

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

Fiduciary Liability Coverage Section



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

(A) **Fiduciary Liability Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Loss** from any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for a **Wrongful Act** committed or allegedly committed by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible; provided, that such **Fiduciary Claim** is reported to the Underwriter in accordance with Section VIII of this Coverage Section.

(B) **Voluntary Settlement Program Coverage:**

The Underwriter shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defense Expenses** with respect to a **Settlement Program Notice** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period; provided, that such **Settlement Fees** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the Underwriter.

II. DEFINITIONS

(A) **“Administration”** means:

- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
- (2) providing interpretations with respect to any **Plan**; or
- (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under any **Plan**.

(B) **“Claim”** means for the purposes of coverage under:

- (1) Insuring Agreement (A) of this Coverage Section: any **Fiduciary Claim**; or

- (2) Insuring Agreement (B) of this Coverage Section: any **Settlement Program Notice**.
- (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**.
- (D) “**Employee**” means any employee of the **Organization** or any **Plan**, including any part-time, seasonal and temporary employee, and any volunteer working for the **Organization** or any **Plan**. **Employee** does not include any independent contractor.
- (E) “**ERISA**” means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar statute or common law, and any regulations promulgated under any such Acts or law.
- (F) “**Executive**” means any natural person who was, now is or becomes:
- (1) a duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member or in-house general counsel of any **Plan** or any **Organization** chartered in the United States of America; or
 - (2) a holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (G) “**Fiduciary 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, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief commenced by:
 - (a) service of a complaint or similar pleading;
 - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (c) filing of a notice of charges or similar document;
 - (3) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or

- (4) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Pensions Regulatory Authority,

against an **Insured** for a **Wrongful Act**.

- (H) “**HIPAA Penalties**” means any civil fines and penalties levied against an **Insured** for violation of Title II of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.

- (I) “**Insured**” means the **Organization**, any **Plan** and any **Insured Person**.

- (J) “**Insured Person**” means any natural person who was, now is or becomes:

- (1) an **Executive** or **Employee**, but only in his or her capacity as a fiduciary, administrator or trustee of any **Plan**; or
- (2) a fiduciary, administrator or trustee of a multi-employer plan, if such person in such capacity is specifically added as an **Insured Person** by written endorsement to this Coverage Section.

- (K) “**Loss**” means **Defense Expenses**, any monetary amount that an **Insured** is legally obligated to pay as a result of a covered **Fiduciary Claim**, including but not limited to 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 **Insureds**, this Policy or the **Fiduciary Claim** giving rise to such damages and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment, post-judgment interest and, solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**.

Loss does not include:

- (1) any costs incurred by an **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (2) civil or criminal fines or penalties; provided, that **Loss** shall include:
 - (a) punitive or exemplary damages or the multiple portion of any multiplied damage award as provided above;
 - (b) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section

502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;

- (c) civil penalties imposed upon an **Insured** by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or any regulations promulgated thereunder; provided any coverage for such civil money penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section;
 - (d) solely with respect to Insuring Agreement (B) of this Coverage Section, **Settlement Fees**; and
 - (e) **HIPAA Penalties**;
- (3) taxes or tax penalties; or
 - (4) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damage award.
- (L) “**Plan**” means:
- (1) any **Sponsored Plan**; and
 - (2) any government-mandated insurance program for workers’ compensation, unemployment, Social Security or disability benefits for **Employees**.
- (M) “**Pollutant**” means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- (N) “**Settlement Fees**” means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. **Settlement Fees** does not include: (1) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (2) any fees, fines, penalties or sanctions relating to a **Plan**, which, as of the earlier of the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or the inception of the first policy in an uninterrupted series of policies issued by the Underwriter of which this Coverage

Section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

- (O) “**Settlement Program**” means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.
- (P) “**Settlement Program Notice**” means prior written notice to the Underwriter by an **Insured** of the **Insured’s** intent to enter into a **Settlement Program**.
- (Q) “**Sponsored Plan**” means:
 - (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** and which existed on or before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations or which is created or acquired after such Inception Date; provided (a) any coverage with respect to any such **Plan** created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed or allegedly committed after the effective date of such creation or acquisition and shall be subject to Section IX of the General Terms and Conditions Section, and (b) any coverage with respect to an employee stock ownership plan created or acquired during the **Policy Period** shall be further subject to Section XI of this Coverage Section;
 - (2) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of its **Employees** or **Executives**, including any fringe benefit, deferred compensation, supplemental executive retirement plan, top-hat plan or excess benefit plan;
 - (3) any other plan or program otherwise described in paragraphs (1) or (2) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, that no coverage is afforded under this Coverage Section for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
 - (4) any other plan, fund or program specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

Sponsored Plan does not include: any employee stock ownership plan created or acquired by the **Organization** during the **Policy Period**, except as otherwise provided in Section XI of this Coverage Section; or any multi-employer plan created before or during the **Policy Period** unless specifically added as a **Sponsored Plan** by written endorsement to this Coverage Section.

- (R) “**Wrongful Act**” means with respect to any **Plan**:
- (1) any breach of the responsibilities, duties or obligations imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** committed or allegedly committed by an **Insured** in the **Insured’s** capacity as such;
 - (2) any negligent act, error or omission in the **Administration** of any **Plan** committed or allegedly committed by an **Insured** in the **Insured’s** capacity as such; or
 - (3) any other matter claimed against an **Insured** solely by reason of the **Insured’s** service as a fiduciary of any **Sponsored Plan**.

III. EXCLUSIONS

- (A) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, **Loss** from any **Claim**:
- (1) 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 Coverage Section is a direct or indirect renewal or replacement;
 - (2) 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** as of the applicable Pending or Prior Date stated in ITEM 3 of the Declarations, or the same or substantially the same fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged therein;
 - (3) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving : (a) any actual, alleged, or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (b) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**; provided, that this EXCLUSION (A)(3) shall not apply to:

- (i) any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the diminution in value of any securities owned by the **Sponsored Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this EXCLUSION (A)(3); or
 - (ii) **Loss** (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**) incurred by an **Insured Person** for which the **Organization** is not permitted by statutory or common law to indemnify or for which the **Organization** is not able to indemnify by reason of **Financial Impairment**;
- (4) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
 - (5) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided, that this EXCLUSION (A)(5) shall not apply to the extent that:
 - (a) an **Insured** would have been liable in the absence of the contract or agreement; or
 - (b) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
 - (6) for the failure of any **Insured** to comply with any workers' compensation, unemployment insurance, Social Security or disability benefits law or any amendments thereto or any regulations promulgated thereunder, or any similar provisions of any federal, state or local statute, ordinance, regulation or common law, except (a) the Consolidated Omnibus Budget Reconciliation Act of 1985, (b) the Health Insurance Portability and Accountability Act of 1996, or (c) any amendments to or any regulations promulgated under such Acts;
 - (7) made against a **Subsidiary** or any **Insured Person** of such **Subsidiary** for any **Wrongful Act** committed or allegedly committed during any time when such entity was not a **Subsidiary**;
 - (8) made against any **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (a) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** is not legally entitled; or

- (b) the committing of any deliberately fraudulent or dishonest act or omission, or any willful violation of any statute, rule or law, by such **Insured**;

provided, that this EXCLUSION (A)(8) shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, 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;

- (9) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment-related act, error, omission, misstatement, misleading statement, breach of duty, policy or practice by or on behalf of any **Insured**; provided, that this EXCLUSION (A)(9) shall not apply to any **Fiduciary Claim** for any actual or alleged discrimination in violation of **ERISA**.

(B) This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for, that part of **Loss**, other than **Defense Expenses**:

- (1) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;
- (2) which constitutes (a) benefits due or to become due under any **Plan**, or (b) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:
 - (i) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
 - (ii) recovery for the benefits is based upon a covered **Wrongful Act**; or
- (3) which is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the failure to collect an employer's contributions owed to any **Plan** unless the failure is because of the negligence of any **Insured**.

IV. SEVERABILITY OF EXCLUSIONS

- (A) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of EXCLUSION (A)(8) of this Coverage Section.
- (B) Only facts pertaining to and knowledge possessed by any past, present or future chief executive officer or chief financial officer of the **Organization** (or equivalent

positions thereof) shall be imputed to such **Organization** to determine the application of EXCLUSION (A)(8) of this Coverage Section.

V. COVERAGE SECTION SPECIFIC LIMITS OF LIABILITY AND RETENTIONS

(A) HIPAA Penalties Sublimit:

The Underwriter's maximum limit of liability for all **HIPAA Penalties** resulting from all **Claims** shall be \$50,000, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(B) Voluntary Settlement Program Coverage Sublimit:

The Underwriter's maximum limit of liability for all **Defense Expenses** and all **Settlement Fees** resulting from all **Settlement Program Notices** first given to the Underwriter during the **Policy Period** or applicable Extended Reporting Period and covered under Insuring Agreement (B) of this Coverage Section shall be the amount stated in ITEM 4 of the Declarations as the Voluntary Settlement Program Coverage Sublimit, which amount shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this Coverage Section.

(C) Retentions:

The following provisions shall apply in addition to the provisions of Section IV of the General Terms and Conditions Section:

- (1) The Underwriter's obligation to pay **Loss** under this Coverage Section shall only be in excess of the applicable Retention stated in ITEM 5 of the Declarations. Such Retention shall only be eroded (or exhausted) by the **Insured's** payment of **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk. The Underwriter shall have no obligation whatsoever, either to the **Insureds** or any other person or entity, to pay all or any portion of the applicable Retention on behalf of any **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.
- (2) No Retention shall apply to any **Loss** resulting from any **Fiduciary Claim** incurred by an **Insured Person** if such **Loss** cannot be indemnified by the **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify, such **Insured Person** by reason of **Financial Impairment**.
- (3) No Retention shall apply under Insuring Agreement (B) of this Coverage Section.

VI. DEFENSE AND SETTLEMENT

- (A) The Underwriter will have the right and duty to defend any **Claim** covered under this Coverage Section through counsel of its choice, even if the allegations of such **Claim** are groundless, false, or fraudulent; provided, that the Underwriter's obligation to defend any **Claim** covered under this Coverage Section is subject to the applicable Retention and the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations.
- (B) No **Insured** 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. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 4 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:
- (1) the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date the **Insureds** refused to settle such **Claim** (the "Settlement Amount"); plus
 - (2) eighty percent (80%) of any **Loss** in excess of the Settlement Amount incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** in excess of the Settlement Amount will be carried by the **Insureds** at their own risk and will be uninsured.
- (C) The Underwriter will have no obligation to pay **Loss**, or to defend or continue to defend any **Claim**, after the Underwriter's applicable Limits of Liability have been exhausted by the payment of **Loss**.

VII. ALLOCATION

If both **Loss** covered by this Coverage Section and loss not covered by this Coverage Section are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**" set forth in DEFINITION (I) above, then such covered **Loss** and uncovered loss shall be allocated as follows:

- (A) one hundred percent (100%) of **Defense Expenses** incurred by the **Insureds** in connection with such **Claim** shall be allocated to covered **Loss**; and
- (B) all loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and

uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VIII. REPORTING OF CLAIMS AND CIRCUMSTANCES

(A) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against an **Insured**, the **Insureds** must, as a condition precedent to any right to coverage under this Coverage Section, give the Underwriter written notice of such **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** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** 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 **Insureds** 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 **Insureds** first became aware of such **Wrongful Act**.

(B) If, during the **Policy Period**, an **Insured** 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 Coverage Section for any **Claim** subsequently arising from such **Wrongful Act**;

then any **Claim** subsequently made against an **Insured** 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)(2) above must include, without limitation, a description of the **Wrongful Act**, the identities of the potential claimants and involved **Insureds**, the injury or damages which have resulted and/or may result from such **Wrongful Act**, the manner in which the **Insureds** first became aware of such **Wrongful Act**, and the reasons why the **Insureds** 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.

IX. OTHER INSURANCE

This Coverage Section is specifically excess of, and will not contribute with, any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is written specifically in excess of this Policy. This Coverage Section will not be subject to the terms of any other insurance.

X. TERMINATION OF A PLAN

If the **Organization** terminates a **Plan** before or after the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, coverage under this Coverage Section with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this Coverage Section for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this Coverage Section had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed or allegedly committed prior to or after the date the **Plan** was terminated.

XI. CREATION OR ACQUISITION OF AN ESOP

Notwithstanding anything in this Coverage Section to the contrary, if during the **Policy Period** the **Organization** creates or directly or indirectly acquires an employee stock ownership plan ("ESOP"), the **Organization** shall promptly give to the Underwriter written notice thereof together with such other information requested by the Underwriter. The Underwriter shall, at the request of the **Organization**, provide to the **Organization** a quotation for coverage for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP, subject to such terms, conditions and limitations of coverage and such additional premium as the Underwriter in its sole discretion may require. Unless the **Insureds** accept such quotation and pay such additional premium within thirty (30) days after receipt of the quotation, no coverage will be available under this Coverage Section for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving such ESOP.

XII. REPRESENTATIONS AND SEVERABILITY; INCORPORATION OF APPLICATION

- (A) The **Insureds** represent that the particulars and statements contained in the **Application** attached to this Policy are true, accurate and complete, and agree that:
- (1) this Coverage Section 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 Coverage Section; and
 - (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.
- (B) The **Insureds** agree that in the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Coverage Section shall be void *ab initio* with respect to any **Insured** who knew, as of the Inception Date stated in ITEM 2(a) of the Declarations, of such facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and completely disclosed in the **Application**). Solely for the purposes of determining whether this Coverage Section shall be void *ab initio* with respect to an **Insured**:
- (1) no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (2) the knowledge of any past or present chief executive officer or chief financial officer (or an equivalent position thereof) of the **Organization** shall be imputed to such **Organization** and its **Plans**.