

## Common Policy Terms and Conditions Section

### CLAIMS MADE NOTICE FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.**

**PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

#### I. Common Policy Terms and Conditions

The Common Policy Terms and Conditions Section of this **Policy** shall apply to all **Coverage Sections**. Unless stated to the contrary in any **Coverage Section**, the terms and conditions of each **Coverage Section** of this **Policy** shall apply only to that **Coverage Section** and shall not apply to any other **Coverage Section** of this **Policy**. If any provision in the Common Policy Terms and Conditions Section is inconsistent or in conflict with the terms and conditions of any **Coverage Section**, including any endorsement attached thereto, the terms and conditions of such **Coverage Section** or endorsement, shall control for the purposes of that **Coverage Section**.

#### II. Extensions

##### A. Extended Reporting Period

1. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this **Policy**, then the **Named Insured** shall have the right, upon payment of the appropriate percentage of the "full annual premium," as stated in Item 8. of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made and reported during the appropriate period of months, as stated in Item 8. of the Declarations, after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this **Policy**. Such appropriate period of months shall be referred to as the Extended Reporting Period. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period** for all **Coverage Sections** purchased as part of this **Policy**.
2. The rights contained in this section II. A. shall terminate unless written notice of such election together with the additional premium due is received by the **Insurer** within 30 days of the effective date of cancellation or non-renewal.
3. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.

##### B. Automatic Extended Reporting Period

If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this **Policy**, then without any additional premium being required, there shall be an automatic extension of the coverage granted by this **Policy** with respect to any **Claim** first made and reported during the period of 60 days after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this **Policy** and only if there is no other policy or policies that would otherwise provide insurance for such **Wrongful Act**. This 60 day period shall be referred to as the Automatic Extended Reporting Period.

##### C. Run Off Period in the event of a Transaction

1. In the event of a Transaction, as defined in section VIII. D. of the Common Policy Terms and Conditions Section of this **Policy**, the **Named Insured** shall have the right to purchase an extension of the coverage granted by this **Policy** of no less than 12 months, but only with respect to any **Wrongful Act** fully occurring prior to the date of the Transaction and otherwise covered by this **Policy**. Such extension of coverage shall be referred to as the Run Off Period. The **Insurer** shall offer such Run Off Period pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide.
2. The rights contained in this paragraph shall terminate unless written notice of such election together with the additional premium due is received by the **Insurer** within 90 days of the Transaction.

3. The additional premium for the Run Off Period shall be fully earned at the inception of the Run Off Period. The Run Off Period is not cancelable. If the Run Off Period is purchased, the Limits of Liability for the Run Off Period shall be part of, and not in addition to, the applicable Limits of Liability stated in Item 4. of the Declarations.

### D. Estates, Legal Representatives, Spouses and Domestic Partners

This **Policy** shall cover **Loss** arising from a **Claim** made against:

1. the heirs, executors, administrators, and legal representatives of an **Insured Person** in the event of death, incapacity or bankruptcy, but solely with respect to the liability of an **Insured Person** as otherwise covered by this **Policy**; or
2. the lawful "spouse" or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise, of any applicable jurisdiction in the world) of an **Insured Person** for a **Claim** arising solely out of his or her status as the "spouse" or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the "spouse" or domestic partner, or property transferred from the **Insured Person** to the "spouse" or domestic partner. As used herein, "spouse" shall include a person that is party to a civil union with the **Insured Person** if they establish such civil union under the licensing process established by the applicable jurisdiction. However, this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the "spouse" or domestic partner, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.

### E. Punitive Damages

**Damages** also means, where insurable, liquidated, punitive, or exemplary damages, or any multiplied damages award in excess of the amount so multiplied. Such coverage for liquidated, punitive, exemplary or multiplied damages is part of and not in addition to the Limit of Liability, and any payment of such damages shall serve to reduce the Limit of Liability. Only for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether such liquidated, punitive, exemplary or multiplied damages are insurable under this **Policy**, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:

1. those damages were awarded or imposed; or
2. any **Wrongful Act** occurred for which such damages were awarded or imposed; or
3. the **Insured** resides, is incorporated or has its principal place of business; or
4. the **Insurer** is incorporated or has its principal place of business.

### F. Coverage for New Subsidiaries and Locations

1. If during the **Policy Period** the **Insured Entity** forms or acquires a **Subsidiary**, this **Policy** shall apply:
  - a. automatically for an entity whose assets are less than 35 percent of the total consolidated assets and whose number of employees are less than 35 percent of the total number of employees of the **Insured Entity** as of the **Policy** inception date; or
  - b. for an entity whose assets are equal to or greater than 35 percent of the total consolidated assets or whose number of employees are equal to or greater than 35 percent of the total number of employees of the **Insured Entity** as of the **Policy** inception date, but only upon the condition that within 90 days of it becoming a **Subsidiary**, the **Named Insured** provides the **Insurer** in writing with full particulars of the new **Subsidiary** and agrees to any additional premium and/or amendment of the provisions of this **Policy** required by the **Insurer** related to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Insured** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.
2. If during the **Policy Period** the **Insured Entity** adds a location domiciled within the United States, other than that which is described in sub-paragraph F. 1. above, subject to the terms and conditions of this **Policy**, coverage for such location shall automatically apply.

### G. Coverage Territory

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world. In the event that the **Insured Entity** operates outside the United States, then the term **Insured Person** also means those titles, positions or capacities in such foreign **Insured Entity** which is equivalent to the position of **Insured Person** in an entity incorporated and/or formed within the United States.

### H. Severability of Exclusions

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the Exclusions set forth in section IV. of this Common Policy Terms and Conditions Section.

## III. Definitions

Whenever printed in boldface type and whether in the singular or plural form in this **Policy**, the following terms shall have the meanings indicated below.

- A. **Claim** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.
- B. **Costs of Defense** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.
- C. **Coverage Section** means, individually or collectively, the purchased coverage sections listed in Item 3. of the Declarations, including all endorsements attached thereto.
- D. **Damages** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.
- E. **Debtor in Possession** means a debtor in possession as such term is used in Chapter 11 of the United States of America Bankruptcy Code.
- F. **Financial Insolvency** means the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Entity**; or the **Insured Entity** becoming a **Debtor in Possession**.
- G. **Insured** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.
- H. **Insured Entity** means the **Named Insured** and any **Subsidiary**, and in the event any bankruptcy proceeding shall be instituted by or against the **Insured Entity**, the **Debtor in Possession** (or equivalent status outside the United States), if any.
- I. **Insured Person** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.
- J. **Insurer** means the entity issuing this **Policy** as listed on the Declarations Page.
- K. **Loss** means **Damages** and **Costs of Defense**.
- L. **Named Insured** means the entity designated in Item 1. of the Declarations.
- M. **Policy** means, collectively: the Declarations; the Common Policy Terms and Conditions Section; the **Coverage Sections**; the **Proposal**; and any attached endorsements.
- N. **Policy Period** means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this **Policy**.
- O. **Prior and Pending Litigation Date** means the respective dates set forth in Item 7. of the Declarations.
- P. **Proposal** means the Proposal Form and any material submitted therewith.
- Q. **Related Wrongful Acts** means **Wrongful Acts** which are the same as, related or continuous or that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- R. **Subsidiary** means:
  - 1. an entity which qualifies as a nonprofit organization and which the **Named Insured** has or controls the right to elect or appoint more than 50 percent of the Board of Directors (or other governing body); or
  - 2. an entity of which the **Named Insured** owns more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its **Subsidiaries**; or
  - 3. an entity identified by endorsement to this **Policy**; or
  - 4. an entity that an **Insured Entity** forms or acquires during the **Policy Period**, subject to the terms of section II. F. of this Common Policy Terms and Conditions Section.

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective date that such **Subsidiary** became a **Subsidiary** and prior to the date that such **Subsidiary** ceased to be a **Subsidiary**. An entity ceases to be a **Subsidiary** when the **Named Insured** ceases to own more than 50 percent of the issued and outstanding voting stock either directly or indirectly through one or more of its **Subsidiaries**.

- S. **Wrongful Act** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsements attached to this **Policy**.

### IV. Exclusions

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The **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission or contamination of any kind, including but not limited to, nuclear material or nuclear waste; provided, however, this exclusion shall not apply to any **Claim** brought derivatively by any security holder of the **Insured Entity**, provided that such **Claim** is instigated and continued totally independent of and totally without the solicitation, assistance or participation of any **Insured** or the **Insured Entity**, or any entity under common control with the **Insured Entity**;
- B. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving:
1. any **Wrongful Act** alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period** under any other policy, or
  2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Related Wrongful Acts**.

### V. Limits of Liability and Deductibles

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#### A. Limits of Liability

In no event shall the **Insurer** be liable to make any payment for **Loss** in excess of the Limit(s) of Liability stated in Item 4. of the Declarations or any applicable sub-limit stated in this **Policy**, with respect to all **Claim(s)** covered under the applicable **Coverage Section(s)**.

In the event a **Claim** is covered under more than one **Coverage Section** and such **Coverage Sections** are not subject to a Shared Limit of Liability, the **Insurer** shall pay covered **Damages** based on the terms of each applicable **Coverage Section** and allocated to each applicable **Coverage Section** on the basis of the relative legal and financial exposures of the parties pursuant to the applicable **Coverage Section(s)**, as determined by the **Insurer**. The **Insurer** shall pay covered **Costs of Defense** based on the terms of each applicable **Coverage Section**, to be distributed equally against all applicable **Coverage Section(s)**. Any **Loss** paid pursuant to any applicable **Coverage Section(s)** shall reduce the applicable sub-limit or Limit of Liability of such **Coverage Section(s)** pursuant to which such **Loss** was paid. In no event shall the **Insurer** be liable to pay **Loss** for such **Claim** in excess of the largest Limit of Liability available under the **Coverage Section(s)** applicable to such **Claim**.

The Limits of Liability for any Extended Reporting Period(s) that may apply shall be part of, and not in addition to, the Limits of Liability stated in Item 4. of the Declarations or any applicable sub-limit stated in this **Policy**.

Unless otherwise stated, all Limits of Liability for this **Policy**, including any sub-limit(s), will apply in the aggregate to all covered **Claims**.

#### B. Shared Limit of Liability

If a Shared Limit of Liability is purchased, as stated in Item 4. A. of the Declarations, then the maximum limit of the **Insurer's** liability for all **Loss** for the **Coverage Sections** purchased as part of the Shared Limit of Liability shall not exceed the Shared Limit of Liability stated in Item 4. A. of the Declarations.

#### C. Separate Limit of Liability

If any Separate Limit(s) of Liability are purchased, as stated in Item 4. B. of the Declarations, then the maximum limit of the **Insurer's** liability for all **Loss** for each applicable **Coverage Section** purchased shall not exceed the Separate Limit of Liability for each applicable **Coverage Section**.

#### D. Exhaustion of Limit of Liability

In the event the applicable Limit of Liability stated in Item 4. of the Declarations, or any applicable sub-limit stated in this **Policy**, is exhausted by payment of **Loss**, or has been offered or tendered to, or on behalf of, the **Insured**, or to a court of competent jurisdiction, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.

#### E. Costs of Defense

**Costs of Defense** are not payable by the **Insurer** in addition to any applicable Limit of Liability. **Costs of Defense** are part of **Loss** and as such are subject to the applicable Limit of Liability for **Loss**.

### F. Deductibles

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Deductible amount stated in Item 5. of the Declarations. Such Deductible amount shall be borne by the **Named Insured** and shall apply to each and every **Claim**. In the event a **Claim** is covered under more than one **Coverage Section**, the largest applicable Deductible shall apply. If the **Named Insured** fails to pay the Deductible, then all **Insureds** shall be jointly and severally obligated to pay the Deductible.

If the **Insurer** advances any **Loss** within the Deductible, the **Named Insured** shall, upon written demand, reimburse the **Insurer** for such amounts within 30 days. Any funds so advanced by the **Insurer**, at its option, shall serve to reduce the Limit of Liability to the extent that they are not repaid to the **Insurer**. If the **Insurer** brings suit to collect the Deductible, then any **Insured** responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.

## VI. Defense, Cooperation and Settlement

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### A. Consent

No **Insured** shall admit or assume liability, enter into any settlement agreement, make any offer of settlement or compromise, stipulate to any judgment, agree to arbitration, or incur **Costs of Defense** without the **Insurer's** prior written consent. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any **Loss** incurred or settlements agreed to prior to the **Insurer** giving its written consent shall not be covered hereunder.

### B. Defense of Claims

1. The **Insurer** shall have the right and the duty to defend any **Claim** covered by this **Policy**. The **Insurer** shall have the right to select defense counsel. The **Insurer** has no obligation to provide **Costs of Defense** for any **Claim** not covered by this **Policy**.
2. The **Insurer** has no obligation to pay any amounts incurred by any **Insured** in any way involving the interpretation or applicability of the terms and conditions of this **Policy** or any other **Policy** issued by the **Insurer**.

### C. Cooperation

Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim**, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**, at no cost to the **Insurer**. Upon the request of the **Insurer**, the **Insured** shall submit to examination and interrogation, under oath if required by a representative of the **Insurer**, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.

### D. Exhaustion of Limit of Liability

The **Insurer's** right and duty to defend any **Claim** shall end when the applicable Limit of Liability stated in Item 4. of the Declarations, or any applicable sub-limit stated in this **Policy**, has been exhausted by the payment of **Loss**, or has been offered or tendered to, or on behalf of, the **Insured** or to a court of competent jurisdiction.

### E. Settlements

The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any civil, criminal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall be the amount for which the **Claim** could have been settled, including **Costs of Defense** incurred up to the date of such refusal, and 80 percent of such **Loss** excess of the amount for which the **Claim** could have been settled. It is a condition of this insurance that the remaining 20 percent of such **Loss** shall be borne by the **Insureds** at their own risk. Such amounts are subject to the provisions of section V. of this Common Policy Terms and Conditions Section.

### F. Allocation

If a **Claim** made against an **Insured** pursuant to any **Coverage Section(s)** contains both covered and uncovered matters, then the **Named Insured** and the **Insurer** will allocate any amount incurred with respect to such **Claim** as follows:

1. 100 percent of **Costs of Defense** incurred will constitute covered **Loss**; and
2. **Damages** will be allocated on the basis of the relative legal and financial exposures of the parties to covered and uncovered matters pursuant to the applicable **Coverage Section(s)**.

If a **Claim** made against an **Insured** pursuant to any **Coverage Section(s)** contains both covered and uncovered parties, then the **Named Insured** and the **Insurer** will allocate any amounts incurred on behalf of any uncovered parties with respect to such **Claim** on the basis of the relative legal and financial exposures of the parties of such covered and uncovered parties pursuant to the applicable **Coverage Section(s)**.

The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**. In the event that the parties cannot reach a mutually agreeable allocation, the **Insurer** will determine the appropriate allocation at its discretion. Any dispute arising out of the allocation of **Loss** shall be subject to the Alternative Dispute Resolution process set forth in section VIII. J. of this Common Policy Terms and Conditions Section.

### VII. Notice of Claims

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#### A. Notice of Claim

As a condition precedent to their rights under this **Policy**, any **Insured** shall give the **Insurer** written notice of a **Claim** first made against the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than 90 days after the expiration of the **Policy Period**.

#### B. Notice of Circumstance

If during the **Policy Period** or the Extended Reporting Period that may apply, any **Insured** becomes aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer**, as soon as practicable (but prior to the expiration of or cancellation of this **Policy**), of:

1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
2. the injury or damages which may result therefrom; and
3. the circumstances by which the **Insured** first became aware thereof;

then any **Claim** subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.

#### C. Related Wrongful Acts

All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more series of any similar, repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:

1. when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** was first made; or
2. when notice pursuant to section VII. B. above of a fact, circumstance or situation giving rise to such **Claim** is given.

#### D. Information and Cooperation

In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insureds** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith, all without charge to the **Insurer**.

### VIII. General Conditions

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#### A. Termination of Policy and Non-Renewal

1. This **Policy** shall terminate at the earliest of the following times:
  - a. upon the receipt by the **Insurer** of written notice of cancellation from the **Named Insured**;
  - b. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
  - c. at such other time as may be agreed between the **Named Insured** and the **Insurer**; or
  - d. upon written notice by the **Insurer** of cancellation for non-payment of premium.
2. The **Insurer** may not cancel this **Policy** except for non-payment of any premium when due. The **Insurer** shall provide at least 20 days written notice to the **Named Insured** prior to any cancellation for non-payment of any premium.
3. If this **Policy** is cancelled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the **Insurer** decides not to renew this **Policy**, the **Insurer** shall provide written notice to the **Named Insured** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.

- Any notices to be given to the **Named Insured** under this section VIII. A. shall be provided to the **Named Insured** at the last known principal address and to its insurance agent or broker.

### B. Proposal

The **Proposal** is the basis of this **Policy** and is incorporated in and constitutes a part of this **Policy**. The Proposal Form(s) and any material submitted with the Proposal Form(s) shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by the **Insureds** that the statements in the **Proposal** are their material representations and that this **Policy** is issued in reliance upon the truth and accuracy of such statements. With respect to such statements, no knowledge or information possessed by any **Insured Person** shall be imputed to any other **Insured Person**.

If any person(s) knew as of the **Policy** inception date that such statements contained in the **Proposal** were untrue, inaccurate or incomplete, and such statements materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, then coverage shall not apply as to that person or persons.

If the President, Chief Executive Officer, Chief Financial Officer or Managing Partner of the **Insured Entity** knew as of the **Policy** inception date that such statements contained in the **Proposal** were untrue, inaccurate or incomplete and such statements materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, then coverage shall not apply as to that person(s) and the **Insured Entity**.

Notwithstanding the foregoing, Insuring Agreement I. A. of the Directors, Officers and Corporate Liability Insurance Coverage Section of this **Policy** shall not be rescinded by the **Insurer** as to any person(s) who did not know as of the **Policy** inception date that such statements contained in the **Proposal** were untrue, inaccurate or incomplete.

### C. 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 of the terms of this **Policy**, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organization shall have any right under this **Policy** to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives.

### D. Changes in Exposure

If during the **Policy Period**:

- the **Named Insured** shall consolidate or merge with or into, or sell all or at least 75 percent of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50 percent of the voting power for the election of Directors of the **Named Insured**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as "Transaction")

then, this **Policy** shall continue in full force and effect as to any **Wrongful Acts** fully occurring prior to the Transaction, but there shall be no coverage afforded by any provision of this **Policy** for any actual or alleged **Wrongful Acts** occurring after the Transaction. This **Policy** may not be cancelled following a Transaction and the entire premium for this **Policy** shall be deemed fully earned as of the Transaction. The **Named Insured** shall give the **Insurer** written notice of the Transaction as soon as practicable but not later than 60 days after the Transaction. In the event of a Transaction, the **Named Insured** shall have the right to purchase the Run Off Period as defined in section II. C. of the Common Policy Terms and Conditions section of this **Policy** but shall have no right to the Extended Reporting Period.

### E. Subrogation

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything reasonable that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Policy** unless such **Insured** has been convicted of a criminal act, or been judicially determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled.

Any amount recovered pursuant to the exercise of such rights of subrogation shall be applied in the following order until the amount recovered has been exhausted: (1) to the repayment of expenses incurred in the exercising of any rights of subrogation; (2) to **Loss** paid by the **Insureds** in excess of the Limit(s) of Liability hereunder; (3) to **Loss** paid by the **Insurer**; (4) to **Loss** paid by the **Insured** in excess of the Deductible; and (5) to repayment of the Deductible.

**F. Assignment**

This **Policy** and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

**G. Entire Agreement**

By acceptance of this **Policy**, the **Insureds** and the **Insurer** agree that this **Policy** (including the **Proposal**) and any written endorsements attached hereto constitute the entire agreement between the parties.

**H. Representation by Named Insured**

It is agreed that the **Named Insured** shall act on behalf of the **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the receipt and acceptance of any endorsements issued to form a part of this **Policy** and the exercising or declining to exercise any right to an Extended Reporting Period.

**I. Bankruptcy**

Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder. In the event a liquidation or reorganization proceeding is commenced by or against the **Insured Entity** pursuant to the United States Bankruptcy Code, including amendments thereto, or any similar state or local law, the **Insured Entity** and the **Insured Persons** hereby: (1) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the **Insurer**, the **Insured Entity** or any **Insured Persons** to obtain relief from any such stay or injunction.

**J. Alternative Dispute Resolution Process**

It is hereby understood and agreed that all disputes or differences which may arise under, or in connection with, this **Policy** that cannot be resolved by and between the **Insurer** and any **Insured**, whether arising before or after termination of this **Policy** (including but not limited to, the breach, termination or invalidity of this **Policy**, or any determination of the amount of **Loss**), must first be submitted to the non-binding mediation process set forth in this section VIII. J. The non-binding mediation will proceed in any manner mutually agreed by and between the **Insurer** and the **Insured**, in which all implicated **Insureds** and the **Insurer** shall try in good faith to settle the dispute by mediation. If the **Insurer** and the **Insured** cannot agree on the process of the mediation, it shall proceed in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator versed in the legal and/or insurance issues relevant to the matter(s) in dispute.

In the event that such non-binding mediation does not result in a settlement of the subject dispute, either party shall have the right, with all other parties' consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three arbitrators selected as follows: (i) the **Insured** will select one arbitrator; (ii) the **Insurer** will select one arbitrator; and (iii) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then-prevailing Commercial Arbitration Rules. In the event of arbitration, the decision of the arbitrators shall be final and binding to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs.

Notwithstanding the foregoing, no arbitration proceeding shall be commenced until at least 90 days after the date of the non-binding mediation shall be deemed concluded or terminated by the mediator. Each party shall share equally the expenses of the non-binding mediation and arbitration.

The non-binding mediation may be commenced in Chicago, Illinois, or in the state indicated in Item 1. of the Declarations as the mailing address for the **Named Insured**.

In witness whereof, the **Insurer** has caused this **Policy** to be signed by its President and Secretary, but this **Policy** shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary