

**NOTICE:**

WITH RESPECT TO COVERAGE PARTS A, B, C AND E, THIS IS A CLAIMS-MADE POLICY AND, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES. COVERAGE PART D APPLIES TO COVERED LOSS SUSTAINED OUT OF ACTS OR EVENTS OCCURRING DURING THE POLICY PERIOD UNLESS CERTAIN CONDITIONS CONCERNING PRIOR INSURANCE ARE MET.

DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

The Insurer and the **ABC Corp. Insureds** agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer."

**I. TERMS AND CONDITIONS**

Except for the General Terms & Conditions or unless stated to the contrary in any Coverage Part, the terms and conditions of each Coverage Part of this Policy apply only to that Coverage Part and shall not apply to any other Coverage Part of this Policy. Any defined term referenced in the General Terms & Conditions but defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that Coverage Part. If any provision in the General Terms & Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

**II. DEFINITIONS**

For purposes of this Policy:

1. **ABC Corp.** means the company named in Item 1 of the Declarations, including such company as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
2. **ABC Corp. Insured(s)** means all organizations, **Plans** and **Insured Persons** covered under any Coverage Part designated as "Included" in the Declarations and attached hereto.
3. **Application** means all signed applications for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any affiliate of the Insurer of which this Policy is a renewal or replacement. An "affiliate of the Insurer" means an insurer controlling, controlled by or under common control with the Insurer.
4. **Crime Coverage Part** means the Commercial Crime Coverage Part, if such Coverage Part is designated as "Included" in the Declarations and attached hereto.
5. **Crime Loss** means loss covered under the **Crime Coverage Part**.

6. **Defense Costs** means reasonable and necessary fees and expenses incurred by the **ABC Corp. Insureds** in defense of any **Liability Claim** and costs of appeal, attachment or similar bonds. The Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, and employees of **ABC Corp.** or any **Subsidiary**.
7. **ERISA or any Similar Act** means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.
8. **Executive Officer** means:
  - a. with respect to **ABC Corp.** or any **Subsidiary**, its chairperson, chief executive officer, president, chief financial officer and in-house general counsel, senior trust officer with respect to any financial institution, and, under the Employment Practices Liability Coverage Part (if included) only, the director of human resources or equivalent position; and
  - b. with respect to a **Plan**, its natural person fiduciaries as defined in **ERISA or any Similar Act**.
9. **Financial Insolvency** means, with respect to any organization or **Plan** covered under any Coverage Part designated as "Included" in the Declarations and attached hereto:
  - a. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such organization or **Plan**; or such organization or **Plan** becoming a debtor in possession; and
  - b. the inability of such organization or **Plan** financially or under applicable law to advance **Defense Costs** or indemnify the **Insured Persons** for **Liability Loss**.
10. **Insured Person(s)** means all natural persons covered under any **Liability Coverage Part**.
11. **Interrelated Wrongful Acts** means any **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.
12. **Liability Claim** means any **Claim** covered under any **Liability Coverage Part**.
13. **Liability Coverage Part** means Coverage Parts A, B, C and E, if such Coverage Part is designated as "Included" in the Declarations and attached hereto.
14. **Liability Loss** means loss covered under any **Liability Coverage Part**.
15. **Policy Period** means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.
16. **Policy Premium** means the original premium and the fully annualized amount of any additional premiums, other than the Extended Reporting Period premium, charged by the Insurer for or during the **Policy Period**.

17. **Pollutants** means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state or local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waster water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.
18. **Single Loss** means:
- all **Liability Loss** arising from each **Liability Claim**;
  - all **Crime Loss** covered under Insuring Agreement D.1 caused by, or involving, one or more **Employees** whether the result of a single act or series of acts;
  - all **Crime Loss** covered under Insuring Agreement D.2 caused by any person or in which that person is involved, whether the loss involves one or more instruments;
  - all **Crime Loss** covered under any other Insuring Agreement of the Crime Coverage Part involving:
    - an act or series of related acts involving one or more persons; or
    - an act or event, or series of related acts or events not involving any person.
19. **Subsidiary** means any entity in which and so long as more than 50% of the voting stock is owned by **ABC Corp.**, either directly or indirectly:
- on or before the effective date of this Policy; or
  - after the effective date of this Policy by reason of being created or acquired by **ABC Corp.** or any **Subsidiary** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section **XIV. 1**,
- including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
20. **Takeover** means:
- the acquisition by another entity or person, or group of entities or persons acting in concert, of (i) the ownership or control of voting stock of **ABC Corp.** resulting in the ownership or control of more than 50% of the voting stock of **ABC Corp.** or (ii) assets of **ABC Corp.** resulting in the ownership of more than 50% of the total consolidated assets of **ABC Corp.** as of the date of **ABC Corp.'s** most recent audited consolidated financial statement prior to such acquisition;
  - the merger of **ABC Corp.** into another entity such that **ABC Corp.** is not the surviving entity;
  - the consolidation of **ABC Corp.** with another entity; or
  - solely with respect to the **Crime Coverage Part**, if included, the appointment of a receiver, conservator, liquidator, trustee, rehabilitator, or similar official to take control of, supervise, manage, or liquidate **ABC Corp.**, or any other taking over of, or taking control of, **ABC Corp.** by any governmental agency, body or representative, or **ABC Corp.** becoming a debtor-in-possession under United States bankruptcy law or an equivalent status under the law of any other country.

**III. EXTENDED REPORTING PERIOD**

1. If **ABC Corp.** cancels or non-renews this Policy or if the Insurer decides not to offer any renewal terms for this Policy, the **ABC Corp. Insureds** shall have the right to purchase, upon payment of an additional premium determined as described in Item 5b of the Declarations, an extension of this Policy for a period described in Item 5a of the Declarations immediately following the end of the **Policy Period**, but only with respect to:
  - a. under a **Liability Coverage Part**, any **Wrongful Act** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**;
  - b. under the **Crime Coverage Part**, covered events occurring completely prior to the earlier of the end of the **Policy Period** or the effective date of any **Takeover**.

This period shall be referred to as the Extended Reporting Period.

2. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase the Extended Reporting Period shall end unless the Insurer receives written notice and full payment of the premium for such period within 30 days after the end of the **Policy Period**.
3. If the Extended Reporting Period is purchased, the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.
4. There is no separate or additional Limit of Liability for the Extended Reporting Period.
5. No receiver, conservator, liquidator, trustee, rehabilitator, or similar official and no governmental agency, body or representative can exercise the right to: (i) purchase extended discovery with respect to the **Crime Coverage Part**; or (ii) report any claim under the **Crime Coverage Part**. In addition, the Extended Reporting Period terminates immediately with respect to the **Crime Coverage Part** on the effective date of any other insurance obtained by **ABC Corp. Insureds** or any other party which replaces, in whole or in part, the coverage afforded by the **Crime Coverage Part**, regardless of whether such insurance provides coverage for **Loss** sustained prior to the effective date of this Policy.

**IV. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES**

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

**V. LIMIT OF LIABILITY**

1. This Policy is offered with either (i) the Single Limit of Liability and Single Retention, (ii) the Single Limit of Liability and Scheduled Retentions, or (iii) the Scheduled Limits of Liability and Scheduled Retentions, as set forth in Item 6 of the Declarations, but never with any more than one of these options.
2. Where the Single Limit of Liability is applicable, the amount set forth as the Limit of Liability in Item 6 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer for all **Loss** under this Policy, regardless of the number of Coverage Parts purchased or claims made against or **Losses** incurred by the **ABC Corp. Insureds**. The Insurer's obligations under this Policy shall be completely fulfilled and extinguished if the Limit of Liability is exhausted by payment of **Loss**.
3. Where the Scheduled Limits of Liability are applicable:
  - a. the amount set forth in the Coverage Schedule in Item 6 of the Declarations as the Scheduled Limit of Liability for Coverage Part A (where included) shall be the maximum aggregate Limit of Liability of the Insurer for all **Loss** under Coverage Part A (where included), regardless of the number of Insuring Agreements purchased or claims made against the **ABC Corp. Insureds**;
  - b. the separate amount(s) set forth in the Coverage Schedule in Item 6 of the Declarations as the Scheduled Limit(s) of Liability for Coverage Parts B, C and E (where included) shall be separate Limits of Liability for each such Coverage Part and shall be the maximum aggregate Limit of Liability of the Insurer for all **Loss** under the respective Coverage Part (where included), regardless of the number of claims made against the **ABC Corp. Insureds**;
  - c. the scheduled Limits of Liability for Coverage Parts A, B, C and E are subject to the Aggregate Scheduled Limit of Liability if and as specified in Item 6a of the Declarations. As such, each such Coverage Part limit of liability is a sublimit which further limits and does not increase the Insurer's maximum liability for all such Coverage Parts. If no Aggregate Scheduled Limit of Liability is specified in Item 6a, the scheduled limits of liability set forth for each such Coverage Part are not subject to an Aggregate Scheduled Limit of Liability, combined, for all such Coverage Parts; and
  - d. the amount set forth in the Coverage Schedule as the Scheduled Limit of Liability for each Insuring Agreement in the **Crime Coverage Part** shall be the maximum Limit of Liability of the Insurer for each **Single Loss** under such Insuring Agreement. The amount, if any, set forth in Item 6b of the Declarations as the Aggregate Scheduled Limit of Liability for all of the Insuring Agreements in the **Crime Coverage Part** (where included) shall be the maximum aggregate Limit of Liability of the Insurer for all **Crime Losses** under such Insuring Agreements. As such, each Insuring Agreement Scheduled Limit of Liability is a sublimit which further limits and does not increase the Insurer's maximum liability for the **Crime Coverage Part**.
4. If the Limit of Liability for any Coverage Part is exhausted by payment of **Loss**, the Insurer's obligations under such Coverage Part shall be deemed completely fulfilled and extinguished.
5. The Insurer shall pay **Liability Loss** as it becomes due and payable to the **ABC Corp. Insureds**, and shall pay **Crime Loss** as incurred by the **ABC Corp. Insureds**, without consideration of other future payment obligations.

6. The liability of the Insurer for all **Crime Loss** sustained by more than one **ABC Corp. Insured** shall not exceed the amount which the Insurer would pay if all **Crime Loss** had been sustained by one **ABC Corp. Insured**. In the event any loss is covered partly by the **Crime Coverage Part** and partly by any prior canceled or terminated insurance that the Insurer or any affiliate issued to the **ABC Corp. Insureds**, the most the Insurer will pay with respect to such loss is the larger of the amount recoverable under the **Crime Coverage Part** or the prior insurance. If any loss is covered partly by the **Crime Coverage Part** and partly by any prior canceled or terminated insurance issued by any carrier other than the Insurer or any affiliate, any retention amount applicable to the loss under the **Crime Coverage Part** will be reduced by any deductible or retention amount applicable under the prior insurance, and the limit applicable to the loss under the **Crime Coverage Part** will be reduced by any amount paid or payable to the **ABC Corp. Insureds** under the prior insurance.

## VI. SETTLEMENT/RETENTIONS/ADVANCEMENT OF DEFENSE COSTS/ALLOCATION

### 1. Insurer's Consent

The **ABC Corp. Insureds** shall not admit liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** incurred by **ABC Corp. Insured** to the extent the **Loss** results from such **ABC Corp. Insured** admitting liability, consenting to any judgment, agreeing to any settlement or making any settlement offer without the Insurer's prior written consent. The **ABC Corp. Insureds** agree that they shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy.

Notwithstanding the above, if the **ABC Corp. Insureds** are able to settle all claims which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such claims.

### 2. Defense of Claims

The **ABC Corp. Insureds** and not the Insurer have the duty to defend **Liability Claims** and claims against **ABC Corp. Insureds** covered under the **Crime Coverage Part** (if included). The Insurer has the right, but not the duty, to associate itself in the defense and settlement of any **Liability Claim** or such **Crime Coverage Part** claim.

### 3. Payment of **Loss** in Excess of Retentions

The Insurer is liable to pay only that amount of a covered **Single Loss** in excess of the applicable Retention, if any, up to the applicable Limit of Liability. The Retention shall be uninsured.

### 4. Retentions

- a. With respect to any **Liability Claim** covered under any **Liability Coverage Part**, **ABC Corp.**, any **Subsidiary** and/or any **Plan** shall advance **Defense Costs** and indemnify the **Insured Persons** for **Liability Loss** in connection with such **Liability Claim** to the fullest extent required or permitted under applicable law and shall pay the Retention applicable to such **Liability Claim**. If, in connection with any **Liability Claim** made against the **Insured Persons**, **ABC Corp.**, any **Subsidiary** and/or any **Plan** are not permitted to advance **Defense Costs** or to indemnify such **Insured Persons** for **Liability Loss** by reason of (i) **Financial Insolvency** or (ii) a good faith determination by **ABC Corp.**, any **Subsidiary** and/or any **Plan** that such payment is not permitted under the broadest construction of applicable law, no

Retention shall apply to **Liability Loss** paid on behalf of the **Insured Persons**. Nevertheless, the Retention shall apply to **Liability Loss** paid on behalf of **ABC Corp.**, any **Subsidiary** and/or any **Plan**. If **ABC Corp.**, any **Subsidiary** and/or any **Plan** fail to pay the Retention applicable to any such **Liability Claim** for any reason other than (i) or (ii) above, then the Insurer on behalf of the **Insured Persons** shall advance **Defense Costs** and pay **Liability Loss** without regard to such Retention, but **ABC Corp.**, any **Subsidiary** and/or any **Plan** further agree that they shall reimburse the Insurer for such amounts up to and including the applicable Retention.

- b. A single Retention shall apply to each **Single Loss** where the Single Limit of Liability and Retention set forth in Item 6 of the Declarations applies.
  - c. Separate Retentions shall apply to each **Single Loss** under each Coverage Part if the Scheduled Retentions set forth in the Coverage Schedule in Item 6 of the Declarations applies.
  - d. In the event more than one Retention applies to a **Single Loss**, the maximum total Retention amount applicable to such **Single Loss** shall be the highest of such applicable Retentions, subject to Section **XIII**.
5. Allocation of **Loss**

If a **Liability Claim** made against the **ABC Corp. Insureds** or a claim against **ABC Corp. Insureds** covered under the **Crime Coverage Part** (if included) includes both covered and uncovered matters or if a **Liability Claim** or such **Crime Coverage Part** claim is made against **ABC Corp. Insureds** who are extended coverage therefor and others (including **ABC Corp. Insureds**) who are not extended coverage therefor, the **ABC Corp. Insureds** agree that there must be an allocation between insured and uninsured loss. The **ABC Corp. Insureds** and the Insurer shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured loss.

6. Advancement of **Defense Costs**

Subject to the conditions set forth in Section **VI.7**, the Insurer, on behalf of the **ABC Corp. Insureds**, shall advance **Defense Costs** in excess of the applicable Retention, if any, before the final disposition of a **Liability Claim** against the **ABC Corp. Insureds** or a claim against **ABC Corp. Insureds** covered under the **Crime Coverage Part**, if included.

7. Conditions for Advancement of **Defense Costs**

Advancement by the Insurer of **Defense Costs** pursuant to this Section **VI.6** shall be subject to the following conditions:

- a. if the **ABC Corp. Insureds** and the Insurer agree on an allocation of insured and uninsured **Defense Costs**, the Insurer shall advance the amount of insured **Defense Costs**;
- b. if the **ABC Corp. Insureds** and the Insurer cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defense Costs**:
  - (i) the Insurer shall advance the percentage of **Defense Costs** proposed by the Insurer to be insured until a different allocation is negotiated, arbitrated or judicially determined;

- (ii) the Insurer, if requested by the **ABC Corp. Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **ABC Corp. Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators;
  - (iii) no presumption as to the correct allocation shall exist in any arbitration, suit or other proceeding; and
  - (iv) any arbitrated or judicially determined allocation of **Defense Costs** shall be applied retroactively to all **Defense Costs** previously advanced;
- c. the **ABC Corp. Insureds** shall provide a satisfactory written undertaking to repay the Insurer any **Defense Costs** finally established not to be insured; and
  - d. any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss**.

#### VII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE

1. If, during the **Policy Period** of the **Extended Reporting Period**, if applicable:
  - a. any **Liability Claim** other than a written demand for monetary damages or non-monetary relief is first made against the **ABC Corp. Insureds**, then the **ABC Corp. Insureds** shall, as a condition precedent to the obligations of the Insurer under any **Liability Coverage Part**, give a written notice to the Insurer as soon as practicable but in no event later than ninety days after the **Policy Period** or the **Extended Reporting Period**, if applicable; or
  - b. the **ABC Corp. Insureds** elect to treat as a **Liability Claim** a written demand for monetary damages or non-monetary relief received by the **ABC Corp. Insureds**, then the **ABC Corp. Insureds** shall give written notice to the Insurer as soon as practicable but in no event later than ninety days after the expiration date of (i) this Policy or (ii) the **Extended Reporting Period**, if applicable.

The **ABC Corp. Insureds** may defer submitting notice of a written demand for monetary damages or non-monetary relief without prejudice to their right to elect to treat such demand as a **Liability Claim** and to provide notice under this Policy or any renewal of this Policy by the Insurer or its affiliates; provided, however, a written demand for monetary damage or non-monetary relief that results in a civil, criminal, administrative regulatory or investigative proceeding, investigation or arbitration against the **ABC Corp. Insureds** shall be noticed to the Insurer pursuant to Paragraph a. above.
2. If during the **Policy Period** or the **Extended Reporting Period**, if applicable, the **ABC Corp. Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Liability Claim** and during such period give written notice to the Insurer of:
  - a. the names of any potential claimants and a description of the **Wrongful Act** which forms the basis of their potential **Liability Claim**,
  - b. the identity of the specific **ABC Corp. Insureds** allegedly responsible for such specific **Wrongful Act**,
  - c. the consequences which have resulted or may result from such specific **Wrongful Act**,

- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
  - e. the circumstances by which **ABC Corp. Insureds** first became aware of such specific **Wrongful Act**,  
then any **Liability Claim** otherwise covered pursuant to a **Liability Coverage Part** which is subsequently made and which arises out of such **Wrongful Act** shall be deemed to have been first made and reported to the Insurer by the **ABC Corp. Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Liability Claim**.
3. Any notice to the Insurer pursuant to subsections 1 or 2 above shall designate the **Liability Coverage Part(s)** under which the notice is being given and shall be treated as notice under only the **Liability Coverage Part(s)** so designated.
  4. Except as provided in 2 above, a **Liability Claim** shall be deemed made:
    - a. in the case of a civil, criminal, administrative, regulatory or investigative proceeding or arbitration, on the earliest of the date of service upon or other receipt by any **ABC Corp. Insured** of a complaint, indictment, notice of charge or similar document against the **ABC Corp. Insured** in such proceeding or arbitration;
    - b. in the case of an investigation, on the earliest of the date of service upon or other receipt by the **Insured Person** of a written notice or subpoena from the investigating authority identifying such **Insured Person** as an individual against whom a formal proceeding may be commenced;
    - c. in the case of a written demand for monetary damages or non-monetary relief, on the Insurer's receipt of notice of such demand from any **ABC Corp. Insured**.
  5. More than one **Liability Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Liability Claim** which shall be deemed made on the earlier of:
    - a. the date on which the earliest such **Liability Claim** was first made, or
    - b. the first date valid notice was given by the **ABC Corp. Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Liability Claim**.
  6. Subject to the discovery provision below, the **Crime Coverage Part** applies to covered loss sustained directly as a result of:
    - a. an act committed or event occurring during the **Policy Period**; or
    - b. an act committed or event occurring during the period of any prior insurance that the **ABC Corp. Insureds** had under which the **ABC Corp. Insureds** could have recovered for the loss except that the time within which to discover the loss had expired, provided:
      - (i) this **Coverage Part** became effective at the time of cancellation or termination of the prior insurance;
      - (ii) the loss would have been covered by this **Coverage Part** had it been in effect when the acts or events causing the loss were committed or occurred; and
      - (iii) the loss is in excess of the Retention.

The limit applicable to such loss is limited to the lesser of the amount recoverable under this **Coverage Part** as of its effective date or the prior insurance, had it remained in effect.

The Insurer will pay under the **Crime Coverage Part** covered loss, or that portion of covered loss, discovered during the **Policy Period** and also such loss discovered:

- c. no later than one year from the end of the **Policy Period** if no replacement insurance is obtained; or
- d. no later than one year from the end of the **Policy Period** if such loss is not also covered by replacement insurance not issued by the Insurer or any affiliate; or
- e. no later than the number of days equal to any extended period to discover loss provided by replacement insurance not issued by the Insurer or any affiliate from the end of the **Policy Period** if such loss is:
  - (i) covered by replacement insurance; and
  - (ii) at the time such loss is discovered the replacement insurance provides an extended period to discover loss of less than one year or does not provide an extended period to discover loss.

Discovery occurs when an officer, director, partner or member of a **ABC Corp. Insured** not acting in collusion with the wrongdoer first becomes aware of facts which would reasonably cause him to believe that a loss of the type covered by the **Crime Coverage Part** has been or will be sustained.

7. Any loss to which the **Crime Coverage Part** applies must be reported as soon as practicable after discovery thereof **ABC Corp. Insured**. Within 90 days after that discovery the **ABC Corp. Insured** sustaining the loss shall provide a detailed sworn proof of loss. The **ABC Corp. Insureds** will, upon request of the Insurer, submit to an examination under oath. The **ABC Corp. Insureds** will also notify the police if they have reason to believe that any loss involves a violation of law.
8. The **ABC Corp. Insureds** shall give written notice to the Insurer under this Policy as specified in Item 4 of the Declarations, which shall be effective upon receipt.
9. The **ABC Corp. Insureds** shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request.

#### VIII. CANCELLATION

1. The Insurer may not cancel this Policy except for non-payment of any premium when due. In such event, the Insurer may cancel this Policy by providing to **ABC Corp.** written notice stating when, not less than 20 days thereafter, such cancellation shall be effective. However, if such cancellation is on account of non-payment of the premium due on inception of the **Policy Period**, such cancellation shall be effective as of the inception of the **Policy Period** unless the Insurer receives payment of such premium within 20 days after the Insurer provides written notice to **ABC Corp.** of such cancellation.
2. The **ABC Corp. Insureds** grant the exclusive authority to cancel this Policy to **ABC Corp.** **ABC Corp.** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective, provided **ABC Corp.** may not cancel this Policy at any time if the **Policy Period** as set forth in Item 2 of the Declarations is 24 months or longer. The mailing or delivery of such notice shall be

sufficient. The unearned premium shall be computed pro rata and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

#### IX. NON-RENEWAL/RENEWAL ON DIFFERENT TERMS

1. Non-Renewal

If the Insurer decides not to offer any renewal terms for this Policy, the Insurer shall provide written notice to **ABC Corp.** at least 60 days prior to the Policy expiration date. The notice shall include the reason for such non-renewal.

2. Renewal on Different Terms

If the Insurer offers to renew this Policy on terms which involve any change in Retention Amounts, premium, Limit of Liability or other terms and conditions, the Insurer shall provide written notice to **ABC Corp.** at least 60 days prior to the Policy expiration date.

#### X. NOTICES TO THE NAMED COMPANY

Any notices required under Section **VIII, CANCELLATION**, and Section **IX, NON-RENEWAL/RENEWAL ON DIFFERENT TERMS**, shall be provided to **ABC Corp.** at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

#### XI. OTHER INSURANCE

If any **Loss** resulting from any claim is insured under any other policies, this Policy shall apply only to the extent the **Loss** exceeds the amount paid under such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this Policy.

#### XII. APPLICATION

1. The **ABC Corp. Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and: (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.
2. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission:
  - a. made with the intent to deceive, or
  - b. which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under the Policy;

this Policy shall be voided as to (i) **ABC Corp.**, and **Subsidiary** and any **Plan** if an **Executive Officer** is responsible for or knew of such misrepresentation or omission and, (ii) any **Insured Persons** who are responsible for or who knew of such misrepresentation or omission. Such responsibility or knowledge shall not be imputed to any other **Insured Persons**.

### XIII. COORDINATION AMONG COVERAGE PARTS

That portion of any **Liability Loss** covered by both Coverage Part B (Employment Practices Liability) and either Coverage Part A (Directors, Officers and Entity Securities) or Coverage Part C (Fiduciary Liability), if included, shall be first covered as provided in, and subject to the Limit of Liability and Retention applicable to, Coverage Part B. If the Limit of Liability applicable to Coverage Part B is exhausted, any remaining portion of such **Liability Loss** shall be then covered as provided in, and subject to the Limit of Liability and Retention (if any) applicable to, such other Coverage Part.

### XIV. COVERAGE FOR NEW SUBSIDIARIES AND PLANS

1. If, after the effective date of this Policy, (i) **ABC Corp.** or any **Subsidiary** creates or acquires an entity or plan, or (ii) **ABC Corp.**, any **Subsidiary** or any **Plan** merges with another entity or plan such that **ABC Corp.**, any **Subsidiary** or any **Plan** is the surviving entity or plan, then such entity or plan and any subsidiaries, plans, directors, officers, trustees or employees of such entity or plan who otherwise would thereby become a **ABC Corp. Insured** shall be covered under this Policy, subject to its terms and conditions, only if:
  - a. the fair value of all cash, securities, assumed indebtedness and other consideration paid by **ABC Corp.**, any **Subsidiary** or any **Plan** in such transaction does not exceed 25% of the total consolidated assets of **ABC Corp.** as of the date of **ABC Corp.'s** most recent audited consolidated financial statement prior to such transaction; or
  - b. other than as described in paragraph a immediately above, the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium and/or amendment of the provisions of the Policy, agrees to provide coverage for such subsidiaries, plans, directors, officers or employees.
2. There shall be no coverage under any **Liability Coverage Part** for any **Wrongful Act** by such created, acquired or merged entity or **Plan**, or by any persons or entities considered to be **ABC Corp. Insureds** pursuant to Section XIV.1 above, where such **Wrongful Act** occurred in whole or in part before the effective date of such acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**. There is no coverage under the **Crime Coverage Part** (if included) for any event discovered prior to the effective date of such creation, merger or acquisition either by **ABC Corp. Insured**, or by the created, acquired or merged entity.

### XV. CHANGE OF STATUS OF INSURED

#### 1. Takeover of ABC Corp.

In the event of a **Takeover** of **ABC Corp.**, coverage under the Coverage Parts of this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Liability Claims** for **Wrongful Acts** occurring, or **Loss** under the **Crime Coverage**

**Part** sustained, before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring, or **Crime Loss** sustained, on or after such effective date, and (ii) **ABC Corp.** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer. However, if the **Takeover** arises in circumstances described in Section II, **DEFINITIONS**, subsection 20(d) in the definition of **Takeover**, there is no coverage under the **Crime Coverage Part** for any event reported after the date of **Takeover**.

2. Cessation of **Subsidiary**

If any organization ceases to be a **Subsidiary**:

- a. there shall be no coverage under the **Liability Coverage Parts** of this Policy for any **Wrongful Act** by such organization or any **Insured Person** or **Plan** of such organization occurring after the date such organization ceased to be a **Subsidiary**; and
- b. there shall be no coverage under the **Crime Coverage Part** (if included) for **Crime Loss** sustained by the **Subsidiary** after the date it ceased to be a **Subsidiary**.

3. Transfer of a **Plan**

If the sponsorship of a **Plan** is transferred so that **ABC Corp.** or any **Subsidiary** is no longer the sole employer sponsor of such **Plan**,

- a. there shall be no coverage under the **Liability Coverage Parts** of this Policy for any **Wrongful Act** by or with respect to such **Plan** occurring after the date of such transfer; and
- b. there shall be no coverage under the **Crime Coverage Part** (if included) for **Crime Loss** sustained by or with respect to such **Plan** after the date of such transfer.

## XVI. SUBROGATION AND RECOVERY

1. To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **ABC Corp. Insureds'** rights of recovery therefor, including without limitation an **Insured Person's** right to indemnification or advancement from **ABC Corp.** or any **Subsidiary**. The **ABC Corp. Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.
2. If a **Single Loss** is in part insured and in part uninsured under this Policy or is in an amount in excess of the applicable Limit of Liability, the **ABC Corp. Insureds** and the Insurer shall attempt to agree upon an equitable allocation of any recoveries made, whether before or after payment of the **Loss** by the Insurer, from any person or source responsible for causing the **Loss**. Reasonable expenses incurred in making a recovery shall always have priority of payment from all such recoveries. If, after exerting their best efforts, the **ABC Corp. Insureds** and the Insurer are unable to agree upon such an allocation after taking into account due consideration for the respective parties' willingness to pay the expenses of making any recovery, the Insurer, if requested by the **ABC Corp. Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **ABC Corp. Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators.

3. In no event shall the **ABC Corp. Insureds** be entitled to recoup from recoveries any amount to satisfy any Retention until after all amounts which the Insurer is required to pay or pays under any applicable Coverage Part are reimbursed to the Insurer.
4. Any allocation of recoveries for purposes of this Section **XVI** shall not change any provisions dealing with calculation of insured **Crime Loss** under the **Crime Coverage Part**.

#### **XVII. CHANGES**

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

#### **XIII. COMPANY AUTHORIZATION**

1. The **ABC Corp. Insureds** agree that **ABC Corp.** will act on behalf of the **ABC Corp. Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section **VII.1** or **2**), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.
2. Payment of **Crime Loss** covered under the **Crime Coverage Part** to **ABC Corp.** shall discharge the Insurer from all further obligations under the **Crime Coverage Part** with respect to such **Crime Loss**, regardless of which **ABC Corp. Insured** sustained the **Crime Loss**.

#### **XIX. NO ACTION AGAINST INSURER**

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **ABC Corp. Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **ABC Corp. Insureds** after trial or by written agreement of the **ABC Corp. Insureds**, the claimant and the Insurer.
2. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Liability Claim** against the **ABC Corp. Insureds** to determine the **ABC Corp. Insureds'** liability, nor shall the Insurer be impleaded by the **ABC Corp. Insureds** or their legal representatives in any such **Liability Claim**.
3. Legal proceedings for the recovery of any **Loss** claimed under the **Crime Coverage Part** shall not be brought prior to the expiration of ninety (90) days after proof of loss was received by the Insurer nor more than two (2) years after the loss was discovered.

#### **XX. ASSIGNMENT OF INTEREST**

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

#### **XXI. TERRITORY**

Coverage shall apply worldwide.

**XXII. ENTIRE AGREEMENT**

The **ABC Corp. Insureds** agree that this Policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.