

# Intellectual Property Infringement Defense Cost Reimbursement Policy - DECLARATIONS

## POLICY NO.

NOTE: Unless waived by Endorsement, no CLAIM to have a CIVIL PROCEEDING or any part thereof deemed COVERED LITIGATION will be accepted or considered if such CIVIL PROCEEDING is actually commenced on or before the Effective Date of this Policy as well as commenced within Ninety (90) days after the Effective Date of this Policy.

Item 1. Name and Address of Insured:

Insured's Agent, Address:

S/L License No.:

Insured is:  Individual  Corporation  Partnership  Other \_\_\_\_\_

Item 2. Policy Period (Month, Day, Year):

|       |     |
|-------|-----|
| From: | To: |
|-------|-----|

(12:01 a.m. Eastern Standard Time at the address of the Insured as stated herein)

(Note: Policy renewability is not guaranteed. Re-application for continued coverage is required. The Company reserves the right to refuse continued coverage, except where required by law.)

Item 3. MANUFACTURED PRODUCTS Insured and Premium:

| Product(s) Description:   | Amount Charged: |
|---|-----------------|
| See Attached Schedule of MANUFACTURED PRODUCT(S)                      | \$              |
| Coverage includes CIVIL PROCEEDINGS for infringement of:              |                 |
| Patents? Yes <input type="checkbox"/> No: <input type="checkbox"/>    |                 |
| Trademarks? Yes <input type="checkbox"/> No: <input type="checkbox"/> |                 |
| Copyrights? Yes <input type="checkbox"/> No: <input type="checkbox"/> |                 |
| <b>TOTAL AMOUNT CHARGED:</b>  | \$              |

Item 4. Limits of Reimbursement (Indemnification) Liability and Damages (if indicated in Item 6); Copayment percentage; and Self-Insured Retention:

|  |             |
|--|-------------|
| LITIGATION EXPENSE/DAMAGES (if applicable) per CLAIM.....        | \$X,XXX,XXX |
| LITIGATION EXPENSE/DAMAGES (if applicable) Policy Aggregate..... | \$X,XXX,XXX |
| Copayment Percentage.....  | %           |
| Self Insured Retention per CLAIM.....                            | \$          |

Item 5. Forms and Endorsements:

|  |
|--|
|  |
|--|

Item 6. Other Coverages:

|   |   |
|---|---|
| Reimbursement for DAMAGES included? YES: <input checked="" type="checkbox"/> NO: <input type="checkbox"/> | TERRORISM COVERAGE Accepted? YES: <input type="checkbox"/> NO: <input type="checkbox"/> |
|---|---|

Countersigned if required by law:

THIS DECLARATIONS PAGE WITH POLICY AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED INFRINGEMENT DEFENSE COST REIMBURSEMENT POLICY

# INTELLECTUAL PROPERTY INSURANCE

## INFRINGEMENT DEFENSE COST AND DAMAGES REIMBURSEMENT INSURANCE POLICY

© (1991 - 2004) Intellectual Property Insurance Services Corporation, Inc.

THIS IS A CLAIMS MADE AND REPORTED POLICY. This Policy applies only to those CLAIMS that are made to the Company during the POLICY PERIOD for reimbursement of LITIGATION EXPENSE and DAMAGES (if DAMAGES are designated on the Declarations Page) arising out of COVERED LITIGATION. Coverage under this Policy does not include payment or reimbursement of any fines, or penalties including but not limited to punitive, exemplary, treble or multiple damages of any kind, non-pecuniary relief and taxes assessed against the Named Insured. PLEASE NOTE THIS IS A DEFENSE COST AND DAMAGES REIMBURSEMENT POLICY ONLY. UNLESS SPECIFICALLY ASSUMED BY THE COMPANY IN WRITING, THE DEFENSE OF THE NAMED INSURED IN ANY ACTION, ADMINISTRATIVE PROCEEDING(S) OR CIVIL PROCEEDING(S) OF WHATEVER NATURE IS AT ALL TIMES THE RESPONSIBILITY OF THE NAMED INSURED. Words and phrases appearing in capital letters have special meaning while the same words and phrases in lower case type have their ordinary and customary meanings; please refer to the DEFINITIONS (SECTION II) below. Please also read the Terms, Conditions, and Exclusions of this Policy carefully and discuss its coverage with your professional advisor.

The Company will only accept and consider CLAIMS on CIVIL PROCEEDINGS alleging INFRINGEMENT which CIVIL PROCEEDINGS are commenced no sooner than ninety (90) days after the effective date of coverage, and thereafter. Unless this Policy has been renewed or terminated, the Company will accept and consider CLAIMS on CIVIL PROCEEDINGS alleging INFRINGEMENT which CIVIL PROCEEDINGS are commenced within ninety (90) days after the expiration date of the Policy.

After a period of one year from the expiration of the Policy the Company will not reimburse LITIGATION EXPENSES or DAMAGES arising from any unauthorized, but not withdrawn or denied CLAIM (i.e. delayed CLAIM) in existence at the expiration of the POLICY PERIOD irrespective of the reasons for such delay and regardless of blame or fault.

NOTICE: THE LIMIT OF INDEMNITY AVAILABLE TO PAY DAMAGES (IF SUCH DAMAGES ARE DESIGNATED ON THE DECLARATIONS PAGE) SHALL BE REDUCED BY AMOUNTS REIMBURSED FOR LITIGATION EXPENSE. AMOUNTS INCURRED FOR LITIGATION EXPENSE AND DAMAGES SHALL BE APPLIED AGAINST THE SELF INSURED RETENTION AMOUNT.

### I. INSURING AGREEMENTS

#### A. Insurance Coverage

In reliance on the statements contained in any required FAVORABLE INFRINGEMENT OPINION and statements in the insurance application, which application shall include the Quotation/Acceptance Form executed by Named Insured, said application being attached hereto and made a part of this Policy, and in

consideration of the payment of the premium specified on the Declarations Page hereof, the Company agrees with the Named Insured as follows:

Subject to the Copayment Percentage, Self Insured Retention per CLAIM and Limits of Reimbursement (i.e. Indemnification) of Liability (and Damages if indicated) stated on the Declarations Page for each of the patent, copyright, trademark or trade dress coverages indicated on the Declarations Page, the Company shall reimburse the Named Insured only for LITIGATION EXPENSE and DAMAGES (if DAMAGES are designated on the Declarations Page) for which the Named Insured is liable and has paid to a third party arising out of COVERED LITIGATION, even if such COVERED LITIGATION is groundless, false or fraudulent. All reimbursement of LITIGATION EXPENSE and DAMAGES (if DAMAGES are designated on the Declarations Page) payable under this Policy shall be subject to all the terms, conditions, limitations, and exclusions stated herein. Reimbursements payable under this Policy will be made based upon receipts for LITIGATION EXPENSES paid by Named Insured and submitted to the Company.

**B. Territory**

The insurance provided under this Policy applies to COVERED LITIGATION that is brought in the United States of America, its territories or possessions.

**C. Limits of Liability**

1. Subject to the Copayment Percentage / Self Insured Retention per CLAIM shown on the Declarations Page, the Limits of Reimbursement (Indemnification) Liability and Damages (if indicated) shown on the Declarations Page is the most that the Company shall pay for reimbursement or indemnification of all LITIGATION EXPENSES and DAMAGES (if DAMAGES are designated on the Declarations Page) for:

- a: any single CLAIM; or
- b: all CLAIMS in the aggregate made during the POLICY PERIOD.

2. The inclusion herein of more than one Named Insured or the making of more than one CLAIM or the bringing of more than one CIVIL PROCEEDING(S), by a single or more than one person or organization shall not operate to increase the Company's limit of liability.

3. The Company will not be obligated to continue to reimburse the Named Insured under this Policy after the applicable limits of Reimbursement Liability (Indemnification) and Damages (if indicated) of the Company have been exhausted by reimbursement of LITIGATION EXPENSES and/or DAMAGES (if DAMAGES are designated on the Declarations Page).

**D. Allocation**

The Company shall reimburse the Named Insured only for LITIGATION EXPENSES and DAMAGES arising out of that portion of a CIVIL PROCEEDING which has been determined to be COVERED LITIGATION, and not for any other costs arising from the CIVIL PROCEEDING(S). If a CIVIL PROCEEDING includes COVERED LITIGATION and allegations that are not COVERED LITIGATION, the Policy shall conclusively allocate reimbursable LITIGATION EXPENSES and DAMAGES pro-rata as follows:

1. If the CIVIL PROCEEDING includes counts or causes of action ("Count(s)") which are not COVERED LITIGATION, reimbursable LITIGATION EXPENSES shall be determined by multiplying the reasonable and customary attorney's fees, costs and disbursements arising from the CIVIL PROCEEDING by a fraction whose numerator is the number of Counts which are COVERED LITIGATION present in the suit at the time those costs arose, and whose denominator is the total number of Counts in the CIVIL PROCEEDING at that time.

2. If a Count includes allegations of INFRINGEMENT by both insured and uninsured MANUFACTURED PRODUCTS, the reimbursable LITIGATION EXPENSES arising from that

Count shall be determined by the proportion of the insured to total MANUFACTURED PRODUCTS accused therein.

3. If a Count includes allegations that both insured-against and uninsured-against patents, trademarks, copyrights or portions thereof (including individual claims of a patent) are INFRINGED by an insured MANUFACTURED PRODUCT, the LITIGATION EXPENSES arising from that Count shall be determined by the proportion of the insured-against to total patents, trademarks, copyrights or portions thereof asserted in that Count.
  4. If DAMAGES are itemized by a Court, such itemization shall determine the reimbursable portion of DAMAGES. If DAMAGES are not itemized by a Court, the pro-rata calculation controlling LITIGATION EXPENSES shall also apply to DAMAGES.
  5. The allocation(s) under each applicable subpart of this Section shall be read in conjunction with each other, and the resulting cumulative allocation shall apply to determine reimbursable LITIGATION EXPENSES and DAMAGES prior to application of any Self Insured Retention or Copayment.
- E. **Copayment Percentage**  
The Named Insured shall be obligated to pay the percentage of copayment stated in Item 4 of the Declarations for all LITIGATION EXPENSES, including DEFENSE EXPENSES for INVALIDITY COUNTERCLAIM and RE-EXAMINATION PROCEEDINGS and DAMAGES, until reimbursements by the Company have reached the Limits of Reimbursement (Indemnification) Liability and Damages (if indicated) shown in the Declarations. Thereafter all LITIGATION EXPENSES and DAMAGES shall become the responsibility of the Named Insured.

F. **The Named Insured**

1. "Named Insured" whenever used in this Policy means:
  - a. The individual, partnership, joint venture or corporation designated in Item 1. of the Declarations Page including any partner, member, executive officer, employee or director of such designated entity solely while acting within the scope of their duties as such but only with respect to MANUFACTURED PRODUCT(S); or
  - b. Any legal representative or trustee of a Named Insured listed in Item 1 above in the event of the Named Insured's incompetency, insolvency or bankruptcy; or
  - c. Additional Insured(s) which is:
    - i. Any Third Party which an individual, partnership, joint venture or corporation designated in Item 1 of the Declarations Page has undertaken in writing, to indemnify for LITIGATION EXPENSES and/or DAMAGES arising out of patent, trademark or copyright INFRINGEMENT proceedings where such Third Party is licensed under one or more of the Named Insured's PATENTS, TRADEMARKS and/or COPYRIGHTS covering MANUFACTURED PRODUCT(S); and such Third Party has manufactured, used, sold or offered for sale such MANUFACTURED PRODUCT(S) during the POLICY PERIOD, provided such Third Party and license were disclosed to the Company in the application for insurance or subsequently under this Policy and such Third party is added to this Policy as an Additional Insured by Endorsement; or,
    - ii. A Third Party who is a Bonafide Purchaser of MANUFACTURED PRODUCTS during the POLICY PERIOD where such purchase is governed by the Uniform Commercial Code (UCC) Section 2.312(3) or its subsequent replacement section, provided such Bonafide Purchaser is entitled to the warranty benefits under the UCC.

2. Only the first Named Insured has the right to receive notifications from the Company and control the Policy including but not limited to adding or removing insureds, canceling the Policy or agreeing to modifications to the Policy. Also, only those Named Insureds whose names actually appear in Item 1 of the Declarations Page (or their legal representatives or trustees) have the right to make CLAIMS against the Company and receive reimbursement under this Policy.
3. No person or entity is a Named Insured under this Policy with respect to the conduct of any current or past partnership or joint venture if that entity or person is not named in Item 1. of the Declarations Page of this Policy.

## II. DEFINITIONS

- A. **ASBESTOS** includes but is not limited to Asbestos, Asbestos Products, Asbestos Fibers, Asbestos Particles, Asbestos Dust, or any product or goods containing Asbestos in any form.
- B. **ASBESTOS LIABILITY** means any liability arising directly or indirectly from loss, injury or damage caused by the HANDLING, USE, MISUSE or EXISTENCE of ASBESTOS.
- C. **BODILY INJURY** or **PROPERTY DAMAGE** includes but is not limited to (1) Bodily injury, sickness, disease, occupational disease, death, shock, disability, mental anguish, mental injury, emotional upset, asbestosis, any trauma, suffered or alleged to be suffered by any person or entity; (2) Damage to tangible or intangible property; (3) Loss of, or loss of use of, tangible or intangible property; (4) Loss of, loss of use of, or interference with property rights; (5) All forms of radioactive contamination of property.
- D. **CIVIL PROCEEDING(S)** means any legal or administrative proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like, directed to or brought against the Named Insured by one or more parties, where applicable, in a State Court, a Federal District Court or United States Appellate Court, or if an alternative dispute resolution, in a proper forum.
- E. **CLAIM** means a demand on the Company by a Named Insured on the Company's properly completed and executed "Infringement Defense Claim" form to have a CIVIL PROCEEDING alleging INFRINGEMENT or any part thereof deemed COVERED LITIGATION and for written acknowledgement that LITIGATION EXPENSE and DAMAGES (if designated on the Declarations Page) resulting from the COVERED LITIGATION will be reimbursed under this Policy. CLAIM does not refer to the actual CIVIL PROCEEDING brought against the Named Insured.

Demands on the Company relating to CIVIL PROCEEDINGS arising out of the same act or a duplication of an act or out of a series of interrelated acts irrespective of the time period over which the acts occurred shall be considered as giving rise to a single CLAIM covered by a single policy irrespective of the number of CIVIL PROCEEDING(S), Plaintiffs, Defendants, or the number of MANUFACTURED PRODUCTS, or the year or policy under which the CLAIM is made.

Two or more CLAIMS arising out of related allegations of INFRINGEMENT or any series of related allegations of INFRINGEMENT, whether those allegations assert INFRINGEMENT of single or multiple patents, copyrights or trademarks or any combination thereof, will be considered a single CLAIM. These provisions apply regardless of the number of Named Insureds, patents, copyrights, trademarks, MANUFACTURED PRODUCTS, plaintiffs, defendants, or organizations that are involved in such CIVIL PROCEEDINGS.

- F. **COPYRIGHT** means the rights in original WORKS OF AUTHORSHIP fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise

communicated, either directly or with the aid of a machine or device as conferred by 17 USCA 106 provided such WORKS OF AUTHORSHIP have been registered by the Named Insured in the U.S. Copyright office under 17 USCA 408 or have been licensed-in by the Named Insured. The term copyright in lower case type means the rights in original WORKS OF AUTHORSHIP fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device as conferred by 17 USCA 106 provided such WORKS OF AUTHORSHIP having been licensed-in by or registered by another in the U.S. Copyright office under 17 USCA 408.

G. **COVERED LITIGATION** means any part of a CIVIL PROCEEDING, brought during the POLICY PERIOD and reported to the Company within the POLICY PERIOD or an EXTENDED REPORTING PERIOD, in which the Named Insured is acting in a defensive or Defendant's role:

1. Which alleges INFRINGEMENT by the Named Insured, including INJUNCTION PROCEEDINGS; or
2. Which alleges INFRINGEMENT by the Named Insured's licensee, provided that such licensee has been added as an Additional Insured by Endorsement under this Policy; or
3. Which alleges INFRINGEMENT to which the Named Insured is responding on behalf of an Additional Insured, pursuant to a manufacturer's warranty of non-infringement under Section 2.312(3) of the Uniform Commercial Code;

provided that the allegations of INFRINGEMENT (i.e., patent, trademark, copyright or trade dress INFRINGEMENT) correspond to an indicated coverage (i.e., patent, trademark, copyright or trade dress defense LITIGATION EXPENSE indemnification coverage) on the Declarations Page and the Company, in response to a CLAIM, has stated in writing to the Named Insured that LITIGATION EXPENSE arising from such CIVIL PROCEEDING will be reimbursed by this Policy; except:

COVERED LITIGATION does not include any CIVIL PROCEEDING brought as a counterclaim or retaliatory suit in or to a legal proceeding, suit, cause of action or alternative dispute resolution proceeding brought by the Named Insured or a third party acting in concert with the Named Insured. A suit shall be deemed to be retaliatory if it is brought within ninety (90) days of a legal proceeding, suit, cause of action or alternative dispute resolution proceeding brought by the Named Insured or a third party acting in concert with the Named Insured or the suit in question is of the same subject matter or based on the same facts or transactions as the legal proceeding, suit, cause of action or alternative dispute resolution proceeding brought by the Named Insured or a third party acting in concert with the Named Insured.

COVERED LITIGATION does not include any legal proceeding, suit, cause of action or alternative dispute resolution (ADR) proceeding which is formally commenced more than one year after the date of the Named Insured's submission of a CLAIM which legal proceeding, suit, cause of action or ADR arises out of the same act or a duplication of the same act or series of interrelated acts which is the basis for that CLAIM.

Authorization to appeal is required to be obtained by Named Insured if the Named Insured does not prevail in the COVERED LITIGATION and wishes to appeal such decision. However, authorization is not required to be obtained again by the Named Insured if the Named Insured is the prevailing party in the COVERED LITIGATION and the opposing party appeals such decision.

H. **DAMAGES** means monetary sums arising out of COVERED LITIGATION paid by the Named Insured to a claimant pursuant to either judgments, awards or settlements negotiated with the written consent of the Company, whichever is applicable, as lost profits and/or royalties for past infringement, and/or reasonable attorneys fees assessed by the Court against the Named Insured provided, however, that DAMAGES shall not include fines, penalties, (including but not limited to punitive, exemplary or multiplied damages), non-pecuniary relief and taxes assessed against the Named Insured. DAMAGES also does not include any amount

for which the Named Insured is not financially liable or any amount as to which there is no legal recourse by the person who is awarded such relief against the Named Insured. Also excluded from DAMAGES is any loss, cost, expense or award arising from any such matters which are uninsurable under the law pursuant to which this Policy shall be construed.

- I. **DEFENSE EXPENSES** means sums of money which the Named Insured shall have paid upon incurring as reasonable and customary attorney's fees, costs, and disbursements, including, but not limited to, court costs, costs of depositions, transcripts, fees and expenses of expert witnesses, appeals authorized under this Policy, but only to the extent that those sums arise out of COVERED LITIGATION.

DEFENSE EXPENSES includes the actual costs and expenses incurred in asserting any INVALIDITY COUNTERCLAIM or initiating any RE-EXAMINATION PROCEEDING which is a direct consequence of COVERED LITIGATION. DEFENSE EXPENSES shall further include: expenses incurred by the Company in any COVERED LITIGATION defended by the Company; costs levied against the Named Insured in any such COVERED LITIGATION defended by the Company; premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed the Company's then remaining applicable limit of indemnity and are required in any COVERED LITIGATION defended by the Company, provided however, neither this provision nor any other in this policy shall be construed as requiring the Company to defend any Named Insured, commence or prosecute any appeal or to apply for or furnish any bonds.

Expenses incurred in obtaining a FAVORABLE INFRINGEMENT OPINION are not included in DEFENSE EXPENSES. Also not included in DEFENSE EXPENSES are loss of earnings, expenses and costs incurred by the Named Insured for salaries and expenses of its officers, staff, in-house attorneys, directors, employees (and outside attorneys or consultants functioning in the capacity of any of the foregoing).

All DEFENSE EXPENSES shall consume and not be in addition to the limits set forth in Item 4 of the Declarations Page.

- J. **FAVORABLE INFRINGEMENT OPINION** means an opinion by an intellectual property attorney who is selected by the Named Insured, approved by the Company and compensated by the Named Insured, or who is selected and compensated by the Company under Section IV.A.1.b.i. of this Policy, which opines that more likely than not a properly advised trier of fact or law or both would conclude that there is no INFRINGEMENT of any unexpired U.S. patent, trademark or copyright vis-à-vis a MANUFACTURED PRODUCT based upon a search of the records and prior art compiled in the United States Patent & Trademark Office or Copyright Office which opinion has been accepted by the Company applying reasonable standards.
- K. **HANDLING, USE, MISUSE, or EXISTENCE** includes, but is not limited to, the manufacture, mining, use, sale, installation, distribution, removal, encapsulation, transportation, or presence of ASBESTOS. It includes the inspection for and exposure to ASBESTOS. It includes the failure to perform, or inadequate performance in said HANDLING, USE, MISUSE or EXISTENCE.
- L. **INFRINGEMENT** means the specific allegation that the making, use, sale or offer for sale of particularly identified MANUFACTURED PRODUCT(S) by the Named Insured, within the United States of America, its territories or possessions during the POLICY PERIOD is unauthorized and in violation of specifically identified enforceable and valid rights of another arising from the grant by the United States Patent & Trademark Office and/or the U.S. Registrar of Copyrights of any unexpired patent, trademark or copyright excluding rights arising under or enforceable by virtue of a Treaty with one or more foreign governments. INFRINGEMENT shall not include in its meaning inducement to infringe, but shall include contributory infringement and in the case of copyrights, vicarious infringement.
- M. **INJUNCTION EXPENSE(S)** means sums of money which the Named Insured shall have paid upon incurring as reasonable and customary attorney's fees, costs and disbursements including but not limited to, court costs,

costs of depositions, transcripts, fees and expenses of expert witnesses, appeals authorized under this Policy, but only to the extent those sums arise out of an INJUNCTION PROCEEDING(S), and only if such INJUNCTION PROCEEDING is brought during the POLICY PERIOD and is solely in respect to the regular, ordinary and usual course of the business of the Named Insured as that business existed on the first date of the POLICY PERIOD and as described in the application for insurance attached hereto and made a part hereof.

INJUNCTION EXPENSES shall further include:

- Expenses incurred by the Company in any INJUNCTION PROCEEDING defended by the Company;
- Costs levied against the Named Insured in any such INJUNCTION PROCEEDING defended by the Company;
- Premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed the Company's then remaining applicable limit of indemnity and are required in any INJUNCTION PROCEEDING defended by the Company, provided however, neither this provision nor any other in this policy shall be construed as requiring the Company to defend any Named Insured, commence or prosecute any appeal or to apply for or furnish any bonds.

Not included in INJUNCTION EXPENSES are loss of earnings, expenses and costs incurred by the Named Insured for salaries and expenses of its officers, staff, in-house attorneys, directors, employees (and outside attorneys or consultants functioning in the capacity of any of the foregoing).

All INJUNCTION EXPENSES shall consume and not be in addition to the limits set forth in Item 4 of the Declarations Page.

- N. **INJUNCTION PROCEEDING(S)** means any CIVIL PROCEEDING brought during the POLICY PERIOD alleging INFRINGEMENT against the Named Insured and thereby seeking to limit or cease Named Insured's specific activities with regard to MANUFACTURED PRODUCTS on the ground that the activities result in INFRINGEMENT, and which could result in a legally enforceable order against the Named Insured to limit or cease the specific activities in question.
- O. **INVALIDITY COUNTERCLAIM** means any legal action taken by the Named Insured in the course of and as part of COVERED LITIGATION which seeks invalidation of a copyright, a trademark or one or more claims of a patent under which INFRINGEMENT is being asserted.
- P. **LIMIT(S) OF LIABILITY** means the maximum amount the Company will reimburse (indemnify) for LITIGATION EXPENSES and/or DAMAGES, either for each CLAIM or in the aggregate under the Policy for CLAIMS authorized by the Company as indicated on the Declarations Page and as set forth in Section I.C.
- Q. **LITIGATION EXPENSES (INCLUDED IN THE LIMITS OF REIMBURSEMENT (Indemnification) LIABILITY and DAMAGES (if indicated))** means:
  - 1. DEFENSE EXPENSES and/or
  - 2. INJUNCTION EXPENSES and/or
  - 3. Costs and expenses of any unsuccessful pursuit of any other Insurer or Indemnitor, which the Company has required (requested) under Section IV. M. of this Policy on Excess Insurance or under Section IV. N. on Excess Indemnity.
- R. **MANUFACTURED PRODUCT(S)** means any COPYRIGHT, TRADEMARK, TRADE DRESS, WORK OF AUTHORSHIP, word, slogan, symbol, design, process, machine, article of manufacture or composition of matter specifically enumerated on the Declarations Page of this Policy which is reproduced, applied or manufactured in the United States or abroad by or for a Named Insured during the POLICY PERIOD and used, sold or offered for sale by or for the Named Insured in the United States during the POLICY PERIOD.
- S. **PATENT** means any unexpired U.S. Patent of the Named Insured. The term patent in lower case type shall mean any U.S. patent of another.



- T. **POLICY PERIOD** means the period from the Effective Date shown in Item 2 of the Declarations Page of this Policy to the expiration date shown in that Item; or in the case of an expiration due to nonrenewal, or cancellation or termination by the Company for any reason other than fraud, material misrepresentation or nonpayment of premium, for an additional period of ninety (90) days after such expiration date; or in the case of cancellation or termination by an Insured, or cancellation by the Company for reasons of fraud, material misrepresentation or nonpayment of premium, as of the Effective Date of cancellation or termination of this Policy.
- U. **RECOVERED COSTS** means any monies received by the Named Insured by way of penalty, indemnification (other than by this policy), or punitive award, or the like, arising in connection with a COVERED LITIGATION.
- V. **RE-EXAMINATION PROCEEDING** means a proceeding brought in the United States Patent and Trademark Office requesting re-examination of one or more claims of a patent under which claim(s), INFRINGEMENT is being asserted.
- W. **SELF INSURED RETENTION** means the amount of unreimbursed LITIGATION EXPENSES and/or DAMAGES for each CLAIM that the Named Insured shall be obligated to pay before the Company shall reimburse any CLAIM amounts. The Self Insured Retention is measured by the amounts that would otherwise be LITIGATION EXPENSES and/or DAMAGES, but shall not reduce the Limits of Liability.
- X. **TRADE DRESS** means the appearance and image of a MANUFACTURED PRODUCT of the Named Insured taken as a whole, including but not limited to the features of size, texture, shape, color or color combinations and graphics. TRADE DRESS does not include the particular advertising or marketing techniques used to promote the product's sale. The term trade dress in lower case type means the appearance and image of the manufactured product of another taken as a whole, including but not limited to the features of size, texture, shape, color or color combinations and graphics. It does not include the particular advertising or marketing techniques used to promote the manufactured products of that other.
- Y. **TRADEMARK** means a word, slogan, design or other symbol used to identify and distinguish goods or services which is licensed in by or registered by the Named Insured, under state or federal law, as a trademark, service mark, collective mark, certification mark or TRADE DRESS. The term trademark in lower case type means a word, slogan, design or other symbol used to identify and distinguish goods or services which is registered by or licensed in by another, under state or federal law, as a trademark, service mark, collective mark, certification mark or trade dress. Federally Registered Mark(s) is any TRADEMARK/trademark which is registered on the Principal Trademark Register pursuant to 15 USC 1051(a). Federally Registered Marks shall also include any TRADEMARK/trademark registered on the Supplemental Register pursuant to 15 USC 1091.
- Z. **WILLFUL INFRINGEMENT** means a specific determination by the Federal District court(s) and/or administrative tribunal(s) in which the CIVIL PROCEEDING was heard that regarding the Named Insured's INFRINGEMENT of the patent, copyright or trademark in question was "willful" or that the Named Insured proceeded in a deliberate fashion in disregard of the intellectual property of others. Notwithstanding the determination of such court(s) or tribunal(s), such INFRINGEMENT will not be considered WILLFUL INFRINGEMENT under this Policy where the Named Insured has first obtained a FAVORABLE INFRINGEMENT OPINION with respect to the insured MANUFACTURED PRODUCT which actually discusses the patent, copyright or trademark under which INFRINGEMENT was found.
- AA. **WORK(S) OF AUTHORSHIP** shall include the following:
1. Literary Works; and/or
  2. Musical works, including any accompanying words; and/or
  3. Dramatic works, including any accompanying music; and/or
  4. Pantomimes and choreographic works; and/or

5. Pictorial, graphic and sculptural works; and/or
6. Motion pictures and other audiovisual works; and/or
7. Sound recordings; and/or
8. Architectural works; and/or
9. Computer programs.

### III. EXCLUSIONS

A. Coverage under this policy does not include reimbursement of:

1. Any loss, costs or expenses arising from any liability of the Named Insured for fines, or penalties, including but not limited to punitive, exemplary, treble, or multiple damages of any kind.
2. Any loss, costs or expenses arising from BODILY INJURY or PROPERTY DAMAGE.
3. Any loss, costs or expenses arising from any litigation, adjudicatory action or CIVIL PROCEEDING, or part thereof, other than COVERED LITIGATION.
4. Any loss, costs or expenses arising from any CLAIM not submitted to the Company during the POLICY PERIOD or any Extended Reporting Period under Section IV.B. of this Policy.
5. Any loss, costs, expenses or professional fees arising from or incurred by the Named Insured prior to the commencement of the COVERED LITIGATION.
6. Any LITIGATION EXPENSE or DAMAGES arising out of a CIVIL PROCEEDING where such CIVIL PROCEEDING was commenced, served or delivered prior to the beginning of the POLICY PERIOD and whether or not the pleadings of such CIVIL PROCEEDING (if any) are amended subsequent to the beginning of the POLICY PERIOD to allege INFRINGEMENT.
7. Any loss, costs or expenses arising from or incurred by the Named Insured for salaries, expenses and/or fees of its officers, staff, in-house attorneys, directors, and employees and outside attorneys or consultants functioning in the capacity of any of the foregoing.
8. Any loss, costs or expenses arising from the defense of, or any liability arising from, any criminal act or omission of Named Insured.
9. Any loss, costs or expenses arising from WILLFUL INFRINGEMENT.
10. Any loss, costs or expenses arising from a CIVIL PROCEEDING alleging INFRINGEMENT where the/a Named Insured or any of the Named Insured's officers, directors, employees, licensees, assignees, lessees, transferees, agents, sales agents, distributors, affiliates, parents, subsidiaries, predecessors or successors in interest (collectively, "Commercially Related Party/Parties") had knowledge prior to the Effective Date of this Policy of any patents, trademarks, copyrights, or applications for patents or trademarks or copyrights which are or could be the basis for the allegation of INFRINGEMENT other than those disclosed to the Company and discussed or noted in a FAVORABLE INFRINGEMENT OPINION or where the/a Named Insured or a Commercially Related Party knew or reasonably should have known that the manufacture, use, sale, offer for sale, application or reproduction of a MANUFACTURED PRODUCT(S) would result in the Named Insured being charged with INFRINGEMENT.

11. Any loss, costs or expenses incurred in or arising out of the defense of any allegations of anti-trust or anti-competitive conduct or unfair trade practices.
12. Any loss, costs or expenses arising from any Declaratory Actions of any nature whether Named Insured is Plaintiff or Defendant.
13. Any loss, costs or expenses arising from any Administrative Proceeding of any nature including but not limited to International Trade Commission Proceedings, except RE-EXAMINATION PROCEEDINGS.
14. Any loss, costs or expenses arising out of allegations of INFRINGEMENT by a MANUFACTURED PRODUCT(S) which is the same as or substantially similar to a WORK OF AUTHORSHIP, word, slogan, symbol, design, TRADEMARK, COPYRIGHT, process, machine, article of manufacture or composition of matter specified on the Declarations page of this policy produced within the three years preceding the Effective Date of this Policy by any former employer of a Named Insured.
15. LITIGATION EXPENSES or DAMAGES arising from any COVERED LITIGATION in which the Named Insured or any parent, subsidiary or affiliate of a Named Insured or any officer, director, employee or holder of more than five percent (5%) of the stock of any of the foregoing has any direct or indirect interest in any recoveries, injunctions or the like arising from such COVERED LITIGATION.
16. Any loss, costs or expenses based upon or arising out of any circumstances or activities of which a Named Insured or any of the Named Insured's officers, directors, employees, licensees, assignees, lessees, transferees, agents, sales agents, distributors, affiliates, parents, subsidiaries, predecessors or successors in interest suspects or has knowledge, at a time prior to the Effective Date of this Policy is/are likely to give rise to a CLAIM. This exclusion includes, but is not limited to, any prior CIVIL PROCEEDING or possible CIVIL PROCEEDING, activity or circumstance whether or not referenced in the Named Insured's Application for this Policy.
17. Any loss, costs and expenses based upon or arising out of any CIVIL PROCEEDING(S) if, on the Effective Date of this Policy, Named Insured had/has any knowledge of any event or circumstance which he knows (or could reasonably believe) may result in such CIVIL PROCEEDING alleging INFRINGEMENT, irrespective of when such CIVIL PROCEEDING is/was actually initiated.
18. Any loss, costs or expenses including but not limited to LITIGATION EXPENSES or DAMAGES based upon or arising out of any CIVIL PROCEEDING alleging INFRINGEMENT by virtue of any party's breach or termination of any contract, license or agreement or suspension of performance thereunder or the expiration of the contract, license or agreement.
19. Any loss, costs or expenses relating to circumstances involving fraud, material misrepresentation or omission by the Named Insured.
20. Any loss, costs or expenses arising from any CLAIM made by any Named Insured under this Policy against any other Named Insured under this Policy.
21. Any loss, cost or expenses based upon or arising out of discrimination by a Named Insured on the basis of race, creed, national origin, disability, age or sex, or sexual preference. Any loss, cost or expenses based upon or arising out of the actual or threatened, discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, pollutants or contaminants into or upon the land, the atmosphere or any course or body of water, whether below or above ground. The intent and effect of this exclusion is

course or body of water, whether below or above ground. The intent and effect of this exclusion is to delete from any and all coverage afforded by this Policy any claim, judgment, liability, settlement, defense or expenses (including any loss, cost or expense arising out of any government cost, or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants) in any way arising out of such actual or threatened discharge, dispersal, release or escape, whether such results from the Insured's activities or the activities of others, and whether or not such is sudden or gradual, and whether or not such is accidental, intended, foreseeable, expected, fortuitous or inevitable, and wherever such occurs.

22. Any loss, cost or expenses arising out of BODILY INJURY or PROPERTY DAMAGE as it relates to Nuclear Energy:

a. With respect to which a Named Insured is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be a Named Insured under any such policy but for its termination upon exhaustion of its limit of liability; or resulting from the "hazardous properties" of "nuclear material" and with respect to which (1) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof, or (2) the Named Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;

b. resulting from the "hazardous properties" of "nuclear material" if:  
(1) the "nuclear material" (a) is at any "nuclear facility" owned by the Named Insured or operated by the Named Insured or on the Named Insured's behalf, or (b) has been discharged or dispersed therefrom;  
(2) the "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by the Named Insured or on the Named Insured's behalf; or  
(3) the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by a Named Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion applies only to PROPERTY DAMAGE to such "nuclear facility" and any property thereat.

c. as used in this exclusion:  
"hazardous properties" includes radioactive, toxic or explosive properties;  
"nuclear material" means source material, special "nuclear material" or by-product material;

"source material", special "nuclear material" and by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization and of a "nuclear facility" included under the first two paragraphs within the definition of "nuclear facility" below;

"nuclear facility" means:

1. any "nuclear reactor";
2. any equipment or device designed or used for (a) separating isotopes of uranium or plutonium, (b) processing or utilizing "spent fuel", or (c) handling, processing or packaging "wastes."
3. any equipment or device used for the processing, fabricating, or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the Named Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
4. any structure, basin, excavation, premises or place prepared or used for storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

23. ASBESTOS Exclusion:

- a. This insurance does not apply to ASBESTOS LIABILITY. This Policy does not cover any obligation on Named Insured's part to indemnify any party for ASBESTOS LIABILITY; or, to indemnify any ASBESTOS LIABILITY assumed under contract;
- b. nor does it apply to any loss, claim or suit directly or indirectly resulting from, caused by or alleged to be caused by, ASBESTOS or ASBESTOS LIABILITY;
- c. Further, there is no obligation or duty on Company's part to investigate or indemnify CLAIMS or suits relating to ASBESTOS LIABILITY.

#### IV. CONDITIONS

##### A. Company's Authorization of a CIVIL PROCEEDING to establish COVERED LITIGATION

1. As a condition precedent to the Company's review of the Named Insured's CLAIM, the Named Insured shall:

- a. Submit to the Company in writing a properly completed and executed "Infringement Defense Claim" form provided by the Company. The CLAIM shall include the MANUFACTURED PRODUCTS involved, a brief statement of the nature of the action brought against the Named Insured including the patents, copyrights, trademarks and/or trade dress alleged to be INFRINGED and the expected result; an explanation of how and when the alleged INFRINGING acts occurred and when the possibility of being involved in a CIVIL PROCEEDING was first discovered by the Named Insured; and a projection quantifying the negative impact to the Named Insured if the CIVIL PROCEEDING alleging INFRINGEMENT is successful.

- b. Supply to the Company, no later than sixty (60) days from the date of the initial request for authorization, or any extension of time granted by the Company, the following:
- i. A current FAVORABLE INFRINGEMENT OPINION letter written to the standards of the profession which sets forth the relevant claim, claims or protected rights of the patent, trademark, or copyright alleged to be INFRINGED and rendering an opinion of noninfringement favorable to the Named Insured. Such FAVORABLE INFRINGEMENT OPINION letter must be signed by independent, outside counsel selected from a list of firms, such list of firms provided by the Company, who will not be selected as litigation counsel and whose opinion was not considered by the Company when issuing this or a previous Policy for the Named Insured. Such FAVORABLE INFRINGEMENT OPINION letter must be obtained at the Named Insured's expense, or may at the Company's sole discretion be obtained from counsel selected and paid for by the Company. Regardless of the source of payment or choosing party, the Named Insured and the Company shall be joint clients of the opining counsel. The opinion letter should discuss validity of the patent, trademark, or copyright, the INFRINGEMENT thereof by the accused, insured MANUFACTURED PRODUCT(S), and should conclude either there is no INFRINGEMENT, or the patent, trademark, or copyright is invalid, or there is no right of trade dress if trade dress is an issue;
  - ii. A description of the Named Insured's MANUFACTURED PRODUCT(S), including TRADEMARKS, TRADE DRESS and/or COPYRIGHTS and the trademark, trade dress, copyright or in the case of a patent the claims which are alleged to be INFRINGED and whether the INFRINGEMENT is in the manufacture, sale, offer for sale, application, reproduction or use of the MANUFACTURED PRODUCT(S) or which, if any, combination thereof;
  - iii. Identification of the Plaintiff, together with all information Named Insured may have concerning such Plaintiff including a credit report, if available;
  - iv. Identification of the Federal District court(s) having jurisdiction over the CIVIL PROCEEDING;  
The Named Insured's preference for litigation counsel, who shall not have been prosecuting counsel for any intellectual property involved in the CIVIL PROCEEDING, nor whose opinion was considered by the Company when issuing this or a previous Policy for the Named Insured or as a FAVORABLE INFRINGEMENT OPINION, nor who may act as coverage counsel for the Named Insured regarding this Policy, provided that such counsel must be admitted to practice and a member in good standing in at least one state or Federal judicial district. The Company reserves the right to approve or disapprove counsel at its sole discretion.
  - vi. A budget projection for LITIGATION EXPENSE, including, but not limited to, proposed attorney's fee arrangements, and estimated costs and expenses for expert witnesses, collection of evidence and items of proof, depositions, interrogatories, and discovery. The Company, however, reserves the right to approve the budget.

- vii. A statement of any other relevant facts and circumstances relating to each patent, trademark, trade dress, copyright or CIVIL or INJUNCTIVE PROCEEDING;
- viii. A photostatic copy of the complete prosecution file maintained by the U.S. Patent & Trademark Office and any summary or brief history of such file prepared by or on behalf of the Insured relating to each patent or trademark if applicable.
2. The Company will only accept and consider CLAIMS on CIVIL PROCEEDINGS alleging INFRINGEMENT commenced no sooner than ninety (90) days after the beginning of the POLICY PERIOD, and thereafter until the expiration of the Policy or, unless this Policy has been renewed or terminated, on CIVIL PROCEEDINGS alleging INFRINGEMENT commenced within ninety (90) days after the expiration of the Policy.
3. The Company shall promptly acknowledge receipt of all material submitted under Paragraph A.1. of this Article IV. The Company will, except as set forth in Paragraph A.4. below, as soon as practicable, after receipt of all material required under Paragraph A.1. of this Article IV, give its decision in writing or authorization of the CIVIL or INJUNCTIVE PROCEEDING in whole or in part to the Named Insured whereupon, if authorized, such authorized whole or part shall become COVERED LITIGATION. The Company's approval must be obtained in writing concerning the selection of litigation counsel and the budget for LITIGATION EXPENSE.
4. The Company may deny authorization of a CLAIM only under the following circumstances:
- Fraud or material misrepresentation by the Named Insured.
  - Inability of the Named Insured to supply an opinion of noninfringement from the independent outside counsel concerning validity and/or INFRINGEMENT as required in IV.A.1.b.i. above.
  - Disapproval by the Company of the litigation counsel, or the budget for LITIGATION EXPENSE. In the event of such disapproval, the choice of counsel and/or the budget, may be submitted to arbitration as provided in IV.E. below. The decision of the arbitrator as to appropriateness of counsel and/or reasonableness of the budget shall be binding on both parties.
  - The CLAIM is not covered by the terms and conditions of this Policy.
5. The Insured must notify the party(s) bringing the COVERED LITIGATION within sixty (60) days after authorization of a CLAIM that the MANUFACTURED PRODUCTS being charged with INFRINGEMENT are Insured under an Infringement Defense Cost and Damages Reimbursement Insurance Policy, unless such notice is waived in writing by the Company.

The Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM prior to and after authorization has been given by the Company. If authorization of a CLAIM has been given, the Company reserves the right to investigate the facts and circumstances surrounding Named Insured's CLAIM, should the need arise, but only with the knowledge of the Named Insured and his litigation counsel.

**B. Claims Made and Reported Coverage with Extended Reporting Period**

1. This is a claims made and reported policy. A CLAIM, on the appropriate Claim Form, must be reported to and received by the Company within the same POLICY PERIOD in

which the CIVIL PROCEEDING giving rise to the CLAIM incepted for that CIVIL PROCEEDING to be considered for COVERED LITIGATION status.

2. Notwithstanding paragraph IV.B.1. above, an Extended Reporting Period may apply, during which CLAIMS may be submitted based upon CIVIL PROCEEDINGS incepted during the POLICY PERIOD.
  - a. If the Named Insured maintains coverage with the Company immediately subsequent to the Expiration Date shown on the Declarations Page, or if this Policy terminates by non-renewal, or if this Policy is cancelled or terminated by the Company for any reason other than nonpayment of premium or fraud or misrepresentation, the Company will accept for consideration CLAIMS on this Policy submitted to it within sixty (60) days following the expiration of the POLICY PERIOD provided that the CIVIL PROCEEDING is incepted no earlier than ninety (90) days prior to the expiration of the POLICY PERIOD.
  - b. If this policy is cancelled by the Named Insured for any reason, or cancelled by the Company for nonpayment of premium, fraud or misrepresentation, there is no Extended Reporting Period and the Named Insured may not submit any CLAIM after the effective date of cancellation.
3. Compliance with the requirements for submission of a CLAIM in this Section is a strict condition precedent to coverage under the Policy. Any CLAIM submitted during an Extended Reporting Period is governed by this Policy, and any LIMITS OF LIABILITY applicable to such CLAIM will be a part of and not in addition to the LIMITS OF LIABILITY set forth on the Declarations Page of this Policy.

**C. Company's Right To Assume Named Insured's Defense**

1. The Company shall have the right but not the duty to assume the defense of any COVERED LITIGATION against the Named Insured and, in such event, the Named Insured shall provide the Company with full cooperation and such information as the Company shall reasonably require. In the event the Company does not assume the defense of the Named Insured, the Company shall, nevertheless, have the right to effectively associate with the Named Insured in the defense and settlement of any matter that appears reasonably likely to involve the Company, including, but not limited to, exercising the right to effectively and meaningfully associate in the negotiation of a settlement and having its attorney made of record in the COVERED LITIGATION.
2. The Company shall have no obligation to reimburse the Named Insured for LITIGATION EXPENSES or to continue the defense (if the Company has assumed the defense) of the Named Insured after the then remaining applicable limit of indemnity in Item 4 of the Declarations Page has been exhausted.
3. The Named Insured shall not admit liability for or settle any COVERED LITIGATION, stipulate to any judgment without the Company's prior written consent, which consent shall not be unreasonably withheld.
4. If the Named Insured refuses or fails, within 30 days of mailing or delivering to the Named Insured a written recommendation from the Company, to consent to any settlement of COVERED LITIGATION within the policy limits recommended by the Company and acceptable to the claimant and such failure or refusal disadvantages or prejudices the Company, then:



- a. The Company may withdraw from the defense of the Named Insured (if it has assumed the defense) by tendering control of the defense to the Named Insured, but irrespective thereof the Named Insured shall thereafter, at its own expense, negotiate or defend such COVERED LITIGATION independently of the Company; and
- b. The Company's liability shall not exceed the smaller of (i) the then remaining applicable limit of indemnity, or (ii) the amount for which the COVERED LITIGATION could have been settled if such recommendation had been consented to, plus LITIGATION EXPENSES incurred by the Company, and LITIGATION EXPENSES incurred by the Named Insured prior to the date of such refusal.

**D. False and Fraudulent Claims**

If the Named Insured shall submit any CLAIM knowing the same to be false or fraudulent, this Policy shall become void and all insurance hereunder shall be forfeited and all LITIGATION EXPENSES incurred or reimbursed by the Company shall be returned.

**E. Delayed Claims**

After a period of one year from the expiration of the Policy, the Company will not reimburse LITIGATION EXPENSES or DAMAGES arising from any unauthorized, but not withdrawn or denied CLAIM (i.e. delayed CLAIM) in existence at the expiration of the Policy irrespective of the reasons for such delay and regardless of blame or fault.

**F. Cooperation of Named Insured**

Throughout the course of any COVERED LITIGATION, the Named Insured shall fully cooperate with the Company in providing full information concerning the conduct of COVERED LITIGATION, including the selection and briefing of counsel, choice of forum, if any, the general and specific conduct of COVERED LITIGATION, and any in or out of court settlement negotiations. Named Insured shall cooperate with Company in providing other documents and material as Company may request from time to time.

**G. Arbitration and Choice of Law**

1. This Policy shall be interpreted according to the law of the state and federal judicial district of New York notwithstanding any rules for conflict of laws of that jurisdiction.
2. Any dispute between the Named Insured and the Company arising out of this Policy shall be promptly referred to Arbitration for final determination. Such arbitration shall be held in New York unless waived by both parties.
3. No arbitration under this policy upon any CLAIM or any other action relating to any CLAIM shall be sustainable unless all the requirements of this Policy shall have been complied with, and unless commenced within twelve months after the Company's authorization or denial of such CLAIM or part thereof.

Matters referred to Arbitration under this policy shall be heard by a single Arbitrator which shall be selected by the Company and the Named Insured from an arbitration service mutually agreed upon by the parties. In the event the Company and the Named Insured are unable to agree upon an arbitration service or choice of Arbitrator, the arbitration service or Arbitrator will be selected by the Federal District Court having jurisdiction to hear allegations of INFRINGEMENT in the underlying CIVIL PROCEEDING.

5. For any dispute arising out of Section IV, Part A of this Policy, the Arbitrator shall be admitted to practice before the US Patent & Trademark Office. The Arbitrator shall

apply the Federal Rules of Evidence which Rules may be modified by agreement of the parties. The proceedings shall be informal.

6. The decision, in writing, of the Arbitrator, when filed with the parties, shall be final and binding on both parties. The Arbitrator must follow the law of the state and federal judicial district of New York notwithstanding any rules for conflict of laws of that jurisdiction. Judgment upon the Arbitration award may be entered in any court having jurisdiction. However, the Arbitrator may not make binding decisions concerning the validity of a patent, trademark or copyright, or the INFRINGEMENT thereof.
7. The cost of Arbitration shall be shared equally between the Named Insured and the Company including filing fees, costs and Arbitrator's charges.

**H. Recovery of Costs**

In the event that any COVERED LITIGATION results in the Named Insured receiving:

1. RECOVERED COSTS, such recovery shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE; and/or
2. an award, if any, of court costs and/or attorneys' fees, the same shall be shared between the Company and the Named Insured pro rata in proportion to their respective contributions to LITIGATION EXPENSE; provided that, in no event shall the Company be entitled to recover, under the above Provision 1 and this Provision 2 combined, a sum greater than the total of all its reimbursements in respect to the COVERED LITIGATION.

**I. Subrogation**

In the event of any payment under this Policy, the Company shall be subrogated to all of any Named Insured's rights of recovery therefor against any person or organization, and such Named Insured shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for the Company. The Named Insured shall do nothing to prejudice such rights either before or after a CLAIM. Any amount recovered in excess of the Company's total payment shall be restored to the Named Insured, less the cost to the Company of recovery.

**J. Termination of Coverage**

1. Cancellation by Named Insured:  
This Policy may be cancelled at any time by Named Insured upon prior written notice to the Company stating the effective date of cancellation and return of the Policy to the Company.
2. Cancellation by the Company  
This Policy may be cancelled by the Company at any time by the giving of not less than thirty (30) days' written notice to the Named Insured at the last known address; provided, however, that not less than ten (10) days' written notice shall be given for non-payment of premium.
3. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the Company cancels, earned premium shall be computed pro rata. If the Named Insured cancels, earned premium shall be computed in accordance with customary short rate tables and procedures.

20. In the event that this Policy expires or is cancelled by the Company in accordance with Item 2 of this Subsection, except for cancellation for fraud, material misrepresentation or nonpayment of premium, such cancellation or expiration shall not terminate the Company's obligation to continue to reimburse the Named Insured for LITIGATION EXPENSE and DAMAGES (if included on the Declarations Page) incurred in respect to any CLAIMS existing at the time of expiration or cancellation; moreover, such cancellation or expiration shall not affect the Company's right to recovery of costs, as provided in Section IV.F.

**K. Minimum Earned Premium**

1. The minimum earned premium for this policy is twenty percent (20%) of the premium stated in Item 3 of the Declarations and is not subject to short rate or pro rata adjustment in the event of cancellation by the Named Insured. In the case of multiple year policies, the minimum earned premium is twenty percent (20%) of the first year's premium.
2. Cancellation for nonpayment of premium after the effective date of this policy shall be deemed a request by the Named Insured for cancellation of this policy, thereby activating the foregoing minimum earned premium provision.

**L. Transfer or Assignment**

This Policy may not be transferred, sold, or assigned by the Named Insured. The Company may transfer, sell or assign this Policy only with the sale of substantially all of its assets.

**M. Excess Insurance**

1. The insurance provided under this Policy shall apply only as excess insurance over any other valid and collectible insurance available to the Named Insured unless such other insurance specifically applies as excess insurance over the Limits of Liability provided herein.
2. In the event any other Insurer, including but not limited to, any Professional Liability Insurer or any General Liability Insurer, denies coverage or indemnification as the case may be for any reason whatsoever for an INFRINGEMENT which may be covered under a policy issued by such Insurer and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason for such denial as stated by such other Insurer. As a condition precedent to making a CLAIM under this Policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against said other Insurer to determine by final judgment the legality of its position. If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with the prior approval of the Company shall be considered LITIGATION EXPENSE.

**N. Excess Indemnity**

The insurance provided under this policy shall also apply only as excess indemnification over any other indemnification available to the Named Insured from whatever source. In the event any Indemnitor denies any indemnification for any reason whatsoever for an INFRINGEMENT which may be covered under an indemnification provision of an agreement between itself and Named Insured or legal obligation of indemnification for the benefit of the Named Insured including but not limited to provisions under the UCC, and also covered hereunder, written notice shall immediately be given by or on behalf of the Named Insured to the Company. Such notice shall contain the reason for such denial as stated by the Indemnitor. As a condition precedent to making a CLAIM under this policy, the Named Insured, upon the Company's request, shall initiate legal proceedings against the said Indemnitor to determine by final judgment the legality of its position.

If such legal proceedings described above are unsuccessful, expense incurred by the Named Insured with prior approval of the Company shall be considered LITIGATION EXPENSE.

O. **Conformity to Statute**

In the event that any terms of this Policy are found to be in conflict with any terms mandated by the statutes of the jurisdiction in which this Policy is issued, such terms shall be deemed to be reformed to conform with those mandatory terms. The provisions of this Policy are severable, and the voiding of any provision by operation of law shall not void the entire Policy, but only such provision or provisions.

IN WITNESS WHEREOF, the Company has caused this Policy and the forms and endorsements attached thereto to be executed according to law.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**SPECIMEN**

**INFRINGEMENT DEFENSE COST AND DAMAGES  
REIMBURSEMENT INSURANCE - ENDORSEMENT**

Endorsement No. IPI-DEF 843-02

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

|                       |                           |                           |
|-----------------------|---------------------------|---------------------------|
| POLICY NO.:           | POLICY CHANGES EFFECTIVE: | COMPANY                   |
| _____                 | _____                     | Gotham Insurance Company  |
| NAMED INSURED:        |                           | AUTHORIZED REPRESENTATIVE |
| _____                 |                           | Sheila A. VanMeter        |
| ADDITIONAL INSURED(S) |                           |                           |
|                       |                           |                           |

In consideration of the premium charged, it is understood and agreed that Item 1. of the Declarations includes the following Additional Insured(s):

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All other terms and conditions remain unchanged

Endorsement No.: IPI-DEF 843-15

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This endorsement, effective \_\_\_\_\_ at 12:01 a.m., standard time, forms a part of Policy No. \_\_\_\_\_ issued to \_\_\_\_\_ by Gotham Insurance Company.

This endorsement modifies insurance provided under the following:  
Infringement Defense Cost and Damages Reimbursement Insurance

**INSURANCE POLICY RENEWAL**

In the event the Policy to which this Endorsement is attached is a renewal of a previous policy, then the following conditions shall apply:

1. **COVERED LITIGATION** which is proceeding under the previous Policy is excluded from coverage under this Policy.
2. Prospective or actual Litigation involving the same or substantially related products as involved in any previous **CIVIL PROCEEDING**, including but not limited to, any previous **COVERED LITIGATION** if brought by the same or related parties as under the previous Policy is excluded from coverage under this Policy.
3. **CLAIMS** tendered to the Company under the previous Policy are excluded from coverage under this Policy unless Company has indicated otherwise in writing specifically identifying the possible plaintiff(s) to which the carried forward **CLAIM** relates.
4. All rights to make a **CLAIM** under the previous Policy shall terminate as of the termination date of said previous Policy and the Company will not accept any such **CLAIM** submitted to it thereafter.
5. The Company will accept and consider **CLAIMS** made under this Renewal Policy on **CIVIL PROCEEDINGS** alleging **INFRINGEMENT** which **CIVIL PROCEEDINGS** are commenced at any time during this Renewal **POLICY PERIOD**.
6. If in the event there is no further renewal of this renewal Policy, the Company will accept **CLAIM(S)** for a period of ninety (90) days after the expiration of this renewal Policy provided that there has been no cancellation or termination of this Policy by either Named Insured or the Company but rather this Policy has expired; and, provided the Named Insured was not issued by the Company a Waiver Endorsement or a modified Policy at the inception of coverage that eliminated or modified the 90-day waiting period as provided in the 2<sup>nd</sup> paragraph of the introductory language preceding Article I, Insuring Agreement, and in Article IV, Conditions, Section A.2. (or modifications or replacements thereof) of the Policy.

\_\_\_\_\_  
Authorized Representative of Insured

(Renew 100104)

**Gotham Insurance Company**  
**919 Third Avenue, New York, NY 10022**

Named Insured: \_\_\_\_\_

ENDORSEMENT # IPI-DEF 843-17

Policy No. \_\_\_\_\_

Effective Date: \_\_\_\_\_

**SERVICE OF PROCESS**

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In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court or competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

Service of process in such suit may be made upon the Senior Claims Officer of GOTHAM INSURANCE COMPANY, 919 THIRD AVENUE, 10<sup>TH</sup> FLOOR, NEW YORK, NY 10022, or his designee. In any suit instituted against any one of them upon this contract, we will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on our behalf in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and we hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**Gotham Insurance Company**  
929 Third Avenue, New York, NY 10022

Endorsement No. IPI-DEF 843-18

**INFRINGEMENT DEFENSE COST AND DAMAGES  
REIMBURSEMENT INSURANCE - ENDORSEMENT**

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

|  |                           |   |
|--|---------------------------|---|
| POLICY NO.:  | POLICY CHANGES EFFECTIVE: | COMPANY<br>Gotham Insurance Company             |
| NAMED INSURED:   |                           | AUTHORIZED REPRESENTATIVE<br>Sheila A. VanMeter |
| <b>SPECIAL COVERAGE ENDORSEMENT<br/>FOREIGN OPERATIONS</b> |                           |   |

This policy will indemnify the Named Insured, \_\_\_\_\_ according to its terms for LITIGATION EXPENSES and Damages incurred arising from COVERED LITIGATION because of the manufacture, use, sale or offer for sale of Insured MANUFACTURED PRODUCTS in foreign countries as well as because of those Insured MANUFACTURED PRODUCTS manufactured, used, sold or offered for sale in the United States.

In consideration of the premium paid, it is understood and agreed that the Policy is amended as set forth below:

The definition of CIVIL PROCEEDING is changed to read:

**CIVIL PROCEEDING(S)** means any legal proceeding, suit, cause of action or alternative dispute resolution proceeding or the threat thereof, including but not limited to, cease and desist letter(s) and the like, directed to or brought against the Named Insured by one or more parties, where applicable, in a State Court, a Federal District Court or United States Appellate Court, or if an alternative dispute resolution, in a proper forum or, if foreign Intellectual Property is alleged to be INFRINGED by the Insured MANUFACTURED PRODUCTS, then CIVIL PROCEEDINGS shall include such legal proceeding, suit, cause of action or alternative dispute, resolution proceeding or the threat thereof including but not limited to, cease and desist letters and the like, where applicable, brought in those courts and/or administrative tribunals in which Intellectual Property suits are heard.

The definition of MANUFACTURED PRODUCTS is changed to read:

**MANUFACTURED PRODUCT(S)** shall mean any WORK OF AUTHORSHIP, word, slogan, symbol, design, process, machine, article of manufacture or composition of matter specifically enumerated on the Declarations Page of this Policy manufactured in the United States or abroad



during the POLICY PERIOD and used, sold or offered for sale in the United States or abroad during the POLICY PERIOD.

The definition of TERRITORY is changed to read:

**TERRITORY** means the United States of America, its territories or possessions or in the event foreign patents, trademarks (including tradenames) or copyrights are included in COVERED LITIGATION, the definition of TERRITORY is expanded to include the country in which the court and/or administrative tribunal sits in which the COVERED LITIGATION is being heard.

SPECIAL  
COVER  
OPERATIONS