

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to the Declarations and all of the terms, conditions and limitations of this Policy, the Underwriter, the **Parent Organization** and the **Insured Persons** agree as follows:

I. INSURING AGREEMENT

- (A) The Underwriter will pay, on behalf of the **Insured Persons**, **Loss** from any **Claim** first made against the **Insured Persons** during the **Policy Period** or applicable Extended Reporting Period for a **Wrongful Act**, but only if such **Loss** is not paid:
- (1) because of a **Drop Down Event**; or
 - (2) because the total limits of liability of all applicable **Underlying Insurance** have been exhausted by actual payment thereunder.
- (B) Any coverage for **Loss** provided pursuant to paragraph (A)(1) above because of a **Drop Down Event** shall:
- (1) be provided pursuant to the terms, conditions and limitations of this Policy;
 - (2) attach at the point where such **Underlying Insurance** would have attached had a **Drop Down Event** not occurred;
 - (3) subject to Section V LIMITS OF LIABILITY, be limited to the extent of the unexhausted portion of the limit of liability of the **Underlying Insurance** for which this Policy is providing coverage pursuant to the **Drop Down Event**; and
 - (4) be without prejudice to the Underwriter's excess position.
- (C) Any coverage for **Loss** provided pursuant to paragraph (A)(2) above because the total limits of liability of all applicable **Underlying Insurance** have been exhausted by actual payment thereunder shall apply in conformance with, and will follow the form of, the terms and conditions of the **Primary Policy**; provided, that:
- (1) the following provisions of this Policy shall remain applicable and shall supersede any equivalent provisions in the **Primary Policy**:
 - (a) the definitions of **Application**, **Policy Period** and **Underlying Insurance** set forth in Section II DEFINITIONS; and
 - (b) Section V LIMITS OF LIABILITY, Section XII ACQUISITION/CREATION OF ANOTHER ORGANIZATION, Section XVI EXTENDED REPORTING PERIOD, Section XVII RUN-OFF QUOTE, Section XVIII CANCELLATION; NONRENEWAL, Section XIX REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION, Section XXI NOTICE, Section XXII ROLE OF PARENT ORGANIZATION, Section XXIV CHANGES and Section XXV ASSIGNMENT; and

- (2) any defined term used in any Section referred to in paragraph (C)(1) above, other than the defined terms listed in paragraph (C)(1)(a) above, shall follow the form of any equivalent defined term in the **Primary Policy**.
- (D) In no event shall this Policy provide coverage to any **Organization** or entity, including but not limited to coverage for any loss for which an **Organization** or **Outside Entity** grants indemnification to an **Insured Person**.

II. DEFINITIONS

- (A) "**Application**" means the application(s) attached to and forming part of this Policy, including any materials submitted and statements made in connection therewith, all of which are on file with the Underwriter and are a part of this Policy, as if physically attached. If any **Application** uses any terms or phrases that differ from terms defined in this Policy, no inconsistency between any term or phrase used in the **Application** and any term defined in this Policy will waive or change any of the terms and conditions of this Policy.
- (B) "**Claim**" means:
- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 - (2) a civil proceeding commenced by the service of a complaint or similar pleading;
 - (3) a civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
 - (4) a criminal proceeding commenced by the return of an indictment, information or similar document;
 - (5) an official request for **Extradition**, including the execution of a warrant for the arrest of an **Insured Person** where such execution of such warrant is an element of the formal process of **Extradition**; or
 - (6) an arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document, against an **Insured Person** for a **Wrongful Act**;
 - (7) a civil, criminal, administrative or regulatory investigation of an **Insured Person** for a **Wrongful Act** commenced by the service upon or other receipt of the **Insured Person** of a written notice from the investigating authority specifically identifying the **Insured Person** as a target individual against whom a proceeding described in (2), (3) or (4) above may be commenced, including when such **Insured Person** is served with a Wells Notice or a target letter; or
 - (8) a subpoena received by an **Insured Person** in connection with a proceeding described in (2), (3), (4) or (7) above or in connection with any equivalent action against an **Organization**; in such event, the Underwriter shall pay **Defense Expenses** incurred by such **Insured Person** in responding to such subpoena.
- (C) "**Defense Expenses**" means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim** and the

premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured Person** or employee of the **Organization** or monies advanced by any **Underlying Insurer**.

- (D) **"Domestic Partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.
- (E) **"Drop Down Event"** means when one or more of the **Underlying Insurers**:
- (1) is financially unable to indemnify an **Insured Person** for **Loss**, including where the **Underlying Insurer** is precluded from indemnifying an **Insured Person** for **Loss** because of a receivership;
 - (2) denies coverage in writing to an **Insured Person** for **Loss** pursuant to the terms and conditions of the **Underlying Insurance** or fails to respond to a written request for indemnification by an **Insured Person** within sixty (60) days of such request;
 - (3) rescinds or voids, or provides to an **Insured Person** or an **Organization** written notification of an intent to rescind or void, or files a complaint or initiates any other proceeding seeking to rescind or void, any **Underlying Insurance**; or
 - (4) is unable to pay **Loss** because a United States bankruptcy court, or any foreign equivalent thereof, has either ruled that such proceeds are subject to an automatic stay, injunction or other order, or that such proceeds are otherwise deemed a part of the debtor's estate in connection with a reorganization or liquidation proceeding commenced against an **Organization** pursuant to the United States Bankruptcy Code or any foreign equivalent thereof, and an **Insured Person** or an **Organization** has requested that the **Underlying Insurer** seek relief from the automatic stay, injunction or order.
- (F) **"Extradition"** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to answer any criminal accusation.
- (G) **"Independent Director"** means any director or member of the Board of Managers of an **Organization** who is not and has never been an officer or employee of any **Organization**.
- (H) **"Insured Person"** means any natural person who was, now is or shall become:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, in-house general counsel, risk manager, comptroller, director of investor relations or director of human resources of any **Organization** chartered in the United States of America;
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in any jurisdiction other than the United States of America or its territories or possessions; or
 - (3) a full-time, part-time, seasonal or temporary employee of the **Organization**, other than any natural person described in paragraph (1) or (2) above; provided, that coverage for any such employee shall only apply if a **Claim** against such employee is also made and continuously maintained against at least one **Insured Person** described in paragraph (1) or (2) above.
- (I) **"Loss"** means **Defense Expenses** and the monetary amount that an **Insured Person** becomes

legally obligated to pay as a result of any **Claim** for which an **Organization** (or, if applicable, an **Outside Entity**) refuses, fails, is financially unable or is not permitted to indemnify an **Insured Person** for any reason, including but not limited to:

- (1) monetary damages (including punitive or exemplary damages or the multiple portion of any multiplied damage award, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the relevant **Insured Persons**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages);
- (2) judgments;
- (3) settlements;
- (4) pre- and post-judgment interest;
- (5) taxes imposed by law upon an **Insured Person** in his or her capacity as such in connection with any bankruptcy, receivership, conservatorship or liquidation of an **Organization**;
- (6) civil penalties levied against an **Insured Person** pursuant to 15 U.S.C. §78dd-2(g)(2)(B) (the Foreign Corrupt Practices Act); and
- (7) any amount attributable to violations of Section 11 and 12 of the Securities Act of 1933, as amended, to the extent such amount is insurable under the law pursuant to which this Policy is construed.

Loss does not include:

- (a) any amount not insurable under the law pursuant to which this Policy is construed, except as provided in paragraph (1) above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award;
- (b) civil or criminal fines or penalties, except as provided in paragraph (1) above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award and as provided in paragraph (6) above with respect to the specified civil penalties;
- (c) taxes or tax penalties (whether imposed by a federal, state, local or other governmental authority), except as provided in paragraph (5) above; or
- (d) any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief.

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

- (K) **"Organization"** means:
- (1) the **Parent Organization**;
 - (2) any **Subsidiary**; and
 - (3) any entity in (1) or (2) above as a debtor in possession.
- (L) **"Outside Capacity"** means service by an **Insured Person** in the position of director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the specific request or direction of the **Organization**.
- (M) **"Outside Entity"** means:
- (1) any not-for-profit organization that is not included in the definition of **Organization**; and
 - (2) any entity specifically added as an **Outside Entity** by written endorsement to this Policy.
- (N) **"Parent Organization"** means the entity designated as such in ITEM 1 of the Declarations.
- (O) **"Policy Period"** means the period from the Inception Date stated in ITEM 2(a) of the Declarations to the Expiration Date stated in ITEM 2(b) of the Declarations or to any earlier cancellation date.
- (P) **"Primary Policy"** means the policy scheduled as such in ITEM 4 of the Declarations.
- (Q) **"Related Claims"** means all **Claims for Wrongful Acts** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally or in any other way.
- (R) **"Subsidiary"** means, subject to the provisions of Sections XII and XIV of this Policy:
- (1) any not-for-profit entity, and any for-profit entity whose securities are not publicly traded, during any time which the **Parent Organization** has **Management Control** of such entity, either directly or through one or more **Subsidiaries**; and
 - (2) any joint venture entity during any time which the **Parent Organization**, either directly or through one or more **Subsidiaries**, has **Management Control** of such joint venture entity pursuant to a written joint venture agreement.
- (S) **"Underlying Insurer"** means the insurer(s) of each respective policy of insurance scheduled in ITEM 4 of the Declarations.
- (T) **"Underlying Insurance"** means the policy(ies) of insurance scheduled in ITEM 4 of the Declarations and all renewals or replacements thereof.
- (U) **"Wrongful Act"** means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured Person** in his or her capacity as such, or any matter asserted against any **Insured Person** solely by reason of his or her status as such; or

- (2) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by any **Insured Person** in his or her **Outside Capacity**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for, **Loss** from any **Claim**:

- (A) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, was the subject of any notice given under any policy or coverage section of which this Policy or any **Underlying Insurance** is a direct or indirect renewal or replacement;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior and/or pending litigation or administrative, regulatory or arbitration proceeding against any **Insured Person** as of the applicable Pending or Prior Date stated in ITEM 5 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
- (C) brought by or on behalf of the **Organization** with the approval of the **Parent Organization's** chief executive officer, chief financial officer or general counsel in the United States of America or Canada or their territories or possessions; provided, that this EXCLUSION (C) shall not apply to:
 - (1) **Defense Expenses** incurred by an **Insured Person** in connection with any such **Claim**;
 - (2) any **Claim** brought and maintained by one or more securityholders of the **Organization** in their capacity as such, provided such **Claim** is brought and maintained independently of, and without the solicitation, assistance, active participation or intervention of, the **Organization** or any **Insured Person**;
 - (3) any **Claim** brought by the bankruptcy trustee or examiner of the **Organization**, or any assignee of such trustee or examiner, or any receiver, conservator, rehabilitator, liquidator or comparable authority of the **Organization**; or
 - (4) any **Claim** brought against an **Insured Person** engaging in any protected activity under 18 U.S.C. 1514A ("whistleblower" protection provided under the Sarbanes-Oxley Act of 2002) or any similar "whistleblower" protection provision of any federal, state or local statute, ordinance, regulation or common law; or
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) the committing of any deliberately fraudulent or criminal act or omission, or any willful violation of any statute, rule or law by an **Insured Person**; or
 - (2) an **Insured Person** having gained any profit, remuneration or advantage to which such **Insured Person** is not legally entitled;provided, that this EXCLUSION (D) shall not apply:
 - (a) unless the deliberately fraudulent or criminal act or omission or willful violation of statute, rule or law, or the gaining of such profit, remuneration or advantage to which such

Insured Person is not legally entitled, has been established by a final adjudication in any judicial or administrative proceeding other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy;

- (b) to **Defense Expenses** incurred prior to a final adjudication described in subparagraph (a) above; or
- (c) to **Loss** incurred by an **Independent Director**.

For the purposes of determining the application of this EXCLUSION (D), no deliberately fraudulent or criminal act or omission, willful violation of statute, rule or law or gaining of any unlawful profit, remuneration or advantage by any **Insured Person** shall be imputed to any other **Insured Person**.

IV. Spouses, Estates and Legal Representatives

- (A) Subject to all limitations, conditions, provisions and other terms of this Policy, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
 - (1) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
 - (2) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.
- (B) All provisions of this Policy that are applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage extended pursuant to this Section IV shall not apply with respect to any loss resulting from an actual or alleged act, error or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

V. LIMITS OF LIABILITY

- (A) The Underwriter's maximum liability for all **Loss** resulting from each **Claim** for which this Policy provides coverage shall be the Limit of Liability set forth in ITEM 3(a) of the Declarations. The Underwriter's maximum aggregate liability for all **Loss** resulting from all **Claims** for which this Policy provides coverage shall be the Limit of Liability set forth in ITEM 3(b) of the Declarations.
- (B) **Defense Expenses** are part of and not in addition to the Limits of Liability set forth in ITEM 3 of the Declarations, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, such applicable Limits of Liability.
- (C) If the Underwriter's maximum aggregate Limit of Liability, as set forth in ITEM 3(b) of the Declarations, is exhausted by the payment of **Loss**, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the entire premium for this Policy will be fully earned.

VI. REPORTING OF CLAIMS AND CIRCUMSTANCES

(A) The **Insured Persons** must, as a condition precedent to any right to coverage under this Policy, give to the Underwriter written notice of any **Claim** as soon as practicable after the **Organization's** risk manager or general counsel (or an equivalent position thereof) first becomes aware of such **Claim**, and in no event later than:

- (1) with respect to any **Claim** first made during the **Policy Period**, ninety (90) days after the end of the **Policy Period**; or
- (2) with respect to any **Claim** first made during any applicable Extended Reporting Period, ninety (90) days after the end of the Extended Reporting Period.

Timely and sufficient notice by one **Insured Person** of a **Claim** shall be deemed timely and sufficient notice for all **Insured Persons** involved in the **Claim**. Such notice shall give full particulars of the **Claim**, including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insured Persons** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which the **Insured Persons** first became aware of such **Wrongful Act**.

(B) If, during the **Policy Period**, an **Insured Person** or the **Organization** first becomes aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and:

- (1) gives the Underwriter written notice of such **Wrongful Act** with full particulars as soon as practicable thereafter but in any event before the end of the **Policy Period**; and
- (2) requests coverage under this Policy for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured Person** arising out of such **Wrongful Act** shall, subject to paragraph (C) below, be treated as if it had been first made during the **Policy Period**. The full particulars required in any notice given under paragraph (B)(1) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insured Persons**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insured Persons** or **Organization** first became aware of such **Wrongful Act**, and the reasons why the **Insured Persons** or **Organization** believe the **Wrongful Act** is likely to result in a **Claim** being made.

(C) All **Related Claims**, whenever made, shall be deemed a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with paragraph (B) above, whichever is earlier.

VII. DEFENSE AND SETTLEMENT

(A) It shall be the duty of the **Insured Persons** and not the duty of the Underwriter to defend **Claims** made against the **Insured Persons**. The Underwriter shall have the right to participate with the **Insured Persons** in the investigation, defense and settlement of any **Claim** that appears reasonably likely to be covered in whole or in part under this Policy, including but not limited to the selection of appropriate defense counsel and the negotiation of a settlement of any such **Claim**.

(B) No **Insured Person** may admit any liability for any **Claim**, settle or offer to settle any **Claim** or incur any **Defense Expenses** without the Underwriter's prior written consent, which shall not be

unreasonably withheld.

- (C) With respect to any **Defense Expenses** for which this Policy provides coverage, the Underwriter shall, upon request from an **Insured Person**, advance **Defense Expenses** on a current basis.

VIII. UNDERLYING INSURANCE

- (A) As long as this Policy is in effect, all **Underlying Insurance** must continuously be kept in full force and effect, provide no less coverage than provided by all of the insurance policies scheduled in ITEM 4 of the Declarations and provide no lower limits of liability than those scheduled in ITEM 4 of the Declarations, except to the extent such limits are reduced or exhausted due to the payment of covered **Claims** under such **Underlying Insurance**. If at any time, for a reason other than a **Drop Down Event**, any **Underlying Insurance** is not kept in full force and effect, provides less coverage or otherwise contains provisions with changes from the provisions originally applicable to such **Underlying Insurance** as scheduled in ITEM 4 of the Declarations or has limits of liability of a lesser amount than those scheduled in ITEM 4 of the Declarations, then the Underwriter will not be liable under this Policy earlier or to any greater extent than it would have been if such **Underlying Insurance** was still in full force and effect, contained its original provisions, and had the original scheduled limits of liability.
- (B) If any **Underlying Insurance** contains an insuring agreement or a grant of coverage with a limit of liability of a lesser amount than that scheduled in ITEM 4 of the Declarations, then:
- (1) if no **Drop Down Event** occurs, this Policy shall not apply to such insuring agreement or grant of coverage; provided, that for the purposes of determining when the coverage afforded under this Policy shall attach, the applicable limits of liability of such **Underlying Insurance** will be deemed to have been eroded (or exhausted) by payment of loss, damages, judgments, settlements or defense expenses under such insuring agreement or grant of coverage; or
 - (2) if a **Drop Down Event** occurs and this Policy provides coverage for **Loss** pursuant to INSURING AGREEMENT (A)(1) above, this Policy shall offer such insuring agreement or grant of coverage pursuant to the terms and conditions of the **Underlying Insurance** for which this Policy is providing coverage pursuant to such **Drop Down Event**, including but not limited to the limit of liability applicable to such insuring agreement or grant of coverage under such **Underlying Insurance**; provided, that nothing in this paragraph (2) is intended, nor shall it be construed, to obligate or require the Underwriter to pay **Loss** under this Policy in an amount exceeding the available applicable Limit of Liability of this Policy.

IX. TERRITORY

Coverage shall extend anywhere in the world.

X. ASSISTANCE AND COOPERATION

In the event of a **Claim**, the **Insured Persons** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured Persons** shall assist in: investigating, defending and settling **Claims**; enforcing any right of contribution or indemnity against another who may be liable to any **Insured Person**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

XI. SUBROGATION

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insured Persons**, including any such right to indemnification from any **Organization** or other source. The **Insured Persons** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured Persons**, including any action against any **Organization** for indemnification or any insurer for failure to pay any indemnity due and owing to the **Insured Persons**. The **Insured Persons** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insured Persons** under this Section XI shall survive the expiration or termination of this Policy.

In no event, however, shall the Underwriter seek subrogation against any **Insured Person** under this Policy unless:

- (A) such **Insured Person** has been convicted of a criminal act;
- (B) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured Person** committed a deliberately fraudulent or criminal act or omission, or willfully violated any statute, rule or law; or
- (C) it has been determined by a final adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured Person** gained any profit, remuneration or advantage to which such **Insured Person** was not legally entitled.

This Policy has been issued to the **Parent Organization** with the understanding and agreement that each **Organization** agrees to fulfill its indemnification obligations, if any, to the **Insured Persons**, and if the Underwriter pays, as **Loss**, any indemnification owed to any **Insured Person** by any **Organization**, the Underwriter does not waive or compromise any of its rights to recover such **Loss** from such **Organization**.

XII. ACQUISITION/CREATION OF ANOTHER ORGANIZATION

- (A) If before or during the **Policy Period** an **Organization**:
 - (1) acquires **Management Control** 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 or consolidation with an **Organization** such that the **Organization** is the surviving entity,

then any individuals of such other organization holding positions equivalent to those positions set forth in the definition of **Insured Person** in Section II DEFINITIONS shall be deemed **Insured Persons** under this Policy, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such acquisition or creation unless the Underwriter agrees, after presentation of a complete application and all other appropriate information, to provide coverage by written endorsement for **Wrongful Acts** committed or allegedly committed by such **Insured Persons** before such acquisition or creation.

- (B) If at the time of an acquisition or creation described in paragraph (A) above the total assets of

any such acquired or created organization exceed twenty-five percent (25%) (or the highest percentage amount set forth in any similar Changes in Exposure or Acquisition/Creation of Another Organization provision of any policy of **Underlying Insurance**, if such percentage amount is greater) of the total assets of the **Parent Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Parent Organization**, respectively, as of the date of such acquisition or creation), then the **Parent Organization** shall provide the Underwriter written notice of such acquisition or creation, containing full details thereof, as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, and the Underwriter, in its sole discretion, may require additional terms, conditions and imitations of coverage and additional premium shall be paid. If the **Parent Organization** fails to give such notice within the time specified in the preceding sentence or fails to pay the additional premium required by the Underwriter, coverage for such **Insured Persons** of such acquired or created organization shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation.

XIII. ACQUISITION BY ANOTHER ORGANIZATION

If:

- (A) the **Parent Organization** merges into or consolidates with another organization and the **Parent Organization** is not the surviving entity; or
- (B) another organization or person or group of organizations and/or persons acting in concert acquires **Management Control** of the **Parent Organization**,

then coverage under this Policy shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by the **Insured Persons** before such merger, consolidation or acquisition.

Upon the occurrence of any event described in paragraph (A) or (B) above, the entire premium for this Policy shall be deemed fully earned.

XIV. CESSATION OF SUBSIDIARY

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, coverage with respect to any **Insured Persons** of such **Subsidiary** shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed while such organization was a **Subsidiary**.

XV. OTHER INSURANCE

- (A) If any **Loss** under this Policy is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Policy), including **Underlying Insurance**, this Policy shall be excess of and shall not contribute with any such other insurance, regardless of whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise, and the premium for this Policy has been calculated accordingly.
- (B) This Policy is specifically excess of and shall not contribute with any insurance policy: (1) which is maintained by an **Outside Entity** and available to an **Insured Person**; or (2) for bodily injury or property damage, including any general liability policy or any liability policy providing coverage for environmental liability.
- (C) Nothing in this Section XV shall be construed to preclude this Policy from responding to a **Drop**

Down Event in accordance with the terms, conditions and limitations of this Policy.

XVI. EXTENDED REPORTING PERIOD

If this Policy is not renewed by the Underwriter or the **Parent Organization**, then an additional period of time during which **Claims** may be reported under this Policy (an "Extended Reporting Period") shall be made available as described in this Section XVI, but any such Extended Reporting Period shall apply only to **Claims** for **Wrongful Acts** committed or allegedly committed before the effective date of such non-renewal ("Termination Date") or the effective date of a merger, consolidation or acquisition described in Section XIII above, whichever is earlier. No Extended Reporting Period shall in any way increase the Underwriter's Limits of Liability stated in ITEM 3 of the Declarations, and the Underwriter's Limits of Liability for **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the applicable Limits of Liability stated in ITEM 3 of the Declarations. The offer of renewal terms, conditions, limits of liability, retentions or premium different from those in effect prior to renewal shall not constitute refusal to renew for purposes of this Section XVI.

The **Parent Organization** or **Insured Persons** may purchase an Extended Reporting Period for one of the periods of time stated in ITEM 7 of the Declarations by notifying the Underwriter in writing of its/their intention to do so no later than thirty (30) days after the Termination Date. The additional premium for an Extended Reporting Period shall equal the applicable percentage, as stated in ITEM 7 of the Declarations, of the full annual premium (including any premium adjustments made during the **Policy Period**) for this Policy, and must be paid no later than thirty (30) days after the Termination Date. The entire additional premium shall be deemed fully earned upon inception of such Extended Reporting Period.

If no election to purchase an Extended Reporting Period is made as described above, or if the additional premium for any such Extended Reporting Period is not paid within thirty (30) days after the Termination Date, there will be no right to purchase any Extended Reporting Period at any later time.

XVII. RUN-OFF QUOTE

- (A) Notwithstanding any extension of coverage that may otherwise be provided pursuant to Section XVI EXTENDED REPORTING PERIOD, in the event the **Parent Organization** is involved in a merger, consolidation or acquisition described in Section XIII ACQUISITION BY ANOTHER ORGANIZATION and provides notice of such merger, consolidation or acquisition within sixty (60) days of such merger, consolidation or acquisition, together with such other information as the Underwriter may require, the Underwriter shall provide the **Parent Organization** a quote for an extension of coverage (the "Run-Off Quote"), for such period as may be negotiated between the Underwriter and the **Parent Organization**, with respect to **Claims** for **Wrongful Acts** committed or allegedly committed by the **Insured Persons** before such merger, consolidation or acquisition.
- (B) Any coverage extension offered pursuant to the Run-Off Quote shall be subject to any additional or different terms, conditions and limitations of coverage and payment of such additional premium as the Underwriter, in its sole discretion, may require.
- (C) Should the **Parent Organization** accept the Run-Off Quote, any extension of coverage provided pursuant to the Run-Off Quote shall replace any extension of coverage that would otherwise be available to the **Parent Organization** and the **Insured Persons** pursuant to Section XVI EXTENDED REPORTING PERIOD.

XVIII. CANCELLATION; NONRENEWAL

- (A) The Underwriter may not cancel this Policy except for the **Parent Organization's** failure to pay a premium when due, in which case twenty (20) days' written notice will be given to the **Parent Organization** by the Underwriter.
- (B) The Underwriter will not be required to renew this Policy upon its expiration. The Underwriter will provide the **Parent Organization** with sixty (60) days' notice of any non-renewal.

XIX. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insured Persons** represent that the particulars and statements contained in the **Application** submitted for this Policy are true, accurate and complete, and agree that:
 - (1) this Policy is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
 - (2) those particulars and statements are the basis of the coverage granted by this Policy; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) With respect to any misrepresentations contained in the **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining the availability of coverage with respect to any **Claim** made against such other **Insured Person**.
- (C) The Underwriter shall not be entitled under any circumstances to void or rescind this Policy.

XX. NO ACTION AGAINST UNDERWRITER

- (A) No action shall be taken against the Underwriter by any **Insured Person** unless, as conditions precedent thereto, the **Insured Person** has fully complied with all of the terms of this Policy and the amount of the **Insured Person's** obligation to pay has been finally determined either by judgment against the **Insured Person** after adjudicatory proceedings, or by written agreement of the **Insured Person**, the claimant and the Underwriter.
- (B) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured Person**; nor shall the Underwriter be impleaded by an **Insured Person** or his or her legal representative in any such **Claim**.

XXI. NOTICE

- (A) Notice to the **Insured Persons** shall be sent to the **Parent Organization** at the address stated in ITEM 1 of the Declarations.
- (B) Notice to the Underwriter shall be sent to the address designated in ITEM 8 of the Declarations. Any such notice shall be effective on the date of receipt by the Underwriter at such address.

XXII. ROLE OF PARENT ORGANIZATION

By acceptance of this Policy, the **Parent Organization** agrees that it shall be considered the sole agent of, and shall act on behalf of, each **Insured Person** with respect to: (A) the payment

of premiums and the receiving of any return premiums that may become due under this Policy; (B) the negotiation, agreement to and acceptance of endorsements; and (C) the giving or receiving of any notice provided for in this Policy (except the giving of notice to purchase an Extended Reporting Period as provided in Section XVI EXTENDED REPORTING PERIOD or the giving of notice of **Claim** or circumstances as provided in Section VI REPORTING OF CLAIMS AND CIRCUMSTANCES). Each **Insured Person** agrees that the **Parent Organization** shall act on his or her behalf with respect to all such matters.

XXIII. VALUATION AND FOREIGN CURRENCY

All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. If a judgment is rendered, a settlement is denominated or any 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 of America dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

XXIV. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or estop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

XXV. ASSIGNMENT

No assignment of interest under this Policy shall bind the Underwriter without its written consent issued as a written endorsement to form a part of this Policy.

XXVI. BANKRUPTCY

- (A) Bankruptcy or insolvency of any **Organization** shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this Policy.
- (B) In the event a liquidation or reorganization proceeding is commenced by or against an **Organization** pursuant to the United States Bankruptcy Code, as amended, any similar law or any foreign equivalent thereof, the **Organization** and the **Insured Persons** hereby: (1) waive and release their rights to any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such Bankruptcy Code, similar law or foreign equivalent thereof, to the extent such waiver or release is allowable by such Bankruptcy Code, similar law or foreign equivalent thereof; and (2) agree not to oppose or object to any efforts by the Underwriter, the **Organization** or an **Insured Person** to obtain relief from any such stay or injunction.

XXVII. ENTIRE AGREEMENT

The **Insured Persons** agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

XXVIII. HEADINGS

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

SPECIMEN