

ALLIED WORLD ASSURANCE COMPANY (U.S.), INC.

FORCEFIELDSM

Employment Practices Liability Policy

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this Policy, ALLIED WORLD ASSURANCE COMPANY (U.S.) (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Employment Practices Liability Coverage

The **Insurer** shall pay on behalf of any **Insured**, subject to the Limit of Liability set forth in Item 3A. of the Declarations, the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this Policy.

B. Third-Party Liability Coverage

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Claim** for a **Third-Party Wrongful Act** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured**, and reported to the **Insurer** in accordance with the terms of this Policy. The Sublimit of Liability set forth in Item 3B. of the Declarations is the **Insurer’s** maximum Limit of Liability for all **Loss** arising from all **Claims** for **Third Party Wrongful Acts**. The Sublimit of Liability for **Claims** for **Third Party Wrongful Acts** shall be part of, and not in addition to, the Limit of Liability set forth in Item 3A. of the Declarations

II. DEFINITIONS

A. “**Application**” means all signed applications, including any attachments and other materials provided therewith or incorporated therein, submitted in connection with the underwriting of this Policy or for any other policy of which this Policy is a renewal, replacement or which it succeeds in time.

B. “**Benefits**” means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan. **Benefits** shall not include salary, wages, bonuses or non-deferred cash incentive compensation.

C. “**Claim**” means any:

- (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
- (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:

- (a) service of a complaint or similar pleading;
 - (b) return of an indictment or similar document (in the case of a criminal proceeding); or
 - (c) receipt or filing of a notice of charges;
- (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
 - (4) notification of an investigation of an **Insured** by the Equal Employment Opportunity Commission (“EEOC”) or similar governmental agency commenced by the filing of a notice of charges, formal investigative order or similar document;
 - (5) audit of an **Insured** conducted by the United States of America Office of Federal Contract Compliance Programs (“OFCCP”), but only if commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or non-monetary or injunctive relief; or
 - (6) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.

Claim shall not include any labor grievance, arbitration or other proceeding pursuant to a collective bargaining agreement.

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

D. **“Company”** means:

- (1) the **Named Insured**;
- (2) any **Subsidiary** of the **Named Insured**; and
- (3) any **Named Insured** or **Subsidiary** as a debtor, a debtor-in-possession or equivalent status.

E. **“Defense Costs”** means:

- (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
- (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond, in connection with a **Claim**; or
- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

“Defense Costs” does not include: (a) amounts incurred prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Company**.

- F. **“Discrimination”** means any violation of employment discrimination laws, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment by the **Company** in any way that would deprive any person of employment opportunities based on such person's race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law.
- G. **“Employee”** means any:
- (1) person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Company**, but only while that person is acting in their capacity as such;
 - (2) person leased to the **Company** or any **Independent Contractor** so long as this person is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** indemnifies such leased person or **Independent Contractor** in the same manner as the **Company’s** employees; and
 - (3) volunteer, whose labor and service is engaged and directed by the **Company**, but only while that person is acting in the capacity as such.
- H. **“Executive”** means:
- (1) any past, present or future duly elected or appointed director, officer, trustee, governor, management committee member or member of the board of managers of the **Company**; or
 - (2) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in (1) above.
- I. **“Financial Impairment”** means an entity becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the entity; or the filing of a petition under the bankruptcy laws of the United States of America or any equivalent event outside the United States of America.
- J. **“Harassment”** means:
- (1) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company** or **Outside Entity**; or
 - (2) workplace harassment, including work-related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company** or **Outside Entity**.

- K. **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Company** which specifies the terms of the **Company’s** engagement of the **Independent Contractor**.
- L. **“Insured(s)”** means the **Company** and any **Insured Person**.
- M. **“Insured Person(s)”** means any:
- (1) **Executive;**
 - (2) **Employee;** or
 - (3) **Outside Entity Insured Person.**
- N. **“Loss”** means:
- (1) damages (including back pay and front pay), settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive or exemplary damages, or the multiple portion of any multiplied damages award, subject to any applicable Sublimit of Liability (including the multiple or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act), but only to the extent such damages are insurable under the applicable law most favorable to the insurability of such damages; and
 - (5) **Defense Costs.**
- “Loss”** does not include:
- (a) amounts for which the **Insureds** are not legally liable;
 - (b) amounts which are without legal recourse to the **Insureds**;
 - (c) taxes;
 - (d) fines and penalties, except as provided for in Definition N.(4) above;
 - (e) amount deemed uninsurable under applicable law;
 - (f) any costs or liability incurred by any **Insured** to modify any building or property to make it more accessible or accommodating to any disabled person, or in connection with any educational, sensitivity or other corporate program, policy or seminar;
 - (g) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; or

- (h) any future compensation, including any **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**.

However, this Policy shall provide coverage for **Defense Costs** incurred in a **Claim** seeking amounts specified in paragraphs (a) through (h) above, subject to all other terms, conditions and exclusions of this Policy.

O. **“Management Control”** means:

- (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of: the board of directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

P. **“Named Insured”** means the entity named in Item 1. of the Declarations.

Q. **“Outside Entity”** means:

- (1) any not-for-profit entity; or
- (2) any other entity listed as such by endorsement to this Policy;

for which an **Executive** of the **Company** acts as a director, officer, trustee or governor, or the equivalent thereof, at the specific request of the **Company**. Any such person shall be referred to herein as an **“Outside Entity Insured Person,”** but only while that person is acting in the capacity as a director, officer, trustee or governor, or the equivalent thereof, of an **Outside Entity**.

R. **“Policy Period”** means the period 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.

S. **“Related Claims”** means all **Claims** for **Wrongful Acts** based upon, arising out of, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same related series of facts, circumstances, situations, transactions or events.

T. **“Retaliation”** means retaliatory treatment of an **Employee** or an employee of an **Outside Entity** alleged to be on account of such individual:

- (1) exercising his or her rights under law, including rights under worker’s compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
- (2) refusing to violate any law or opposing any unlawful practice;

- (3) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **Insured**;
- (4) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or
- (5) filing or expressing an intent to file any claim against the **Company** or **Outside Entity** under the Federal False Claims Act or any other similar foreign, federal, state, or local “whistle blower” law.

U. **“Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Insured Person** thereof, which grants stock or stock options or stock appreciation rights to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

V. **“Subsidiary”** means:

- (1) any for-profit entity in which the **Company** has **Management Control** (hereinafter a “Controlled Entity”) before the inception of the Policy Period;
- (2) any for-profit entity, whose securities are not publicly traded, of which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more Controlled Entities; and
- (3) any not-for-profit entity sponsored exclusively by a **Company** prior to or during the **Policy Period**.

Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Wrongful Act** of a **Subsidiary**, shall only apply to **Wrongful Acts** committed or allegedly committed after the effective date such entity becomes a **Subsidiary** and prior to the effective date that such entity ceases to be a **Subsidiary**.

W. **“Third-Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**. **Third-Party** shall not include an **Insured Person** or any applicant for employment with the **Company** or any **Outside Entity**

X. **“Third-Party Wrongful Act”** means any actual or alleged:

- (1) discrimination against a **Third-Party** based upon such **Third-Party's** race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law; or
- (2) harassment, directed against a **Third Party**, including sexual harassment, unwelcome sexual advances, requests for sexual favors or other misconduct of a sexual nature.

Y. **“Workplace Tort”** means any employment-related:

- (1) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or
- (2) negligent retention, supervision, hiring or training, wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures;

when alleged as part of a **Claim** for actual or alleged **Wrongful Employment Decision, Discrimination, Harassment, or Retaliation**.

Z. **“Wrongful Act”** means any actual or alleged:

- (1) **Discrimination;**
- (2) **Harassment;**
- (3) **Retaliation;**
- (4) **Workplace Tort;** or
- (5) **Wrongful Employment Decision;**

committed by an **Insured** but only if alleged by or on behalf of an **Employee** or an applicant for employment with the **Company** or an **Outside Entity**.

Wrongful Act shall also include a **Third Party Wrongful Act** committed by an **Insured**, but solely with respect to the coverage provided under Insuring Agreement B.

AA. **“Wrongful Employment Decision”** means any actual or alleged:

- (1) wrongful termination, dismissal, or discharge of employment, demotion, denial of tenure, or failure or refusal to hire or promote; or
- (2) breach of any implied employment contract or obligation, including but not limited to any such obligation arising out of any personnel manual, employee handbook or policy.

III. EXCLUSIONS

This Policy shall not cover any **Loss** in connection with any **Claim**:

- A. alleging, arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act or any wilful violation of law by an **Insured** if a final judgment or adjudication establishes that such act or violation occurred;

In determining the applicability of Exclusion A, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or

current Chairman of the Board, Chief Executive Officer, President or Chief Financial Officer of the **Company** shall be imputed to the **Company**;

- B. alleging, arising out of, based upon or attributable to any actual or alleged liability of any **Insured** under any express contract or agreement; provided however, that this Exclusion shall not apply: (1) to the extent such liability which would have attached in the absence of such express contract or agreement; or (2) to the payment of **Defense Costs** in any such **Claim** against an **Insured Person**;
- C. alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6. of the Declarations, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation, of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- D. alleging, arising out of, based upon or attributable to the same facts or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this Policy as set forth in Item 2. of the Declarations, under any policy, whether excess or underlying, of which this Policy is a renewal or replacement or which it may succeed in time;
- E. for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof;
- F. for bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided however, that this Exclusion shall not apply to that portion of a **Claim** seeking damages for emotional distress or mental anguish when resulting from a **Wrongful Act** of an **Insured**;
- G. alleging, arising out of, based upon, attributable to or in any way relating to the refusal, failure or inability to pay wages or overtime pay for services rendered, improper classification of any **Employee**, improper payroll deductions taken from any **Employee** or purported **Employee**, or failure to provide or enforce legally required meal or rest break periods; provided however, that this Exclusion shall not apply to any **Claim** for **Retaliation**;
- H. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; provided however, that this Exclusion shall not apply to any **Claim** for **Retaliation**;
- I. alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment

insurance, retirement benefits, social security benefits or similar law; provided however, that this Exclusion shall not apply to any **Claim** for **Retaliation**;

- J. alleging, arising out of, based upon or attributable to any **Claim** brought by a securities holder of a **Company** or an **Outside Entity**, in their capacity as such;
- K. alleging, arising out of, based upon or attributable to any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations; provided however, that this Exclusion shall not apply to any **Claim** for **Retaliation**;
- L. alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Insured Person** serving in any capacity, other than as an **Insured Person**.

IV. LIMITS OF LIABILITY

- A. The Limit of Liability stated in Item 3A. of the Declarations is the maximum Limit of Liability of the **Insurer** for all **Loss** from all **Claims** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable.
- B. **Defense Costs** are part of, and not in addition to, the Limit of Liability set forth in Item 3A. of the Declarations, and payment by the **Insurer** of **Defense Costs** shall reduce and may exhaust such Limit of Liability.
- C. The purchase of a Discovery Period by the **Company** pursuant to Section VIII. of this Policy, shall neither increase nor reinstate any Limit of Liability.
- D. If the maximum Limit of Liability is exhausted by the payment of **Loss**, the **Insurer** will have no further obligations of any kind with respect to this Policy, and the Policy Premium set forth in Item 5. of the Declarations will be fully earned.

V. RETENTION

- A. Subject to all other terms and conditions of this Policy, the **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount as set forth in Item 4. of the Declarations for each Insuring Agreement of the Policy. A single Retention amount shall apply to all **Loss** from all **Related Claims**. The Retention amount shall be borne by the **Insureds** and remain uninsured.
- B. The application of the Retention to **Loss** under one Insuring Agreement shall not reduce the Retention that applies to **Loss** under any other Insuring Agreement. If different Retention amounts, as set forth in Item 4. of the Declarations, apply to different parts of a **Claim**, the applicable Retentions shall be applied separately to each part of the **Claim** and the sum of such Retention amounts shall not exceed the largest single Retention amount which applies to such **Claim**.
- C. If a **Company** is legally required or permitted to indemnify its **Insured Person** for any **Loss**, and does not do so for any reason, the **Insurer** shall not require payment of the applicable Retention by the **Insured Person**. However, the **Company** hereby agrees to reimburse the **Insurer** for the full amount of such applicable Retention immediately upon

request, unless the **Company** is unable to do so solely by reason of **Financial Impairment**.

VI. DEFENSE AND SETTLEMENT OF A CLAIM

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Policy. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.
- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** as respects any **Claim**, such consent shall not be unreasonably withheld.
- C. The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, make any settlement offer, enter into any settlement agreement or stipulate to any judgment, without the prior written consent of the **Insurer**. Any **Loss** incurred by the **Insured(s)** and/or any settlements or judgments agreed to by the **Insured(s)** without such consent shall not be covered by this Policy. However, the **Insurer's** consent is not required for the **Insured** to settle a **Claim** for a **Loss** amount within the applicable Retention, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Insurer**.
- D. The **Insurer** shall have the right to associate with the **Insured** in the defense of any **Claim** that can reasonably be expected to require any payment by the **Insurer**, including but not limited to the right to investigate, conduct negotiations, and enter into the settlement of any **Claim** that the **Insurer** deems appropriate, subject to the consent of the **Insured** which shall not be unreasonably withheld. In the event the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, the **Insurer's** liability for **Loss** on account of such **Claim** shall not exceed:
- (1) the amount for which the **Insurer** could have settled the **Claim**; plus;
 - (2) any **Defense Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus
 - (3) eighty percent (80%) of covered **Loss**, other than **Defense Costs**, in excess of the amount for which the **Insurer** could have settled the **Claim**. The remaining amount of any **Loss**, including any **Defense Costs** incurred after the date the **Insured** refused to settle such **Claim**, shall be carried by the **Insured** at its own risk and be uninsured.

However, in no event shall the **Insurer's** liability exceed the applicable Limit of Liability for this Coverage Section, as set forth in Item 4.A. of the Declarations.

- E. At the request of the **Named Insured**, the **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, subject to all other terms and conditions of this Policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Defense Costs** under the terms and conditions of this Coverage Section, such

payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally, according to their respective interests.

F. Right to Tender Defense:

- (1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**.
- (2) This right shall be exercised by the **Named Insured** on behalf of all **Insureds** by providing written notice to the **Insurer**. The **Insured's** right to tender the defense of a **Claim** shall terminate if it is not exercised within fifteen (15) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.
- (3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation sent thereof to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Section VI. The **Insurer** shall not be obligated to defend or continue to defend a **Claim**, or to pay or reimburse **Defense Costs**, after the applicable Limit of Liability has been exhausted.
- (4) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, subject to all other terms and conditions of this Policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally, according to their respective interests.

VII. NOTICE OF CLAIM

- A. The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer**, at either the physical or email address indicated in Item 8. A. of the Declarations, of a **Claim** made against an **Insured** as soon as practicable after the **Company's** General Counsel or Risk Manager, or any individual with functionally equivalent responsibilities, becomes aware of the **Claim**.
- B. Notwithstanding the above, in no event shall notice of any **Claim** be provided to the **Insurer** later than ninety (90) days after the end of the **Policy Period**, or Discovery Period if purchased. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.
- C. If during the **Policy Period** an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall, during the **Policy Period**, give written notice to the **Insurer**, at either the physical

or email address indicated in Item 8. A. of the Declarations, of the circumstances including the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, any **Claim** that is subsequently made against the **Insured** alleging, arising out of, based upon or attributable to such circumstances, shall be deemed to have been made at the time written notice of such circumstances was given to the **Insurer**.

- D. All **Related Claims** shall be deemed to be a single **Claim** first made on the date on which the earliest **Claim** within such **Related Claims** was first made, or when the earliest **Claim** within such **Related Claims** is treated as having been made in accordance with Section VII. C. above, whichever is earlier. In such event, only one Limit of Liability and one Retention shall apply.

VIII. DISCOVERY PERIOD

- A. If this Policy is cancelled by either the **Named Insured** or the **Insurer** for any reason other than non-payment of premium, or the **Insurer** refuses to renew this Policy, or if an Organizational Change as defined in Section XII occurs, the **Insured** shall have the right to purchase a Discovery Period of up to six (6) years following the effective date of such cancellation, non-renewal or Organizational Change.
- B. The **Insured's** right to purchase a Discovery Period shall lapse unless written notice of election to purchase such Discovery Period and the additional premium for such Discovery Period is received by the **Insurer** within sixty (60) days after such cancellation, non-renewal or Organizational Change.
- C. The additional premium for a Discovery Period of one (1) to six (6) years shall be determined by multiplying the applicable percentage set forth in Item 7. of the Declarations by the Policy Premium set forth in Item 5. of the Declarations.
- D. During such Discovery Period, the **Insured** may provide the **Insurer** with notice, pursuant to Section VII of this Policy, of **Claims** first made against an **Insured** during the Discovery Period, for **Wrongful Acts** occurring prior to the effective date of the cancellation or termination of the Policy or the effective date of the Organizational Change, and otherwise covered by this Policy.
- E. The election of a Discovery Period does not increase or reinstate the Limits of Liability set forth in Item 3.A. of the Declarations.
- F. The premium for the Discovery Period shall be fully earned at the inception of the Discovery Period, and the Discovery Period is non-cancellable.

IX. OTHER INSURANCE

- A. The insurance provided by this Policy shall apply as primary insurance unless expressly written to be excess over other applicable insurance.
- B. In connection with any covered **Claim** made against an **Outside Entity Insured Person**, a leased employee, or an **Independent Contractor**, and subject to all other terms and conditions herein, this Policy shall apply specifically excess of any indemnification and any other insurance coverage available to the **Outside Entity Insured Person**, leased

employee or **Independent Contractor**. In the event such other insurance coverage available to an **Outside Entity Insured Person**, a leased employee or an **Independent Contractor** is also provided by the **Insurer** (or would be provided except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the **Insurer's** maximum aggregate limit of liability for all **Loss** in connection with a **Claim** covered, in whole or in part, by this Policy and such other insurance policy, shall be the greater of (1) the applicable Limit of Liability of this Policy; or (2) the applicable limit of liability of such other insurance policy.

X. COVERAGE EXTENSIONS

- A. This Policy shall cover **Loss** arising from any **Claims** made against the estates, heirs, or legal representatives of any deceased person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such estates, heirs, or legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.
- B. This Policy shall also cover **Loss** arising from any **Claims** made against the legal representatives of any incompetent, insolvent or bankrupt person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.
- C. This Policy shall also cover **Loss** arising from any **Claims** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law or common law of any applicable jurisdiction in the world, or by any formal program established by the **Company**) of an **Insured Person** for all **Claims** 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; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of the spouse or domestic partner, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.
- D. The coverage extensions set forth in this Section X. are subject to all other terms and conditions of this Policy.

XI. CANCELLATION AND NON RENEWAL

- A. This Policy may be cancelled by the **Named Insured** by sending written prior notice to the **Insurer** stating when thereafter the cancellation of the Policy shall be effective. The Policy terminates at the date and hour specified in such notice. The **Insurer** shall retain the pro rata proportion of the Policy Premium.
- B. This Policy shall not be cancelled by or on behalf of the **Insurer** except by reason of non-payment of premium by the **Insured**. The **Insurer** may cancel the Policy by delivering

or by mailing to the **Named Insured**, by courier or registered mail, at the **Named Insured's** address set forth in Item 1. of the Declarations, written notice stating when, not less than twenty (20) days thereafter, cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the Policy will be deemed terminated as of the date indicated in the **Insurer's** written notice of cancellation to the **Named Insured**.

- C. 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.
- D. The **Insurer** shall have no obligation to renew this Policy. In the event the **Insurer** decides to non-renew this Policy, it shall deliver or mail to the **Named Insured**, at the address set forth in Item 1. of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

XII. ORGANIZATIONAL CHANGES

A. If during the Policy Period:

- (1) the **Named Insured** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire more than fifty percent (50%) of the assets or voting rights of the **Named Insured**;

(any events described in paragraphs (1) or (2) are referred to herein as an “Organizational Change”) then this Policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective date of the Organizational Change. However, there shall be no coverage afforded by this Policy for any actual or alleged **Wrongful Act** occurring after the effective date of the Organizational Change. This Policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective date of the Organizational Change.

- B. The **Insured** shall also have the right to purchase a Discovery Period described in Section VIII. of this Policy, in the event of an Organizational Change.
- C. The **Named Insured** shall give the **Insurer** written notice of the Organizational Change as soon as practicable, but no later than thirty (30) days after the effective date of the Organizational Change.

XIII. AUTHORIZATION AND NOTICES

The **Named Insured** shall act on behalf of all **Insureds** with respect to all matters as respects this Policy including: (1) giving of notice of **Claim**; (2) the defense or settlement of a **Claim**; (3) giving and receiving of all correspondence and information; (4) giving and receiving notice of cancellation; (5) payment of premiums; (6) receiving of any return premiums; (7) receiving and accepting of any endorsements issued to form a part of this Policy; and (8) the exercising of any right to a Discovery Period.

XIV. VALUATION AND CURRENCY

All amounts stated in this Policy are expressed in United States dollars and all amounts payable under this Policy are payable in United States dollars. If a judgment rendered or settlement entered into under this Policy are stated in a currency other than United States dollars, then payment under this Policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the final judgment is rendered or the settlement payment is established.

XV. TERRITORY

This Policy extends to **Wrongful Acts** occurring, or **Claims** made, anywhere in the world, to the extent permitted by law.

XVI. ASSIGNMENT AND CHANGES TO THE POLICY

- A. This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.
- B. Notice to any agent or knowledge possessed by any agent or person acting on behalf of the **Insurer**, will not result in a waiver or change in any part of this Policy or prevent the **Insurer** from asserting any right under the terms and conditions of this Policy. The terms and conditions of this Policy may only be waived or changed by written endorsement signed by the **Insurer** or its authorized agent.

XVII. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the **Insurer** under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery. The **Insureds** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

XVIII. ACTION AGAINST THE INSURER

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this Policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and the **Insurer**.

XIX. CONFORMITY TO STATUTE

- A. Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy, including any endorsement to this Policy which is required by any state Department of Insurance, or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

- B. In the event any portion of this Policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this Policy.

XX. HEADINGS

The descriptions in the headings and any subheading of this Policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this Policy's terms or conditions.

XXI. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- B. With respect to the statements and representations contained in the **Application**, no knowledge of any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such **Insured Person**. However, the knowledge possessed by any **Insured Person** who is a past or current Chief Executive Officer, President or Chief Financial Officer of the **Company** shall be imputed to the **Company** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Company**.

XXII. COOPERATION

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense and settlement of any **Claim** and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an **Insured's** indemnification or contribution rights.