monetary, non-monetary or injunctive relief; or
 2. a civil or arbitration proceeding against an **Insured** for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading; or
 3. a formal civil administrative or regulatory adjudicatory or investigative proceeding against any **Insured Person** or, with respect to any **Wrongful Act** described in the definition of **Employment Claim**, against the **Organization** commenced by the filing of a notice of charge, formal investigative order or similar document, including without limitation any proceeding by the Equal Employment Opportunity Commission or other similar governmental authority;
- provided **Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- D. **"Defamation Claim"** means any **Claim** to the extent it is for a **Wrongful Act** in connection with any actual or alleged libel, slander, or any other kind of defamation.
- E. **"Defense Costs"** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Organization**) incurred by the **Insureds** in investigating, adjusting, defending or appealing **Claims** and the premium for appeal, attachment or similar bonds but without any obligation to apply for or furnish any such bonds.
- F. **"Domestic Partner"** means any natural person qualifying as a domestic partner under either (1) the provisions of any applicable federal, state or local law, or (2) the provisions of any formal program established by the **Organization**.
- G. **"Employment Claim"** means any **Claim** to the extent it is brought and maintained by or on behalf of any past, present or prospective employee of the **Organization** for a **Wrongful Act** in connection with any actual, alleged or constructive wrongful dismissal, discharge or termination of employment; breach of any oral, written or implied employment contract or quasi-employment contract; employment-related misrepresentation; violation of any federal, state or local statute, regulation, ordinance, common law or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; wrongful demotion or adverse change in the terms, conditions or status of employment; failure to grant tenure; failure to adopt adequate workplace or employment policies and procedures; **Retaliation**; negligent hiring; negligent evaluation of employees; wrongful reference; employment-related invasion of privacy; employment-related defamation; employment-related wrongful infliction of emotional distress; or other employment-related torts.
- H. **"Executive Officer(s)"** means with respect to any **Organization**, its chairperson, president, chief executive officer, chief operating officer, executive director, chief financial officer, in-house general counsel and, solely with respect to an **Employment Claim**, director of human resources, and any person holding a position equivalent to any of such positions.

- I. **“Financial Impairment”** means the status of the **Organization** resulting from:
1. the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Organization**; or
 2. the **Organization** becoming a Debtor-In-Possession.
- J. **“Insured Person(s)”** means any person who has been, now is or shall become a duly elected or appointed director, trustee or officer, or any employee, volunteer or member of the staff, faculty or duly constituted committee, of the **Organization**.
- K. **“Insured(s)”** means:
1. **Insured Persons**; and
 2. with respect to Insuring Agreements B and C only, the **Organization**.
- L. **“Interrelated Wrongful Acts”** means **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.
- M. **“Loss”** means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements and **Defense Costs** for which the **Insureds** become legally obligated to pay; however, except as otherwise expressly provided in this Policy, **Loss** shall not include (i) civil or criminal fines or penalties imposed by law, (ii) taxes, (iii) **Benefits** due or to become due or the equivalent of such **Benefits**, (iv) any amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**, (v) any amount that represents or is substantially equivalent to disgorgement or restitutionary or rescissionary damages, or forfeiture of any profits or remuneration, (vi) any amount incurred by an **Insured** in connection with any proceeding or investigation that is not then a **Claim** against such **Insured**, even if such amount also benefits the defense of a covered **Claim** or if such proceeding or investigation subsequently gives rise to a covered **Claim**, (vii) costs incurred by the **Organization** to comply with any injunctive or other non-monetary relief or an agreement to provide such relief, or (viii) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.
- Loss** shall specifically include (subject to this Policy’s other terms, conditions and limitations, including, but not limited to, exclusions relating to profit or advantage, deliberate fraud or deliberate criminal acts) punitive, exemplary and multiple damages, or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.
- Loss** shall also specifically include (subject to this Policy’s other terms, conditions and limitations) any 10% penalty excise tax imposed upon an **Insured** pursuant to 26 U.S.C. §4958(a)(2) for participation in an Excess Benefit transaction, provided **Loss** shall not include (i) any penalty excise tax imposed upon an **Insured Person** who in fact received an Excess Benefit and any **Defense Costs** incurred by such **Insured Person** relating thereto, or (ii) any Excess Benefit penalty excise tax imposed upon any **Insured** if a 200% Excess Benefit penalty excise tax is assessed against any **Insured**. For purposes of this paragraph, “Excess Benefits” means an excess benefit as defined in 26 U.S.C. §4958.
- N. **“Named Insured”** means the organization designated in Item 1 of the Declarations.
- O. **“Non-Profit Outside Entity”** means any non-profit corporation, community chest, fund or foundation that is (i) not included in the definition of **Organization**, and (ii) exempt from federal income tax under the Internal Revenue Code of 1986, as amended.
- P. **“Non-Profit Outside Position”** means the position of director, officer, manager, trustee or other equivalent executive position held by any director, trustee or officer of the **Organization** in a **Non-Profit**

Outside Entity if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to such person by the **Organization**.

- Q. **“Organization”** means the **Named Insured** and any **Subsidiary**.
- R. **“Policy Period”** means the period specified in Item 2 of the Declarations, subject to prior termination in accordance with Section XI.
- S. **“Retaliation”** means retaliatory treatment against an employee of the **Organization** on account of such individual:
1. exercising his or her rights under law, including but not limited to rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
 2. refusing to violate any law;
 3. having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the **Organization**;
 4. disclosing or threatening to disclose to a superior, to any governmental authority or to the public any alleged violations of law; or
 5. filing any claim against the **Organization** under the Federal False Claims Act or any other similar “whistle blower” federal, state or local statutory law or common law anywhere in the world.
- T. **“Subsidiary”** means:
1. an organization with respect to which the **Named Insured** on or prior to inception of this Policy, either directly or indirectly through one or more of its **Subsidiaries**, owns more than 50% of the outstanding securities or controls more than 50% of the outstanding voting rights representing the present right to vote for election of directors or equivalent positions;
 2. any other organization expressly included as a **Subsidiary** by written endorsement to this Policy; and
 3. any organization acquired or created during the **Policy Period** and covered as a **Subsidiary** pursuant to Section XII(a).

An organization becomes a **Subsidiary** at the time the circumstances described in paragraph (1), (2) or (3) above first apply to such organization. An organization ceases to be a **Subsidiary** at the time such circumstances no longer apply to such organization.

In all events, coverage as is otherwise afforded under this Policy with respect to a **Claim** made against a **Subsidiary** or its **Insured Persons** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a covered **Subsidiary** as provided above and prior to the time that such **Subsidiary** ceased to be a covered **Subsidiary**.

- U. **“Third Party Discrimination Claim”** means any **Claim** to the extent it is brought and maintained by or on behalf of a customer or client of the **Organization** or other third party for a **Wrongful Act** in connection with any actual or alleged discrimination, sexual harassment or violation of an individual’s civil rights.
- V. **“Wrongful Act”** means:
1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Insured Persons** in their respective capacities as such or by a director, trustee or officer of the **Organization** in a **Non-Profit Outside Position** or, with respect to Insuring Agreement C, by the **Organization**, or

2. any other matter claimed against the **Insured Persons** solely by reason of their status as **Insured Persons** or against a director, trustee or officer of the **Organization** solely by reason of service in a **Non-Profit Outside Position**.

III. EXTENSIONS

A. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

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

B. HEARING/TRIAL ATTENDANCE EXPENSES AND LOSS OF EARNINGS

The **Insurer** will pay up to \$250 per day per person for actual loss of earnings and reasonable expenses incurred by an **Insured Person** to attend hearings and trials at the **Insurer's** express written request in connection with a covered **Claim**; provided, however, the **Insurer's** maximum liability for all such loss of earnings and expenses on account of each **Claim**, regardless of the number of hearings, trials, or persons attending, shall be \$5,000. The preceding sentence creates a sublimit which shall be part of and not in addition to the **Insurer's** aggregate Limit of Liability under this Policy as set forth in Item 3 of the Declarations. Any amounts paid by the **Insurer** under this Section III.B shall reduce the aggregate Limit of Liability for all **Loss** under this Policy as set forth in Item 3 of the Declarations. No Retention shall apply to coverage afforded under this Section III.B.

IV. EXCLUSIONS

A. The **Insurer** shall not be liable under any Insuring Agreement to make any payment for **Loss** as a result of a **Claim** made against an **Insured**:

1. arising out of, based upon or attributable to the gaining of any profit, remuneration or financial advantage to which such **Insured** was not legally entitled, as evidenced by a written statement or written admission by such **Insured** or a judgment or other final adjudication in the underlying action or in a separate action, alternative dispute resolution process (including one pursuant to Section XV) or other proceeding;
2. arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent act by such **Insured**, as evidenced by a written statement or written admission by such **Insured** or a judgment, ruling or other finding of fact in the underlying action or in a separate action, alternative dispute resolution process (including one pursuant to Section XV) or other proceeding;
3. alleging, arising out of, based upon or attributable to:
 - a) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any policy of which this Policy is a direct or indirect renewal or replacement or under any similar policy; or
 - b) any **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (a) above, constitute **Interrelated Wrongful Acts**;
4. alleging, arising out of, based upon or attributable to:
 - a) any demand, suit, proceeding or formal investigation pending on or before the date stated in Item 5 of the Declarations; or

- b) any **Wrongful Act** alleged in such pending or prior demand, suit, proceeding or formal investigation, or any **Wrongful Act** whenever occurring, which together with any **Wrongful Act** alleged in such pending or prior demand, suit, proceeding or formal investigation, constitute **Interrelated Wrongful Acts**;
- 5. alleging, arising out of, based upon or attributable to any actual or alleged act or omission of the **Insured Persons** in their capacities as directors, officers, trustees, governors, employees, volunteers, members of the staff, faculty or a committee, general counsel, risk manager or in the case of a limited liability company, members of the management board (or equivalent position), of any organization other than the **Organization**, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Organization**; provided, however, this exclusion shall not apply with respect to any **Claim** for **Wrongful Acts** in a **Non-Profit Outside Position**;
- 6. which is brought or maintained by, or on behalf of, or in the right of (whether such right is transferred or assigned by operation of law or otherwise) the **Organization**, whether directly or derivatively, unless such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured Person** or any **Organization**;
- 7. for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property or loss of use of tangible property whether or not damaged or destroyed;
- 8. alleging, arising out of, based upon or attributable to:
 - a) any actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time; or
 - b) any request, demand or order to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants,

including but not limited to such a **Claim** alleging damage to the **Organization** or its members or constituents; provided, however, this exclusion shall not apply to any **Employment Claim** for **Retaliation**.

"Pollutants" include, but are not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. "Waste" includes, but is not limited to, material to be recycled, reconditioned, or reclaimed and nuclear materials;

- 9. for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 or the Health Insurance Portability and Accountability Act of 1996, or amendments thereto or any similar provisions of state or foreign statutory or common law, upon fiduciaries of any employee benefit plan sponsored by the **Organization**; or
 - 10. alleging, arising out of, based upon, or attributable to any failure or omission by an **Insured** to obtain, effect or maintain adequate insurance.
- B. The **Insurer** shall not be liable under Insuring Agreement C to make any payment for **Loss** as a result of a **Claim** made against an **Organization**:
- 1. for any actual or alleged obligation under or breach of any oral or written contract or agreement, including any liability of others assumed by the **Organization** under any such contract or agreement; provided, however, this exclusion shall not apply (i) to an actual or alleged breach of an implied contract in an **Employment Claim**, or (ii) to the extent the **Organization** would have been liable for such **Loss** in the absence of such contract or agreement;

2. alleging, arising out of, based upon, or attributable to any actual or alleged obligation of the **Organization** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or any similar federal, state or local statutory law or common law anywhere in the world; provided, however, this exclusion shall not apply to any **Employment Claim** for **Retaliation**; or
 3. for any actual or alleged violation of the Fair Labor Standards Act (except the Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law or common law anywhere in the world; provided, however, this exclusion shall not apply to any **Employment Claim** for **Retaliation**.
- C. For the purpose of determining the applicability of Exclusions A.1 and 2, the **Wrongful Acts** of and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**. Only the knowledge possessed by an **Executive Officer** shall be imputed to the **Organization**.

V. LIMIT OF LIABILITY (FOR ALL LOSS OTHER THAN DEFENSE COSTS)

The Limit of Liability stated in Item 3 of the Declarations is the maximum aggregate liability of the **Insurer** for all **Loss**, other than **Defense Costs**, under all Insuring Agreements, combined, as a result of all covered **Claims**, regardless of the number of **Claims** or the time of payment by the **Insurer**. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**.

Except as provided below, **Defense Costs** are not part of and shall not reduce the Limit of Liability. The **Insurer's** liability under any Insuring Agreement for **Defense Costs** shall be in addition to the Limit of Liability. However, the **Insurer's** liability for **Defense Costs**, including the **Insurer's** duty to defend any **Claim**, shall cease upon exhaustion of the Limit of Liability or upon the **Insurer's** offer to pay the full amount of the remaining Limit of Liability. Notwithstanding the foregoing, if the **Insureds** elect to assume the duty to defend a **Claim** or refuse to consent to a proposed settlement pursuant to Section IX below, then all covered **Defense Costs** incurred thereafter as a result of such **Claim** shall be part of and shall reduce the Limit of Liability stated in Item 3 of the Declarations.

All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be one **Claim** for purposes of this Policy, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against an **Insured**, regardless of whether such date is before or during the **Policy Period**.

VI. RETENTION

The **Insurer** shall only be liable for the amount of **Loss** as a result of each **Claim** which is in excess of the applicable Retention amount stated in Item 4 of the Declarations. Such Retention shall be borne by the **Insureds** and shall remain uninsured. If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

If the **Organization**:

- A. is permitted or required by common or statutory law to indemnify the **Insured Persons** for **Loss** or to advance **Defense Costs** on their behalf; and
- B. fails or refuses, other than for reason of **Financial Impairment**, to indemnify the **Insured Persons** for such **Loss** or to advance such **Defense Costs**,

then any payment of such **Loss** or advancement of such **Defense Costs** by the **Insurer** under Insuring Agreement A shall be subject to the applicable Insuring Agreement B Retention amount stated in Item 4 of the Declarations. All other **Loss** covered under Insuring Clause A shall not be subject to a Retention.

For purposes of this Section VI, the **Organization** shall be deemed to indemnify the **Insured Persons** for **Loss** and to advance such **Defense Costs** to the fullest extent permitted or required by law, and hereby agrees to indemnify the **Insured Persons** for such **Loss** and to advance such **Defense Costs** to the fullest extent permitted or required by law, including the making in good faith of any required application for court approval.

While the **Organization** is unable to indemnify the **Insured Persons** for **Loss** or to advance **Defense Costs** because of its **Financial Impairment**, no Retention shall apply to such **Loss** or **Defense Costs**; provided the **Insureds** shall take all action reasonably required to obtain court approval or other authorization for any such indemnification or advancement.

VII. 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 of this Policy, the **Insurer** shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

- A. first, the **Insurer** shall pay any such **Loss** covered under Insuring Agreement A;
- B. second, only if and to the extent the payment under Insuring Agreement A does not exhaust the Limit of Liability, the **Insurer** shall pay any remaining **Loss** otherwise covered under this Policy.

Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer (or equivalent position) of the **Named Insured**, delay any payment of covered **Loss** otherwise due and owing under Insuring Agreement B and/or C until such time as the **Named Insured** designates; provided the **Insurer's** liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

Any such delayed payment of **Loss** shall be available to the **Insurer** to pay **Loss** covered under Insuring Agreement A. If and to the extent the **Insurer** pays **Loss** under Insuring Agreement A out of funds withheld by the **Insurer** pursuant to this provision, the **Insurer's** liability to make a delayed payment of **Loss** under Insuring Agreement B and/or C shall be reduced by the amount of the payment under Insuring Agreement A.

VIII. NOTICE

All notices to the **Insurer** shall refer to the Policy Number and shall be given in writing and sent by mail, prepaid express courier or by facsimile, to the address or facsimile number listed in Item 7 of the Declarations and shall be effective upon receipt.

The **Organization** or an **Insured Person** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer** at the address or facsimile number listed in Item 9 of the Declarations of a **Claim** made against an **Insured** as soon as practicable after the **Named Insured's** chief executive officer (or equivalent position) first becomes aware of the **Claim**, but in all events no later than sixty (60) days after the end of the **Policy Period** or the Extended Reporting Period (if applicable).

If during the **Policy Period** the **Organization** or an **Insured Person** first becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and during the **Policy Period** gives written notice to the **Insurer** of the circumstances, the anticipated allegations of **Wrongful Act(s)** and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against an **Insured** arising out of such circumstances shall be considered made at the time such notice of circumstances was first given to the **Insurer**. However, the **Insurer** shall not be liable under this Policy for any amount incurred by an **Insured** in the defense, investigation or settlement of any such potential **Claim** prior to the date the **Claim** is actually made against the **Insured**.

IX. DEFENSE, SETTLEMENTS AND ALLOCATION

The **Insurer** shall have the right and duty to defend any **Claim** covered by this Policy, even if any of the allegations in such **Claim** are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease upon exhaustion of the Limit of Liability. However, if all **Insureds** against whom a **Claim** is made give notice to the **Insurer** within thirty (30) days after such **Claim** is first made that such **Insureds** elect to assume the

duty to defend such **Claim**, then the **Insurer's** duty to defend such **Claim** shall irrevocably cease as of the date of such notice, subject to the following:

- A. The **Insurer** shall advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** incur in connection with such **Claim** within ninety (90) days after receipt of itemized **Defense Costs** invoices;
- B. The **Insureds** agree that any **Defense Costs** advanced by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent it is finally determined that such **Defense Costs** are not covered under this Policy; and
- C. All **Defense Costs** incurred as a result of such **Claim** after the **Insurer** receives notice of such election shall be part of and shall reduce the Limit of Liability stated in Item 3 of the Declarations.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, make any settlement offer, stipulate to any judgment, select defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this Policy. The **Insurer's** consent shall not be unreasonably withheld.

The **Insurer** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require. Upon the **Insurer's** request, the **Insureds** shall attend proceedings, hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

The **Insurer** may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If any **Insured** refuses to consent to the settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, then all covered **Defense Costs** incurred as a result of such **Claim** after such refusal shall be part of and shall reduce the Limit of Liability stated in Item 3 of the Declarations, and the **Insurer's** maximum liability for all covered **Loss** as a result of such **Claim** shall not exceed the sum of:

- (1) The amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
- (2) Seventy-five percent (75%) of **Loss** incurred as a result of such **Claim** in excess of the amount specified in (1) above.

Such payment limitation does not increase the **Insurer's** maximum liability under this Policy, as set forth in Item 3 of the Declarations.

If as a result of any **Claim** an **Insured** incurs both **Loss** covered under this Policy and loss not covered under this Policy, either because such **Claim** is made against both the **Insured** and others or because such **Claim** includes both covered and uncovered matters, then such amount shall be allocated between covered **Loss** and uncovered loss based on the relative legal and financial exposures of the parties to such covered and uncovered matters, and in the event of a settlement, also based on the relative benefit to the parties from settlement of such covered and uncovered matters.

X. EXTENDED REPORTING PERIOD

If the **Insurer** or the **Insureds** shall refuse to renew this Policy or if the **Named Insured** cancels this Policy, the **Insureds** shall have the right, upon payment of the Extended Reporting Period Premium stated in Item 6(a) of the Declarations, to a continuation of the coverage afforded by this Policy for the Additional Period stated in Item 6(b) of the Declarations following the effective date of such nonrenewal or cancellation (herein referred to as the "Extended Reporting Period"), but only to the extent a **Claim** is first made against the **Insureds** during the Extended Reporting Period for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this Policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within thirty (30) days after the effective date of nonrenewal or cancellation.

The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable. This Section and the rights contained herein shall not apply as a result of a renewal quotation with different terms and conditions than the expiring Policy.

XI. CANCELLATION

This Policy may be canceled by the **Named Insured** by surrender thereof to the **Insurer** or any of its authorized representatives or by mailing to the **Insurer** written notice stating when thereafter the cancellation shall be effective.

This Policy may be canceled by the **Insurer** for non-payment of premium by mailing to the **Named Insured** at the address shown in the Declarations written notice stating when not less than 10 days thereafter such cancellation shall be effective.

This Policy may be canceled by agreement of the **Insurer** and the **Named Insured**.

The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**.

If the **Named Insured** cancels this Policy, earned premium shall be the customary short rate amount of the annual premium, and if the **Insurer** cancels this Policy, earned premium shall be the pro rata amount of the annual premium; provided, however, if at the time of cancellation the Limit of Liability has been exhausted, the entire premium shall be considered earned. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. Mailing of the **Insurer's** check or the check of its representative shall be sufficient tender of any refund of premium due to the **Named Insured**.

XII. CHANGES IN CONTROL

A. New Subsidiaries

If during the **Policy Period**, an **Organization**:

1. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**, or
2. acquires another organization by merger into the **Organization**,

then subject to the terms and conditions of this Section XII,

- (a) if such organization is a not-for-profit entity under any applicable state statute or the Internal Revenue Code of 1986 (as amended), such organization and its subsidiaries and their respective **Insured Persons** shall automatically be **Insureds** under this Policy, and
- (b) if such organization is a for-profit entity, such organization and its subsidiaries and their respective **Insured Persons** shall be **Insureds** under this Policy only if the **Insureds** shall give the **Insurer** full details of the transaction in writing within 60 days of such acquisition, creation or merger and the **Organization** pays any additional premium and agrees to any amendment of the provisions of this Policy required by the **Insurer**, in its absolute discretion, relating to such new **Subsidiary**.

Any coverage afforded by reason of this Section XII shall apply only with respect to **Wrongful Acts** taking place after such acquisition, creation or merger. The **Insurer** shall not be liable under this Policy for any **Wrongful Act** or any **Interrelated Wrongful Acts** of such new **Insureds** taking place in whole or in part before such acquisition, creation or merger.

B. Change in Control of **Named Insured**

Immediately upon the occurrence of any of the following:

1. the **Named Insured** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert;
2. any person or entity or group of persons and/or entities acting in concert shall acquire voting rights which result in control by such person(s) or group(s) of more than 50% of the outstanding voting rights representing the present right to vote for the election of directors or equivalent positions of the **Named Insured**; or
3. the appointment of a receiver, conservator, trustee, liquidator or rehabilitator or any similar official for or with respect to the **Named Insured**

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

then, this Policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective date of the Transaction, but there shall be no coverage afforded by any provision of this Policy for any actual or alleged **Wrongful Act** occurring after the effective date of the Transaction. This Policy may not be canceled after the effective date of the Transaction and the entire premium for this Policy shall be deemed earned as of such date.

The **Named Insured** 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.

XIII. SUBROGATION

In case of payment of **Loss** by the **Insurer** hereunder, the **Insurer** shall be subrogated to the amount of such payment to the **Insured's** right of recovery against any other person or organization for such **Loss**, and the **Insured** shall execute all papers required, and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this Policy unless such **Insured** has committed a deliberate criminal act, or deliberate fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled, and as to any of the foregoing, only as evidenced by a written statement or written admission by such **Insured** or a judgment or other final adjudication in the underlying action or in a separate action, alternative dispute resolution process (including one pursuant to Section XV) or other proceeding.

Any recovery (after payment of expenses incurred to obtain the recovery) with respect to a **Loss** shall be used to reduce the **Loss**, and so much of such recovery shall be paid to the **Insurer** as will reduce the **Loss** ultimately borne by the **Insurer** to what it would have been had the recovery preceded any payment of such **Loss** by the **Insurer**.

XIV. OTHER INSURANCE

Such insurance as is provided by 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 also be specifically excess over 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**.

XV. ARBITRATION

Only if requested by the **Insured**, 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 **Insured**, 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.

XVI. AUTHORIZED REPRESENTATIVE

It is agreed that the **Named Insured** shall act on behalf of its **Subsidiaries** and all **Insured Persons** with respect to giving notice of **Claim**, giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to an Extended Reporting Period.

XVII. ALTERATION, ASSIGNMENT AND HEADINGS

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

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

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

XIX. REPRESENTATIONS

By acceptance of this Policy the **Insureds** agree that the statements in the **Application** are their agreements and representations and that this Policy is issued in reliance upon the truth of such agreements and representations, which are deemed material to the acceptance of the risk or the hazard assumed by the **Insurer** under the Policy.

The **Insureds** agree that in the event that any such agreements and representations are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

- A. the **Organization**, under Insuring Agreement B, to the extent it indemnifies any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**, and
- B. the **Organization**, under Insuring Agreement C, if any **Executive Officer** knew the facts that were not truthfully disclosed in the **Application**,

whether or not such **Insured Person** or **Executive Officer** knew of such untruthful disclosure in the **Application**. No knowledge of one **Insured Person** shall be imputed to any other **Insured Person**.

Coverage under Insuring Agreement A shall not be rescinded or voided by the **Insurer** in whole or in part for any reason; provided, however, if the **Organization** is permitted or required by law to indemnify an **Insured Person** who knew the facts that were not truthfully disclosed, or to advance **Defense Costs** on behalf of such **Insured Person**, and does not in fact do so other than because of **Financial Impairment**, then this Policy shall not afford any coverage for such **Insured Person** under Insuring Agreement A.

XX. ENTIRE AGREEMENT

This Policy, including the Declarations, **Application** and Endorsements, embodies all agreements existing between the **Named Insured** and the **Insurer** or any of its agents relating to this insurance.