

S

IMPORTANT NOTE: THIS IS CLAIMS MADE COVERAGE. PLEASE READ THIS POLICY CAREFULLY.

THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE DISCOVERY PERIOD IF EXERCISED. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS.

**FIDUCIARY
LIABILITY
POLICY**

S

FIDUCIARY LIABILITY POLICY DECLARATIONS

IMPORTANT NOTE: THIS IS CLAIMS MADE COVERAGE. PLEASE READ THIS POLICY CAREFULLY. THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE DISCOVERY PERIOD IF EXERCISED. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS.

Item 1. Named Company and Address: **Policy Number:**
Prior Policy Number:

Item 2. Insurer Duty to Defend Coverage Elected Yes No

Item 3. Limit of Liability:
\$ Each Policy Period
Note that the Limit of Liability and any Retention are reduced or exhausted by Defense Costs

Item 4. Policy Period: From 12:01 A.M. to 12:01 A.M. Local time at the address shown in Item 1.

Item 5. Retention Amount each Claim:
(A) Non-Indemnifiable Loss in each Claim \$0
(B) Indemnifiable Loss in each Claim \$

Item 6. Additional Insureds:

Item 7. Discovery Period:
(A) Additional Premium: % (per Subsection III.C. of the Policy)
(B) Additional Period:

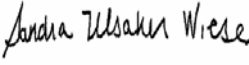

Item 8. Prior Litigation Date:

Item 9. Continuity Date:

Item 10. Endorsements Effective at Inception:

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary and countersigned by a duly authorized representative of the Insurer.

Countersigned: **ST. PAUL MERCURY INSURANCE COMPANY**

Authorized Representative Secretary President

Countersignature Date Countersigned At

S

TABLE OF CONTENTS

I. INSURING AGREEMENT	4
II. DUTY TO DEFEND PROVISION.....	4
III. EXTENSIONS.....	4
A. ESTATES AND LEGAL REPRESENTATIVES	4
B. SPOUSAL LIABILITY	4
C. DISCOVERY PERIOD	5
IV. DEFINITIONS	5
V. EXCLUSIONS	8
A. EXCLUSIONS APPLICABLE TO ALL LOSS	8
B. EXCLUSIONS APPLICABLE TO LOSS OTHER THAN DEFENSE COSTS	9
C. SEVERABILITY OF EXCLUSIONS.....	10
VI. GENERAL CONDITIONS AND LIMITATIONS	10
A. LIMIT OF LIABILITY AND RETENTION	10
B. NOTICE.....	11
C. DEFENSE AND SETTLEMENT	12
D. OTHER INSURANCE	13
E. CHANGES IN EXPOSURE.....	13
F. REPRESENTATIONS AND SEVERABILITY	15
G. TERRITORY AND VALUATION.....	16
H. TERMINATION OF POLICY.....	16
I. SUBROGATION.....	17
J. ACTION AGAINST THE INSURER	17
K. AUTHORIZATION CLAUSE	17
L. ALTERATION AND ASSIGNMENT	17
M. ARBITRATION.....	17

S

FIDUCIARY LIABILITY COVERAGE

In consideration of payment of the premium and in reliance upon the statements made in the Application, which are made a part hereof and deemed attached hereto, and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy, the Insurer and the Insureds agrees as follows:

I. INSURING AGREEMENT

The Insurer shall pay on behalf of the Insureds Loss for which the Insureds become legally obligated to pay on account of any Claim first made against the Insureds during the Policy Period or, if exercised, during the Discovery Period, for a Wrongful Act taking place before or during the Policy Period by an Insured or by any person for whose Wrongful Acts the Insured is legally responsible.

II. DUTY TO DEFEND PROVISION

If the Insurer duty-to-defend option is elected as provided in Item 2 of the Declaration, then, subject to the provisions of Subsection VI.C., the Insurer shall have the right and duty to appoint counsel and defend any Claim for which coverage under this Policy applies, even if any of the allegations are groundless, false or fraudulent. If the Insurer duty-to-defend option is not elected as provided in Item 2 of the Declarations, then, subject to the provisions of Subsection VI.C., it shall be the duty of the Insureds and not the duty of the Insurer to appoint counsel and defend any Claim for which coverage under this Policy applies.

III. EXTENSIONS

A. Estates and Legal Representatives

This Policy shall afford coverage for Claims for the Wrongful Acts of Insured Persons made against the estates, heirs, legal representatives or assigns of Insured Persons who are deceased or against the legal representatives or assigns of Insured Persons who are incompetent, insolvent or bankrupt to the extent that in the absence of such death, incompetence, insolvency or bankruptcy, such Claims would have been covered by this Policy.

B. Spousal Liability

If a Claim against an Insured Person includes a claim against the Insured Person's lawful spouse solely by reason of (i) such spouse's legal status as a spouse of the Insured Person, or (ii) such spouse's ownership interest in property which the claimant seeks as recovery for alleged Wrongful Acts of the Insured Person, all loss which such spouse becomes legally obligated to pay by reason of such Claim shall be treated for purposes of this Policy as Loss which the Insured Person becomes legally obligated to pay on account of the Claim made against the Insured Person. All terms and conditions of this Policy, including without limitation the Retention Amount, applicable to Loss incurred by such Insured Person in the Claim shall also apply to such spousal loss.

S

The coverage extension afforded by this Subsection III.B. does not apply to the extent the Claim alleges any wrongful act or omission by the Insured Person's spouse.

C. **Discovery Period**

If the Insurer or the Insureds do not renew this Policy or if the Named Company terminates this Policy, the Insureds shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this Policy for the period set forth in Item 7(B) of the Declarations (Discovery Period) following the effective date of such nonrenewal or termination, but only with respect to a Wrongful Act otherwise covered under this Policy taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the Insureds to the Insurer within thirty (30) days following the effective date of termination or nonrenewal. Any Claim made during the Discovery Period shall be deemed to have been made during the Policy Period.

The premium due for the Discovery Period shall equal that percent set forth in Item 7(A) of the Declarations of the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the Policy Period set forth in Item 4 of the Declarations. The entire premium for the Discovery Period shall be deemed fully earned and non-refundable upon payment.

The Insureds shall not be entitled to elect the Discovery Period under this Subsection III.C. if an extension of coverage is elected pursuant to Subsection VI.E.2 of this Policy.

IV. **DEFINITIONS**

When used in this Policy:

- A. **Administration** means (i) counseling employees, beneficiaries, or Plan participants with respect to any Plans, (ii) providing interpretations with respect to any Plan, (iii) handling records in connection with any Plan, or (iv) enrolling, terminating or canceling employees under any Plan.
- B. **Application** means all signed applications, including attachments and materials submitted therewith, for this Policy or for any policy of which this Policy is a renewal or replacement. All such applications, attachments and materials are deemed attached to and incorporated into this Policy.
- C. **Claim** means:
 - 1. a written demand against an Insured for monetary damages,
 - 2. a civil proceeding against an Insured commenced by the service of a complaint or similar pleading,

S

3. a criminal proceeding against an Insured commenced by a return of an indictment,
4. a formal civil administrative or regulatory proceeding against an Insured commenced by the Insured's receipt of a notice of charges, formal investigative order or similar document, or
5. any fact-finding investigation of an Insured by the Department of Labor or the Pension Benefit Guaranty Corporation,

for a Wrongful Act, including any appeal therefrom.

- D. **Defense Costs** means that part of Loss consisting of 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 Sponsor Company or Plans) incurred in defending or investigating Claims and the premium for appeal, attachment or similar bonds.
- E. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
- F. **Executive Officers**, either in the singular or plural, means the chairperson, president, chief executive officer, chief financial officer and in-house general counsel of the Sponsor Company and the trustees of the Plans.
- G. **Financial Impairment** means the status of the Sponsor Company 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 Sponsor Company, or (2) the Sponsor Company becoming a debtor in possession.
- H. **Insured Persons**, either in the singular or plural, means:
1. any one or more natural persons who were, now are or shall be duly elected or appointed directors, trustees, officers or employees of the Sponsor Company or any Plan, or
 2. any other natural persons listed in Item 6 of the Declarations.
- I. **Insureds**, either in the singular or plural, means:
1. the Sponsor Company,
 2. the Plans, and
 3. the Insured Persons.

S

- J. **Interrelated Wrongful Acts** means all 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.
- K. **Loss** means the amount which the Insureds become legally obligated to pay on account of each Claim and for all Claims in the Policy Period and the Discovery Period, if exercised, made against them for Wrongful Acts for which coverage applies, including, but not limited to, damages, judgments, settlements and Defense Costs. Loss does not include (1) any amount for which the Insureds are absolved from payment, (2) the cost to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief, or (3) matters uninsurable under the law pursuant to which this Policy is construed.
- L. **Named Company** means the organization first named in Item 1 of the Declarations.
- M. **Plan** means:
1. any employee benefit plan (as defined by ERISA) which is operated solely by the Sponsor Company or jointly by the Sponsor Company and a labor organization for the benefit of the employees of the Sponsor Company located anywhere in the world, if such plan existed before the Policy Period or is afforded coverage pursuant to Subsection VI.E.1 of this Policy,
 2. any other employee benefit plan not subject to Title 1 of ERISA sponsored solely by the Sponsor Company for the benefit of the employees of the Sponsor Company, if such plan existed before the Policy Period or is afforded coverage pursuant to Subsection VI.E.1 of this Policy,
 3. any other employee benefit plan listed in Item 6 of the Declarations, or
 4. any government-mandated benefit program for workers compensation, unemployment, social security or disability benefits for employees of the Sponsor Company,
- provided "Plan" shall not include any multiemployer plan or employee stock ownership plan (as defined in ERISA) unless such plans are specifically listed in Item 6 of the Declarations.
- N. **Policy** means, collectively, the Declarations, the Application, this policy form and any endorsements hereto.
- O. **Policy Period** means the period of time specified in Item 4 of the Declarations, subject to prior termination in accordance with Subsection VI.H. of this Policy.
- P. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the

S

United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, electrical or magnetic or electromagnetic field and noise.

Q. **Sponsor Company** means, collectively, the organization(s) named in Item 1 of the Declarations and their Subsidiaries.

R. **Subsidiary**, either in the singular or plural, means any organization in which more than 50% of the outstanding voting securities representing the present right to vote for election of directors is owned, directly or indirectly, in any combination, by one or more Sponsor Companies.

S. **Wrongful Act** means:

1. any breach of the responsibilities, obligations or duties imposed upon Insureds in their capacity as fiduciaries of any Plan by ERISA or by the common or statutory law of the United States or any other jurisdiction anywhere in the world,
2. any other matter claimed against the Sponsor Company or an Insured Person solely because of their service as fiduciaries of any Plan, or
3. any negligent act, error or omission solely in the Administration of any Plan.

V. **EXCLUSIONS**

A. **Exclusions Applicable to All Loss**

The Insurer shall not be liable for Loss on account of any Claim made against any Insured:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Policy is a renewal or replacement;
2. based upon, arising out of, or attributable to any prior or pending litigation against any Insured as of the applicable Prior Litigation Date set forth in Item 8 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. based upon, arising out of, or attributable to any actual or alleged obligation of an Insured under any law governing workers compensation, unemployment, social security or disability benefits, except the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended;

S

4. for discrimination in violation of any law other than ERISA;
5. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, or for libel, slander, defamation of character or violation of a person's right of privacy;
6. based upon, arising out of, or attributable to (i) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or (ii) any direction or request that the Sponsor Company or the Insured Persons test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so;
7. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation if a judgment or other final adjudication adverse to such Insured establishes that such Insured committed such an act, omission or willful violation;
8. for liability of others assumed by the Insured under any contract or agreement, provided this exclusion shall not apply to the extent (i) the Insured would have been liable in the absence of such contract or agreement, or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the Plan was established; or
9. based upon, arising out of, or attributable to such Insured gaining in fact any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.

B. Exclusions Applicable to Loss Other than Defense Costs

The Insurer shall not be liable for that part of Loss, other than Defense Costs, which constitutes:

1. criminal or civil fines or penalties imposed by law, taxes, punitive or exemplary damages, or the multiple portion of any multiplied damage award, provided this exclusion shall not apply to the 5% or less, or the 20% or less, civil penalties imposed upon an Insured under § 502(i) or (l), respectively, of ERISA;
2. (i) benefits due or to become due under any Plan, or (ii) benefits which would be due under any Plan if such Plan complied with all applicable law, or (iii) that portion of any settlement or judgment which constitutes benefits; provided, this exclusion does not apply to the extent that recovery for such benefits is based upon a covered Wrongful Act by an Insured Person and such benefits are payable as a personal obligation of such Insured Person; or

S

3. contributions owed by the Sponsor Company to any Plan for which any of the Insureds failed to collect, unless such failure is because of the negligence of an Insured.

C. **Severability of Exclusions**

No fact pertaining to or knowledge possessed by any Insured Person shall be imputed to any other Insured Person for purposes of applying the exclusions set forth in this Section V. Only facts pertaining to or knowledge possessed by an Executive Officer shall be imputed to the Sponsor Company or Plan for purposes of applying the exclusions set forth in this Subsection V.

VI. **GENERAL CONDITIONS AND LIMITATIONS**

A. **Limit of Liability and Retention**

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

Except as otherwise provided in this Subsection VI.A., the Insurer's maximum liability for all Loss on account of all Claims first made during the same Policy Period shall be the Limit of Liability for each Policy Period set forth in Item 3 of the Declarations. Defense Costs shall be part of and not in addition to such Limit of Liability, and Defense Costs shall reduce such Limit of Liability.

For purposes of this Subsection VI.A., the applicable Limit(s) of Liability for the Discovery Period, if exercised, shall be part of and not in addition to the applicable Limit(s) of Liability for the Policy Period. The purchase of the Discovery Period shall not increase or reinstate the Limit(s) of Liability set forth in Item 3 of the Declarations, which shall be the maximum liability of the Insurer for all Loss on account of all Claims first made during such Policy Period and Discovery Period, combined.

Except as otherwise provided in this Subsection VI.A., the Insurer's liability with respect to Loss arising from each Claim shall apply only to that part of Loss which is excess of the applicable Retention Amount set forth in Item 5 of the Declarations and such Retention Amount shall be borne by the Sponsor Company and Plan uninsured and at their own risk.

The Retention Amount for non-indemnifiable Loss set forth in Item 5(A) of the Declarations shall apply to Loss incurred by any Insured Person for which the Sponsor Company either (1) is not permitted or required by common or statutory law to indemnify, or (2) is permitted or required to indemnify but does not do so by reason of its

S

Financial Impairment. The Retention Amount for indemnifiable Loss set forth in Item 5(B) of the Declarations shall apply to all other Loss.

If Loss arising from a single Claim is subject in part to the Retention Amount set forth in Item 5(A) and in part to the Retention Amount set forth in Item 5(B) of the Declarations, the applicable Retention Amounts shall be applied separately to each part of such Loss, but the largest applicable Retention Amount set forth in Item 5 of the Declarations shall be the maximum Retention Amount applicable to all Loss on account of such Claim.

B. Notice

The Insureds shall, as a condition precedent to their rights under this Policy, give to the Insurer written notice of any Claim made against the Insureds as soon as practicable but in no event later than sixty (60) days after expiration of the Policy Period or, if exercised, during the Discovery Period.

If during the Policy Period or Discovery Period (if exercised), the Insureds become aware of circumstances which could give rise to a Claim for a Wrongful Act taking place before or during the Policy Period and give written notice of such circumstances and the other information referenced below to the Insurer during the Policy Period or Discovery Period (if exercised), then any Claims subsequently arising from such circumstances shall be considered to have been first made during the Policy Period or the Discovery Period in which the circumstances were first reported to the Insurer.

The Insureds shall, as a condition precedent to exercising their rights under this Policy, (1) include within any notice of Claim or circumstance a description of the Claim or circumstances, the nature of the alleged Wrongful Act, the nature of the alleged or potential damage, the names of actual or potential claimants and Insureds involved, and the manner in which the Insureds first became aware of the Claim or circumstances, and (2) give to the Insurer such other information and cooperation as the Insurer may reasonably request.

All notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, or fax properly addressed to the appropriate party. Notice to the Insureds may be given to the Named Company at the address shown in Item 1 of the Declarations. Notice to the Insurer of any Claim or circumstance shall be given to The St. Paul Companies, Inc., 385 Washington Street, St. Paul, Minnesota 55102-1396, Attention: Professional E&O Claim Unit. All other notices to the Insurer under this Policy shall be given to the same addressee but to the attention of the Financial and Professional Services Unit. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

S

C. Defense and Settlement

The Insurer may, with the consent of the Named Company, settle any Claim for any monetary amount that the Insurer deems reasonable. If the Named Company withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer to the Named Company. The Insurer's duty to defend, if elected as provided in Item 2 of the Declarations, shall cease with respect to such Claim as of such date, and the Insureds shall thereafter have the duty to defend such Claim.

The Insurer shall be entitled to the Insureds' full cooperation, and all information and particulars it may request from the Insureds in order to conduct its investigation or to reach a settlement of a Claim or, if the Insurer duty-to-defend option is elected as provided in Item 2 of the Declarations, to defend a Claim. The Insureds agree that in the event of a Claim, the Insureds will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.

The Insureds shall not incur any Defense Costs, settle or offer to settle any Claim, assume any contractual obligation, admit liability, voluntarily make any payment or confess or otherwise consent to any damages or judgments with respect to any Claim covered by this Policy without the written consent of the Insurer, which shall not be unreasonably withheld. The Insurer shall not be liable for any Defense Costs, settlement, assumed obligation, admitted liability, voluntary payment, or confessed damages or judgment to which it has not consented.

If the Insurer duty-to-defend option is not elected as provided in Item 2 of the Declarations, then the Insurer shall advance on behalf of the Insureds covered Defense Costs which the Insureds have incurred in connection with Claims made against them, prior to disposition of such Claims, provided that to the extent it is finally established that any such Defense Costs are not covered under this Policy, the Insureds, severally according to their interests, agree to repay the Insurer such Defense Costs.

The Insurer shall have the right to appeal any judgment with respect to any Claim covered in whole or in part by this Policy but the expense of appealing such judgment shall be part of Defense Costs as defined herein.

Except as otherwise provided in this Subsection VI.C., the Insurer duty-to-defend option, if elected as provided in Item 2 of the Declarations, ceases upon exhaustion of the applicable Limit of Liability as stated in Item 3 of the Declarations, by the payment of Loss and the Insurer shall not be liable for any Defense Costs incurred after such exhaustion of the applicable Limit of Liability, whether or not Defense Costs coverage is within the Limit of Liability.

If the Insurer's duty to defend ceases with respect to any Claim(s) as provided in this Subsection VI.C., the Insurer shall notify the Sponsor Company of such Claim(s) so that

S

the Sponsor Company can arrange to take control of their defense. The Insurer agrees to take whatever steps are necessary to avoid a default judgment during a transfer of control of the defense of any outstanding Claim. If the Insurer does so, the Insureds agree to repay the reasonable expenses incurred by the Insurer during the transfer and further agree that, in undertaking the steps necessary to avoid a default judgment during the transfer, the Insurer has not waived or given up any rights under this Policy.

D. **Other Insurance**

If any Loss arising from any Claim made against any Insured is insured under any other valid and collectible policy(ies), prior or current, then this Policy shall cover such Loss, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such Loss is in excess of the amount of such other insurance, whether such insurance is stated to be primary, contributory, excess, contingent, or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this Policy.

E. **Changes in Exposure**

1. Acquisition or Creation of Another Organization or Plan

If during the Policy Period the Sponsor Company:

- (a) acquires securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a Subsidiary,
- (b) acquires any organization by merger into or consolidation with the Company, or
- (c) creates a Plan,

such organization, Plan and their Insureds shall be covered under this Policy as follows:

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the Sponsor Company for any such acquisition or creation is less than 20% of the total assets of all of the Sponsor Companies as reflected in the Sponsor Companies' most recent financial statements as of the inception of the Policy Period, such organization, Plan and their Insureds shall automatically be covered under this Policy, but only with respect to Wrongful Acts taking place after such acquisition or creation, unless the Insurer agrees after presentation of a complete application and all appropriate information to provide coverage by endorsement for Wrongful Acts taking place prior to such acquisition or creation.

With respect to all other acquisitions or creations described in subparts (a), (b) or (c) above, such organization, Plan and their Insureds shall automatically be covered under this Policy, but only for ninety (90) days or the remainder of the Policy Period,

S

whichever is less, following the effective date of such acquisition or creation (“Automatic Coverage Period”) and only with respect to Wrongful Acts taking place after such acquisition or creation. The Named Company, as a condition precedent to further coverage with respect to such organization, Plan or their Insureds after such Automatic Coverage Period, shall give written notice of such acquisition or creation to the Insurer as soon as practicable but in no event later than forty-five (45) days following the effective date of such acquisition or creation, and shall thereafter promptly provide to the Insurer such information as the Insurer may request. Upon receipt of such notice and other information, the Insurer shall promptly provide to the Named Company a quotation for coverage under this Policy for such organization, Plan and their Insureds for the remainder of the Policy Period. If the Named Company fails to comply with such condition precedent, or if within thirty (30) days following receipt of such quotation the Named Company fails to pay any additional premium or fails to agree to any additional coverage terms and conditions as set forth in such quotation, coverage otherwise afforded by this Subsection VI.E.1 for such organization, Plan and their Insureds shall terminate upon expiration of such Automatic Coverage Period.

Notwithstanding the foregoing, no coverage shall be afforded by this Subsection VI.E.1. with respect to any multiemployer plan or employee stock ownership plan (as defined in ERISA) or its Insureds unless such coverage is specifically granted by endorsement to this Policy.

2. Acquisition of Named Company

If during the Policy Period:

- (a) the Named Company merges into or consolidates with another organization, or
- (b) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the Named Company,

coverage under this Policy shall continue until termination of this Policy but only with respect to Claims against those who were Insureds before such merger, consolidation, or acquisition, for Wrongful Acts taking place prior to such merger, consolidation, or acquisition. As of the effective date of such merger, consolidation, or acquisition, all premiums paid or due at any time under this Policy shall be deemed fully earned and non-refundable.

The Named Company shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may request. Upon receipt of such notice and information and at the request of the Named Company, the Insurer shall promptly provide to the Named Company a

S

quotation for a three-year (or such lesser or greater period as may be negotiated with the Insurer) extension of coverage with respect to Claims for Wrongful Acts taking place prior to such merger, consolidation, or acquisition. Any coverage extension pursuant to such quotation shall be conditioned upon the Insureds, within sixty (60) days after receipt of such quotation: (i) giving to the Insurer written notice of their desire to elect such extended coverage; (ii) paying any additional premium required by the Insurer, which shall be deemed fully earned upon inception of such coverage extension; and (iii) accepting any additional terms and conditions required by the Insurer.

Such coverage extension shall not increase or reinstate the maximum Limit of Liability set forth in Item 3 of the Declarations and the Limit of Liability for such coverage extension shall be part of and not in addition to the Limit of Liability for the Policy Period.

The Insureds shall not be entitled to elect an extension of coverage under this Subsection VI.E.2 if a Discovery Period is elected pursuant to Subsection III.C of this Policy.

3. Cessation of Subsidiaries

If before or during the Policy Period an organization ceases to be a Subsidiary, coverage with respect to such Subsidiary and its Insureds shall continue until termination of this Policy but only with respect to Claims for Wrongful Acts taking place prior to the date such organization ceased to be a Subsidiary.

4. Termination of Plan

If before or during the Policy Period a Plan is terminated, coverage with respect to such Plan and its Insureds shall continue until termination of this Policy. Such coverage continuation shall apply with respect to Claims for Wrongful Acts taking place prior to or after the date the Plan was terminated.

F. Representations and Severability

In granting coverage under this Policy, the Insurer has relied upon the statements and representations in the Application and upon any declarations and statements in the written application submitted to another insurer in respect of the prior coverage incepting as of the Continuity Date set forth in Item 9 of the Declarations. The Insureds represent that all such statements and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth thereof.

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

S

1. any Insured Person who knew the facts that were not truthfully disclosed in the Application and
2. the Sponsor Company and the Plan 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.

G. **Territory and Valuation**

Coverage under this Policy shall extend to Wrongful Acts taking place or Claims made anywhere in the world.

All premiums, limits, retentions, Loss, Defense Costs, and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is entered, the amount of settlement is agreed upon or the other element of Loss is due, respectively.

H. **Termination of Policy**

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

1. the effective date of termination specified in a prior written notice by the Named Company to the Insurer, provided this Policy may not be terminated by the Named Company after the effective date of the Named Company merger, consolidation, or acquisition as described in Subsection VI.E.2;
2. upon expiration of the Policy Period as set forth in Item 4 of the Declarations;
3. ten (10) days after receipt by the Named Company of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such ten (10) day period; or
4. at such other time as may be agreed upon by the Insurer and the Named Company.

The Insurer may not terminate this Policy prior to expiration of the Policy Period, except as provided above for non-payment of a premium. The Insurer shall refund the unearned premium computed at customary short rates if this Policy is terminated by the Named Company. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition

S

precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

I. **Subrogation**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all of the Sponsor Company's, the Plan's and the Insured Persons' rights of recovery. The Sponsor Company, the Plan and the Insured Persons shall execute all papers required and shall do everything 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 Insureds.

J. **Action Against the Insurer**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all 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 Insureds to determine the Insured's liability nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of an Insured or of the estate of any Insured Person shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

K. **Authorization Clause**

By acceptance of this Policy, the Named Company agrees to act on behalf of the Insureds with respect to the giving and receiving of notice of Claim or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the agreement to and acceptance of endorsements and the giving or receiving of any notice provided for in this Policy (except the giving of notice to apply for the Discovery Period), and the Insureds agree that the Named Company shall act on their behalf.

L. **Alteration and Assignment**

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 signed by an authorized representative of the Insurer.

M. **Arbitration**

Only if requested by the Insureds, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial

S

arbitration rules. The arbitration panel shall consist of one arbitrator selected by the Insureds, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.