

CORPORATE FIDUCIARY LIABILITY INSURANCE

(CLAIMS MADE INSURANCE)

THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY PROVIDED. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **INSURED** to pay the deductible herein and in reliance upon all statements made and information in the application, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the Company agrees with the **INSURED** as follows:

I. INSURING AGREEMENT

The Company shall pay on behalf of the **INSURED** all **LOSS** and **DEFENSE COSTS** that the **INSURED** becomes legally obligated to pay solely because of a **CLAIM** first made against the **INSURED** during the **POLICY PERIOD**, or the Extended Reporting Period if in effect, for a **WRONGFUL ACT** committed or allegedly committed by the **INSURED** or by any person for whom the **INSURED** is legally responsible.

II. DEFENSE AGREEMENT

A. COMPANY'S DUTY TO DEFEND

1. Except as hereinafter stated, the Company shall have both the right and duty to defend any **CLAIM** against an **INSURED** alleging a **WRONGFUL ACT**, even if such **CLAIM** is groundless, false or fraudulent.
2. The **INSURED** shall have the right, at their own cost and expense, to associate with the Company in the defense or settlement of any **CLAIM** subject to the provisions described in this clause. However, the Company shall not be obligated to defend any **CLAIM** after the applicable limit of the Company's liability has been exhausted or after the rejection of a settlement offer pursuant to Clause V(G)(1).

B. OPTION TO ASSUME DEFENSE

Notwithstanding the above, the **INSUREDS** shall have the right to assume the defense of any **CLAIM** made against them. Such option shall be made in writing by the **SPONSOR ORGANIZATION** on behalf of each and every **INSURED** and shall be exercised within thirty (30) days of the reporting of the **CLAIM** to the Company pursuant to Clause V(F) of this policy. Upon receipt of such written request, the Company shall tender the defense of the **CLAIM** to the **INSUREDS**. Once the defense has been so tendered, the Company cannot re-assume the defense of the **CLAIM**. The Company shall have the right, at its own cost and expense, to associate and participate with the **INSUREDS** in the defense or settlement of any **CLAIM**.

C. COMPANY'S RIGHT TO SELECT OR APPROVE COUNSEL

If the Company defends a **CLAIM** pursuant to Clause II(A)(1), it shall have the right to select legal counsel for such defense. If the **INSUREDS** elect to defend any **CLAIM** pursuant to the Clause II(B), the Company shall have the right to receive information regarding the legal counsel proposed by the **INSUREDS** and to consent to such counsel, which consent shall not be unreasonably withheld.

III. DEFINITIONS

A. **CLAIM** means:

1. A written demand for monetary or injunctive relief received by the **INSURED**; or
2. A civil proceeding for monetary or injunctive relief which is commenced by:
 - a. Service upon the **INSURED** of a complaint or similar pleading; or
 - b. Receipt by the **INSURED** of a notice of charges; or
3. Any notice received by the **INSURED** of a formal agency adjudicative proceeding to which the **INSUREDS** are subject; or
4. Any notice received by the **INSURED** of an investigation by the Department of Labor, the Pension Benefit Guaranty Corporation, or any similar governmental agency outside of the United States, for the purpose of enforcement of statutory provisions dealing with fiduciary responsibility and conduct.

B. **CLOSING AGREEMENT PROGRAM** means that portion of the program administered by the United States Internal Revenue Service ("IRS") which permits sponsor employers or qualified pension plans to avoid disqualification due to certain types of violations, by voluntarily advising the IRS, before or after audit by the IRS, of the violations, voluntarily remedying the violations and paying a fine or sanction as negotiated with and set by the IRS.

C. **DEFENSE COSTS** means fees and expenses incurred, with the Company's written consent, in defending, investigating, or appealing a **CLAIM** insured herein, including a **CLAIM** for non-pecuniary relief. **DEFENSE COSTS** shall also mean that portion of the cost of any bond required to be posted on appeal, which is the proportion of the available Limit of Liability under this Policy to the total amount of the judgment on which the appeal has been filed. The Company shall not be obligated to obtain such bond on appeal, but only to pay that portion of the cost of the bond as calculated pursuant to this Clause III(C). **DEFENSE COSTS** shall not include fees and expenses incurred with respect to any criminal action or proceeding.

D. **EMPLOYEE BENEFIT PLAN** means a **SPONSORED PLAN** or an **INSURED PLAN**.

E. **ERISA** means the Employee Retirement Income Security Act of 1974, and its amendments.

F. **FIDUCIARY** shall have the same meaning as that term is defined under **ERISA**.

G. **INSURED** means:

1. the **SPONSOR ORGANIZATION(S)**;
2. the **EMPLOYEE BENEFIT PLAN** or **PLANS** named in Item 1 of the Declarations;
3. Any past, present, or future director, officer, employee, or trustee of the **SPONSOR ORGANIZATION** or **SPONSORED PLAN**, or the estates, heirs, legal representatives, or assigns of such persons who are deceased, or incompetent, and the spouses of such persons, but only to the extent that **CLAIMS** are asserted against such spouses arising solely out of any actual or alleged **WRONGFUL ACTS** of the spouse who is an **INSURED** under this definition; and
4. Any director, officer, employee or trustee of the **SPONSOR ORGANIZATION** for any matter arising out of his or her service as a **FIDUCIARY** of any multi-employer plan as defined by **ERISA**, but only if such service is at the specific written request or direction of the **SPONSOR ORGANIZATION** and such multi-employer plan is added by specific written endorsement attached to this Policy and identified as a multi-employer plan and any

required premium is paid. In no event shall coverage under this Policy extend to the multi-employer plan itself, or any other fiduciaries or administrators of such multi-employer plan.

- H. **INSURED PLAN** means any insurance program of the **SPONSOR ORGANIZATION** mandated by statute for workers' compensation, unemployment, social security or disability benefits.
- I. **LOSS** means the amount of money damages, including interest and awards of attorney's fees, which the **INSURED** is legally obligated to pay in settlement or satisfaction of **CLAIMS** insured herein. **LOSS** shall not include:
1. Any civil or criminal fines, penalties, multiples of compensatory damages, sanctions or taxes, other than a civil penalty assessed pursuant to section 502(l) of **ERISA** or a 5% civil penalty assessed pursuant to Section 502(i) of **ERISA**. However, notwithstanding the foregoing, **LOSS** shall include penalties or sanctions assessed against a **SPONSOR ORGANIZATION** by the United States Internal Revenue Service pursuant to the **CLOSING AGREEMENT PROGRAM**, provided that the **INSUREDS** first became aware of the violations during the **POLICY PERIOD** and notified the Company of the violations and the intent to pursue a resolution pursuant to the **CLOSING AGREEMENT PROGRAM** prior to notifying or submitting an application to the Internal Revenue Service as to the violations and a request for consideration under the **CLOSING AGREEMENT PROGRAM**.
 2. Benefits paid or payable to a participant or beneficiary of an **EMPLOYEE BENEFIT PLAN** if such benefits are or may be lawfully paid from the **EMPLOYEE BENEFIT PLAN**;
 3. Contributions paid or payable to the **EMPLOYEE BENEFIT PLAN** pursuant to the **SPONSOR ORGANIZATION'S** obligation to fund the **EMPLOYEE BENEFIT PLAN**;
 4. The return or restitution of any money, assets, or personal profit received by the **INSURED** to which the **INSURED** is not legally entitled;
 5. Any damages based upon an adjudication that the **INSURED** engaged in conduct that the **INSURED** knew to be dishonest or a breach of the responsibilities, obligations or duties imposed upon **FIDUCIARIES**.
- J. **POLICY PERIOD** means the period from the inception date stated in Item 4 of the Declarations to the expiration date or earlier termination date.
- K. **SPONSOR ORGANIZATION** means the entity named in Item 2 of the Declarations.
- L. **SPONSORED PLAN** means:
1. any plan named in Item 1 of the Declarations;
 2. any plan of the **SPONSOR ORGANIZATION** which is defined in section 3(1) of **ERISA** and which is governed by **ERISA**;
 3. any plan of the **SPONSOR ORGANIZATION**, except an Employee Stock Ownership Plan, created or acquired subsequent to the inception date of this Policy, but only for a period from the date of acquisition or creation to the end of the **POLICY PERIOD**. Clauses V(D) and V(E) do not apply to any such plan without the Company's written consent;
 4. any previously covered pension or welfare plan which was merged, sold, spun-off or terminated during or prior to the inception date of this Policy, but solely with respect to **WRONGFUL ACTS** that occurred prior to the date of such merger, sale or spin-off, or in the case of a terminated plan, prior to the final date of asset distribution of such plan, and further provided that notice of such merger, sale, spin-off or termination is provided to the Company before the end of the **POLICY PERIOD**.

M. **WRONGFUL ACT** means:

1. Any breach of the responsibilities, obligations, or duties prescribed by **ERISA** or by the common or statutory law of the United States, or any State or other jurisdiction therein which are imposed upon an **INSURED** while acting as a **FIDUCIARY** of a **SPONSORED PLAN**;
2. Any negligent act, error, or omission in informing employees of the content of a **SPONSORED PLAN** or **INSURED PLAN**, or in effecting or terminating enrollment in a **SPONSORED PLAN** or **INSURED PLAN**.

IV. EXCLUSIONS

The Company shall not be liable to pay any **LOSS** or **DEFENSE COSTS** with respect to any **CLAIM** made against any **INSURED**:

- A. Based on or involving facts or circumstances which at the original inception date of this Policy, any **INSURED** had a reasonable basis to believe such facts or circumstances might lead to a **CLAIM** against any **INSURED**; knowledge possessed by any one **INSURED** shall not be imputed to any other **INSURED** for the purpose of determining the application of this exclusion. The term "original inception date" shall mean the date when continuous coverage was first issued to the **INSURED** through Professional Indemnity Agency, Inc.;
- B. Based on or involving facts or circumstances about which an **INSURED** has provided notice to any prior insurer;
- C. Based on or involving bodily injury to, or sickness, disease, emotional distress, mental anguish, or death of any person, or loss of use of, damage to or destruction of any tangible property; or for libel or slander;
- D. Arising out of the failure of the **INSURED** to comply with any law governing workers' compensation, unemployment insurance, social security or disability benefits, or any similar law;
- E. Based on or involving seepage, pollution or contamination of any kind.

V. OTHER CONDITIONS AND AGREEMENTS

A. **LIMIT OF LIABILITY, DEDUCTIBLE AND OTHER INSURANCE**

1. Without regard to when payment is made, the Company's obligation to pay **LOSS** and **DEFENSE COSTS** because of all **CLAIMS** first made against the **INSURED** during the **POLICY PERIOD** is subject to and shall never exceed the amount stated as the Company's Limit of Liability stated in Item 5 of the Declarations. Any payment of **LOSS** and/or **DEFENSE COSTS** by the Company will reduce the stated Limit of Liability. Once the Limit of Liability is exhausted by such payments, the Company will have no further liability under this Policy.
2. The Company shall only be liable to pay, subject to the Limit of Liability, for **LOSS** and/or **DEFENSE COSTS** in excess of the Deductible stated in Item 6 of the Declarations. The Deductible applies to **LOSS** and **DEFENSE COSTS** with respect to each **CLAIM** insured.
3. This insurance is excess of any other valid and collectible insurance available to the **INSURED**, whether such insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability stated in Item 5 of the Declarations of this Policy.

B. **ALLOCATION OF DEFENSE COSTS [WITH RESPECT TO CLAUSE II(B)]**

In the event that any portion of a **CLAIM** does not come within the coverage afforded by this Policy, the Company shall be entitled to an allocation of **DEFENSE COSTS** incurred on behalf of the **INSUREDS** based upon the ratio of the number of counts, causes of action or allegations for which coverage is afforded under this Policy as compared to the number of such counts, causes of action or allegations which are not within the scope of

coverage. The Company shall not be required or obligated to pay that portion of **DEFENSE COSTS** allocated to those counts, causes of action or allegations which are not within the scope of coverage herein.

C. INTERRELATED ACTS

A **CLAIM** or **CLAIMS** by one or more claimants made against one or more **INSUREDS** which arise out of the same actual or alleged **WRONGFUL ACTS** or interrelated **WRONGFUL ACTS** shall be deemed to be a single **CLAIM** and shall be deemed to have been first made when the earliest of such **CLAIMS** is made. Any interrelated actual or alleged **WRONGFUL ACTS** shall be deemed to have been committed when the first of any such actual or alleged **WRONGFUL ACTS** was committed.

D. REPORTING OF **WRONGFUL ACTS**

If, during the **POLICY PERIOD** or the Extended Reporting Period, if in effect, the **INSURED** first becomes aware of any specific and identifiable **WRONGFUL ACT** which could give rise to a **CLAIM** and written notice of such **WRONGFUL ACT** is given to the Company, including the circumstances by which the **INSURED** first became aware of such **WRONGFUL ACT**, then any **CLAIM** that is subsequently made against the **INSURED** arising out of such **WRONGFUL ACT** shall be deemed for the purpose of this Policy to have been made against the **INSURED** during the **POLICY PERIOD**. The **INSURED** shall not have the right to report any **WRONGFUL ACT** to the Company if such **WRONGFUL ACT** takes place or commences subsequent to the expiration date or date of termination of the Policy. The **INSURED** shall cooperate with and assist the Company and its representatives in the investigation of any **WRONGFUL ACT** reported under this Clause V(D).

E. EXTENDED REPORTING PERIOD OPTION

If the Company or the **SPONSOR ORGANIZATION** shall cancel or refuse to renew this Policy, the **SPONSOR ORGANIZATION** shall have the right, upon payment of an additional premium of seventy-five (75) percent of the annual premium stated in Item 7 of the Declarations, to an additional period of twelve (12) months following the effective date of such cancellation or the expiration date of the Policy in which to give written notice of **CLAIMS** first made against the **INSURED** during the Extended Reporting Period, but only in respect of any **WRONGFUL ACT** committed or allegedly committed prior to the effective date of such cancellation or date of termination of the Policy and subsequent to the Prior Acts Exclusion Date, if any. This right of extension shall terminate unless written notice of such election is received by the Company within ten (10) days of the effective date of cancellation or the expiration date of the Policy. For purposes of the Limit of Liability, the Extended Reporting Period shall be deemed part of the **POLICY PERIOD** and not in addition thereto, and shall not change or enlarge the Company's Limit of Liability. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

F. NOTICE

As a condition precedent to the **INSURED'S** right to coverage under this Policy, the **INSUREDS** shall:

1. give written notice to the Company as soon as practicable of any **CLAIM** made against the **INSUREDS**, and at their own expense, cooperate with and assist the Company and its representatives, as the Company may require, in the settlement, defense, appeal and/or investigation of such **CLAIM**;
2. immediately notify the Company of any summons, lawsuit or proceeding served upon the **INSURED**.

With regard to Paragraph 1 above, knowledge of a **CLAIM** possessed by one **INSURED** shall not be imputed to any other **INSURED**;

Any notice to the Company under this Clause V(F) shall be given to Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 150 East 42nd Street, New York, New York 10017.

G. SETTLEMENT OF CLAIM

1. The Company shall not settle or satisfy any **CLAIM** without the consent of the **INSURED**. If the **INSURED** elects not to settle or satisfy a **CLAIM** as recommended by the Company and acceptable to the claimant, then subject to the Limit of Liability of this Policy, the Company will not be liable for any **LOSS** in excess of the amount of the recommended settlement, or for any **DEFENSE COSTS** incurred after the date of the **INSURED'S** election not to settle or satisfy a **CLAIM** as recommended by the Company. In no event shall the Company be liable in excess of the available Limit of Liability.
2. The **INSURED** shall not assume or admit liability for, or pay, settle or satisfy any **CLAIM**, either as to **LOSS** or **DEFENSE COSTS**, without the Company's prior written consent, except at the **INSURED'S** own expense.

H. CANCELLATION

1. This Policy may be cancelled by the **SPONSOR ORGANIZATION** at any time by written notice to the Company stating when thereafter the cancellation shall be effective or by surrender of this Policy to the Company.
2. This Policy may also be cancelled by or on behalf of the Company by delivering to the **INSUREDS'** representative designated in the application, or by mailing to the **INSUREDS'** representative by registered, certified, or other first class mail, written notice stating when, not less than thirty (30) days thereafter (or ten (10) days in the event of non-payment of premium), the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.
3. If this policy shall be cancelled by the Company, the Company shall retain the customary pro rata earned premium.
4. If this Policy shall be cancelled by the **SPONSOR ORGANIZATION**, the Company shall retain the customary short rate earned premium.
5. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice of cancellation is prohibited or made void by any law controlling the construction thereof, such period shall be amended so as to be equal to the minimum period of limitation permitted by any such law.
6. For the purpose of this Policy, notice of cancellation given to the **INSUREDS'** representative pursuant to this paragraph shall be deemed to be notice to all **INSUREDS**.

I. REPRESENTATIONS AND SEVERABILITY

The Company, in issuing this Policy, has relied upon the declarations and statements contained in the written application for coverage and the documents attached thereto. All the declarations, statements and documents are the basis of coverage and shall be considered incorporated in and constituting part of the Policy. The written application for coverage shall be construed as a separate application by each **INSURED**. With respect to the declarations, statements and documents contained in the written application for coverage, no statement or knowledge possessed by an **INSURED** shall be imputed to any other **INSURED** in determining whether coverage is available for any **CLAIM** made against an **INSURED**.

J. ACTION AGAINST THE COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, the **INSURED** shall have fully complied with all the terms of this Policy, nor until the amount of the **INSURED'S** obligation to pay shall have

been finally determined either by judgement against the **INSURED** after actual trial, or by written agreement of the **INSURED**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a part to any action against the **INSURED** to determine the **INSURED'S** liability, nor shall the Company be impleaded by the **INSURED** or his legal representative. Bankruptcy or insolvency of the **INSURED** or of the **INSURED'S** estate shall not relieve the Company of any of its obligations hereunder.

K. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Company without its written consent.

L. SUBROGATION AND RECOURSE

1. In the event of any **CLAIM** or payment under this Policy, the Company shall be subrogated to the extent of such payment to all rights of recovery therefore and the **INSUREDS** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the **INSUREDS**. The **INSUREDS** shall do nothing after **CLAIM** is made against them to prejudice such rights. Any recovery shall be first paid to the Company to the extent of any **LOSS** paid by the Company with the balance paid to the **INSURED**.
2. If any premium for the Policy is paid out of the assets of the **EMPLOYEE BENEFIT PLAN**, then the Company shall have the right of recourse required by Section 410(b)(1) of ERISA, unless the **INSURED** (other than the **EMPLOYEE BENEFIT PLAN** or **SPONSOR ORGANIZATION**) has paid a waiver of recourse premium.

M. ENTIRE AGREEMENT

By acceptance of the Policy, the **INSUREDS** and the Company agree that this Policy embodies all agreements existing between them or any of their representatives relating to this insurance.

N. NOTICE TO **INSUREDS**

All **INSUREDS** appoint the person designated as the **INSUREDS'** representative in the application, at the address of the **SPONSOR ORGANIZATION** set forth in Item 3 of the Declarations, as their agent to receive any notice or communication from the Company.

O. CHANGES

Notice to or knowledge possessed by any agent of the Company shall not effect a waiver or a change in any part of this Policy nor estop the Company from asserting any rights under the terms of this Policy. The terms of this Policy cannot be waived or changed, except by endorsement issued to form a part of this Policy, signed by an authorized representative of the Company.