

NOTICE: THE LIABILITY COVERAGE PARTS SCHEDULED IN ITEM 5: COVERAGE ELECTIONS PROVIDES CLAIMS MADE COVERAGE. EXCEPT AS OTHERWISE SPECIFIED HEREIN, COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND PAYMENT OF DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY. NOTICE OF A CLAIM MUST BE GIVEN TO THE INSURER AS SOON AS PRACTICABLE, PROVIDED THAT SUCH NOTICE IS GIVEN NOT LATER THAN 60 DAYS AFTER ANY MANAGER BECOMES AWARE THAT SUCH CLAIM HAS BEEN MADE. DEFENSE COSTS ARE APPLIED AGAINST THE DEDUCTIBLE. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, the Insurer and the **Insureds** agree as follows:

COMMON TERMS AND CONDITIONS

I. TERMS AND CONDITIONS

- (A) All Coverage Parts included in this Policy are subject to the following Common Terms and Conditions. If any provision in these Common Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.
- (B) Except as otherwise provided by specific reference to other Coverage Parts, the terms and conditions of each Coverage Part shall apply only to such Coverage Part.

II. COMMON DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

- (A) “**Affiliate**” means any insurance company controlling, controlled by or under common control with the Insurer.
- (B) “**Application**” means the application for this Policy, including any materials or information submitted therewith, such application shall be on file with the Insurer and deemed a part of and attached hereto, as if physically attached hereto. “**Application**” also means an application for any policy in an uninterrupted series of policies issued by the Insurer, or an **Affiliate**, of which this Policy is a renewal or replacement.
- (C) “**Claim**” shall have the meaning specified for such term in each Coverage Part.
- (D) “**Debtor in Possession**” means a “debtor in possession” as such term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.
- (E) “**Defense Costs**” means reasonable and necessary legal fees and expenses incurred in the investigation, defense or appeal of a **Claim**. **Defense Costs** shall include the costs of appeal, attachment or similar bonds, provided that the Insurer shall have no obligation to furnish such bonds. **Defense Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.
- (F) “**Domestic Partner**” means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- (G) “**Employee**” means any past, present, or future:
 - (1) employee of an **Insured Entity** in such person’s capacity as an employee, including any part time, seasonal, temporary, leased, or loaned employee; or
 - (2) volunteer with an **Insured Entity** in such person’s capacity as a volunteer.

- (H) “**ERISA**” means the Employee Retirement Income Security Act of 1974.
- (I) “**Financial Insolvency**” means the status of an **Insured Entity** as a result of:
- (1) the appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such **Insured Entity**; or
 - (2) such **Insured Entity** becoming a **Debtor in Possession**.
- (J) “**Insured Entity**” means:
- (1) the **Named Entity**; or
 - (2) any **Subsidiary**; and
 - (3) **Insured Entity** shall also include:
 - (a) any such entity as a general partner of a limited partnership in which and so long as the **Named Entity** owns or controls, directly or indirectly, more than 50% of the limited partnership interest and such **Insured Entity** is the sole general partner.
 - (b) any such entity as a **Debtor in Possession**.
- (K) “**Insured Person**” shall have the meaning specified for such term in each Coverage Part.
- (L) “**Insureds**” shall have the meaning specified for such term in each Coverage Part.
- (M) “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- (N) “**Liability Coverage Part**” means the Directors, Officers and Entity Liability, Employment Practices Liability, Fiduciary Liability and Miscellaneous Professional Liability Coverage Parts, if included in ITEM 5 of the Declarations.
- (O) “**Loss**” shall have the meaning specified for such term in each Coverage Part.
- (P) “**Manager**” means any natural person who is a past, present or future:
- (1) duly elected or appointed director, officer, member of the board of managers or management committee member of an **Insured Entity**;
 - (2) in-house general counsel of an **Insured Entity**; or
 - (3) executive of an **Insured Entity** created outside the United States of America to the extent that such executive holds a position equivalent to those described in (1) or (2),
- in such person’s capacity in such position.
- (Q) “**Named Entity**” means the entity named in ITEM 1 of the Declarations.
- (R) “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 3 of the Declarations or any earlier cancellation date.

- (S) “**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalies, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed.
- (T) “**Subsidiary**” means any:
- (1) corporation in which and so long as the **Named Entity** owns or controls, directly or indirectly, more than 50% of the outstanding securities representing the right to vote for the election of the board of directors of such corporation;
 - (2) limited liability company in which and so long as the **Named Entity** owns or controls, directly or indirectly, the right to elect, appoint or designate more than 50% of such entity’s managers;
 - (3) corporation operated as a joint venture in which and so long as the **Named Entity** owns or controls, directly or indirectly, exactly 50% of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such corporation, the **Named Entity** solely controls the management and operation of such corporation; or
 - (4) foundation, charitable trust or political action committee in which and so long as such entity or organization is controlled by the **Named Entity** or any **Subsidiary** as defined (1) through (3) above.
- (U) “**Wrongful Act**” shall have the meaning specified for such term in each Coverage Part.

III. COVERAGE EXTENSIONS

(A) Spousal/Domestic Partner Liability Coverage

Coverage shall apply to the lawful spouse or **Domestic Partner** of an **Insured Person** for a **Claim** made against such spouse or **Domestic Partner**, provided that:

- (1) such **Claim** arises solely out of:
 - (a) such person’s status as the spouse or **Domestic Partner** of an **Insured Person**; or
 - (b) such spouse or **Domestic Partner’s** ownership of property sought as recovery for a **Wrongful Act**;
- (2) the **Insured Person** is named in such **Claim** together with the spouse or **Domestic Partner**; and
- (3) coverage of the spouse or **Domestic Partner** shall be on the same terms and conditions, including any applicable Deductible, as apply to coverage of the **Insured Person** for such **Claim**.

No coverage shall apply to any **Claim** for a **Wrongful Act** of such spouse or **Domestic Partner**.

(B) Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** made against such

Insured Person. No coverage shall apply to any **Claim** for a **Wrongful Act** of such estate, heirs, legal representatives or assigns.

IV. LIMIT OF LIABILITY

Solely with respect to all **Liability Coverage Parts**:

- (A) The Limit of Liability for each Coverage Part in ITEM 5 of the Declarations shall be the maximum aggregate amount that the Insurer shall pay under such Coverage Part for all **Loss** from all **Claims** covered under such Coverage Part.
- (B) Notwithstanding the above, if a Combined Aggregate Limit of Liability For All Coverage Parts is included in ITEM 5 of the Declarations, then:
 - (1) such single Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under all included Coverage Parts combined; and
 - (2) any amount specified as a Limit of Liability for any individual Coverage Part in ITEM 5 of the Declarations shall be subject to, part of, and not in addition to, the amount stated as the Combined Aggregate Limit of Liability For All Coverage Parts.

V. DEFENSE COSTS

Solely with respect to all **Liability Coverage Parts**:

- (A) **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the Insurer shall reduce each Limit of Liability.
- (B) Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then payment of **Defense Costs** shall be in addition to any applicable Limit of Liability, provided that:
 - (1) if a Limit of Liability is specified for any individual Coverage Part in ITEM 5 of the Declarations, then the maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under such Coverage Part shall be 50% of such Limit of Liability;
 - (2) if a Combined Aggregate Limit of Liability For All Coverage Parts is included in ITEM 5 of the Declarations, then:
 - (a) the single maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under all included Coverage Parts combined shall be 50% of such Limit of Liability; and
 - (b) any amount of **Defense Costs** available for any individual Coverage Part shall be subject to, part of, and not in addition to, the single maximum amount of **Defense Costs** available for all included Coverage Parts combined specified in (a) above; and
 - (3) if the amount available for **Defense Costs** in (1) or (2) above is exhausted by the payment of **Defense Costs**, then **Defense Costs** shall be paid by the Insurer out of any remaining applicable Limit of Liability until the exhaustion of the applicable Limit of Liability.

VI. DEDUCTIBLE

Solely with respect to all **Liability Coverage Parts**:

- (A) The Insurer shall pay **Loss** in excess of the Deductible applicable to each **Claim** as specified in ITEM 5 of the Declarations.
- (B) The Deductible shall be borne by the **Insureds** uninsured at the **Insureds'** own risk.
- (C) Any **Defense Costs** incurred by the Insurer shall apply to the Deductible. The **Insureds** shall reimburse the Insurer upon request for any amounts paid regarding a **Claim** that are within the applicable Deductible for such **Claim**.
- (D) If a **Claim** is covered under more than one Coverage Part, the applicable Deductible for each Coverage Part shall be applied separately to such **Claim**, provided that the maximum Deductible applied to such **Claim** shall not exceed the highest of such applicable Deductibles.
- (E) No Deductible shall apply to **Loss** incurred by any **Insured Person** that an **Insured Entity** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is not able to do so by reason of **Financial Insolvency**.
- (F) If an **Insured Entity** is permitted or required by common or statutory law to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on their behalf, and does not do so other than because of **Financial Insolvency**, then such **Insured Entity** and the **Named Entity** shall reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the Deductible that would have applied if such indemnification had been made.
- (G) If a **Subsidiary** is unable to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on their behalf, because of **Financial Insolvency**, then the **Named Entity** shall reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the applicable Deductible that would have applied if such indemnification had been made.

VII. DEFENSE AND SETTLEMENT

Solely with respect to all **Liability Coverage Parts**:

- (A) The Insurer shall have the right and duty to defend any **Claim** for which the **Insureds** give notice to the Insurer, even if such **Claim** is groundless, false or fraudulent. The Insurer may make any investigation it deems appropriate.
- (B) The Insurer's duty to defend any **Claim** shall cease upon exhaustion of any applicable Limit of Liability.

Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then the Insurer's duty to defend any **Claim** shall cease upon exhaustion of the maximum aggregate amount of **Defense Costs** available under Section V. DEFENSE COSTS, and any applicable Limit of Liability.

If any Limit of Liability is exhausted, the premium for this Policy shall be deemed fully earned.

- (C) The **Insureds** shall not admit nor assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** regarding any **Claim** without the prior written consent of the Insurer, such consent not to be unreasonably withheld. The Insurer shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.
- (D) The Insurer may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the Insurer deems reasonable.

- (E) Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then the Insurer may settle any **Claim** for a monetary amount that the Insurer deems reasonable and the consent of the **Insureds** shall not be required to settle a **Claim**.
- (F) The **Insureds** shall give to the Insurer all information and cooperation as the Insurer may reasonably request.

VIII. NOTICE OF CLAIM

Solely with respect to all **Liability Coverage Parts**:

- (A) As a condition precedent to coverage under this Policy, the **Insureds** shall give the Insurer written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after the termination of the **Policy Period**, or Extended Reporting Period as described in Section IX. Such notice shall specify the Coverage Part under which notice is being given.
- (B) If, during the **Policy Period**, the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and, if written notice of such **Wrongful Act** is given to the Insurer during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice.

IX. EXTENDED REPORTING PERIOD

- (A) If any **Liability Coverage Part** is canceled or non-renewed for any reason other than non-payment of premium, the **Insureds** shall have the right to elect an extension of time to report **Claims** under this Policy (the "Extended Reporting Period").
- (B) To elect the Extended Reporting Period, the **Insureds** shall send a written notice of election of the Extended Reporting Period to the Insurer together with the premium therefor. The right to elect the Extended Reporting Period shall end unless the Insurer receives such notice and premium within sixty (60) days of cancellation or non-renewal. There shall be no right to elect the Extended Reporting Period after such time.
- (C) The premium for the Extended Reporting Period shall be that percentage specified in ITEM 7 of the Declarations of the sum of the original annual premium plus the annualized amount of any additional premium charged by the Insurer during the **Policy Period**. Such premium shall be deemed fully earned at the inception of the Extended Reporting Period.
- (D) The Extended Reporting Period shall be for the duration specified in ITEM 7 of the Declarations following the end of the **Policy Period**.
- (E) Coverage during the Extended Reporting Period shall apply to **Claims** made for **Wrongful Acts** occurring prior to the earlier of the end of the **Policy Period** or the time of any transaction described in Section XIV. CHANGES IN EXPOSURE, (B) Takeover of Named Entity. No coverage shall apply for any **Wrongful Act** occurring after such time.
- (F) There is no separate or additional Limit of Liability for the Extended Reporting Period.

X. INTERRELATIONSHIP OF CLAIMS

Solely with respect to all **Liability Coverage Parts**:

All **Claims** based upon, arising from or in any way related to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earliest date that:

- (A) any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (B) notice of any **Wrongful Act** described above was given to the Insurer under this Policy pursuant to Section VIII. NOTICE OF CLAIM (B); or
- (C) notice of any **Wrongful Act** described above was given under any prior insurance policy.

XI. ALLOCATION

If, in any **Claim** under a **Liability Coverage Section**, the **Insureds** who are afforded coverage for such **Claim** incur an amount consisting of both **Loss** that is covered by this Policy and also **Loss** that is not covered by this Policy because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by such **Insured** from such **Claim** will be considered covered **Loss**; and
- (B) **Loss** other than **Defense Costs**: all remaining **Loss** incurred by such **Insured** from such **Claim** will be allocated between covered **Loss** and uncovered **Loss** based upon the relative legal exposures of the parties to such matters.

XII. OTHER INSURANCE

If **Loss** arising from any **Claim** is insured under any other valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

XIII. CANCELLATION

- (A) The Insurer may cancel this Policy for non-payment of premium by sending not less than 10 days notice to the **Named Entity**. This Policy may not otherwise be canceled by the Insurer.
- (B) Except as provided in Section XIV. CHANGES IN EXPOSURE, (B) Takeover of Named Entity, the **Insureds** may cancel this Policy by sending written notice of cancellation to the Insurer. Such notice shall be effective upon receipt by the Insurer unless a later cancellation time is specified therein.
- (C) If the Insurer cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the Insurer's customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The Insurer shall make payment of any unearned premium as soon as practicable.

XIV. CHANGES IN EXPOSURE

Solely with respect to all **Liability Coverage Parts**:

(A) Mergers and New Subsidiaries

If, before or during the **Policy Period**, any **Insured Entity**:

- (1) merges with another entity such that the **Insured Entity** is the surviving entity; or

(2) acquires a **Subsidiary**,

then such newly merged or acquired entity and its subsidiaries, managers, directors, officers, and employees shall be **Insureds** to the extent such entities and persons would otherwise qualify as **Insureds** under the **Liability Coverage Parts**, but only for a **Wrongful Act** occurring after such merger or acquisition. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring before such transaction or for any **Interrelated Wrongful Acts** thereto.

If the fair value of the assets of any newly merged or acquired entity exceed 25% of the total assets of the **Named Entity** as reflected in its most recent consolidated audited financial statements prior to such merger or acquisition, the **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable and the Insurer shall be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There shall be no coverage under the **Liability Coverage Parts** for any newly merged or acquired entity or any of its subsidiaries, managers, directors, officers, or employees unless the **Insureds** comply with the terms of this provision.

(B) Takeover of Named Entity

If, during the **Policy Period**:

- (1) the **Named Entity** merges into or consolidates with another entity such that the **Named Entity** is not the surviving entity; or
- (2) more than 50% of the securities representing the right to vote for the **Named Entity's** board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert,

then coverage shall continue under the **Liability Coverage Parts**, but only for a **Wrongful Act** occurring before such transaction. No coverage shall be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, this Policy shall not be canceled and the entire premium for this Policy shall be deemed fully earned.

The **Insureds** shall give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

(C) Loss of Subsidiary Status

If, before or during the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage shall be available under the **Liability Coverage Parts** for such **Subsidiary** and its **Insured Persons**, but only for a **Wrongful Act** of such **Insureds** occurring before such transaction. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring after such transaction.

XV. SUBROGATION

The Insurer shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** by the Insurer under this Policy. The **Insureds** shall execute all papers required and do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable the Insurer to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the Insurer's position or any potential or actual rights of recovery.

XVI. APPLICATION

- (A) The **Insureds** represent that the declarations and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application** contains intentional misrepresentations or misrepresentations that

materially affect the acceptance of the risk by the Insurer, no coverage shall be afforded under this Policy for any **Insureds** who knew on the Inception Date of this Policy of the facts that were so misrepresented.

(B) For the purpose of determining coverage:

- (1) knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- (2) knowledge possessed by the **Named Entity's** chairman of the board, chief executive officer, chief operating officer, or chief financial officer or anyone signing the **Application** shall be imputed to all **Insured Entities**. No other person's knowledge shall be imputed to an **Insured Entity**.

XVII. ACTION AGAINST THE INSURER

Solely with respect to all **Liability Coverage Parts**:

- (A) No action shall be taken against the Insurer unless there shall have been full compliance with all the terms and conditions of this Policy.
- (B) No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** nor shall the Insurer be impleaded by the **Insureds** in any such **Claim**.

XVIII. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurer without its consent as specified in a written endorsement issued by the Insurer to form a part of this Policy.

XIX. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of any **Insureds** shall not relieve the Insurer of any of its obligations under this Policy.

XX. AUTHORIZATION OF NAMED ENTITY

The **Named Entity** shall act on behalf of all **Insureds** with respect to all matters under this Policy, including, without limitation, giving and receiving of notices regarding **Claims**, cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this Policy.

XXI. CHANGES

This Policy shall not be changed or modified except in a written endorsement issued by the Insurer to form a part of this Policy.

XXII. ENTIRE AGREEMENT

This Policy, including the Declarations, Common Terms and Conditions, included Coverage Part(s), **Application** and any written endorsements attached hereto, constitute the entire agreement between the **Insureds** and the Insurer relating to this insurance.

XXIII. NOTICES

- (A) All notices to the **Insureds** shall be sent to the **Named Entity** at the address specified in ITEM 1 of the Declarations.
- (B) All notices to the Insurer shall be sent to the address specified in ITEM 9 of the Declarations.

Any such notice shall be effective upon receipt by the Insurer at such address.

XXIV. HEADINGS

The headings of the various sections of this Policy are intended for reference only and shall not be part of the terms and conditions of coverage.

XXV. REFERENCES TO LAWS

- (A) Wherever this Policy mentions any law, including, without limitation, any statute, Act or Code of the United States of America, such mention shall be deemed to include all amendments of, and all rules or regulations promulgated under, such law.
- (B) Wherever this Policy mentions any law or laws, including, without limitation, any statute, Act or Code of the United States of America, and such mention is followed by the phrase "or any similar law", such phrase shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, statutes and any rules or regulations promulgated under such statutes as well as common law.

XXVI. COVERAGE TERRITORY

Coverage under this Policy applies worldwide.