

# **EXECUTIVE SAFEGUARD**

Directors and Officers Liability & Company Reimbursement Insurance  
Employment Practices Liability Insurance  
Fiduciary Liability Insurance  
Special Risk Insurance

In consideration of the premium paid and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, herein called the "Insurer"), including all statements made in the **Application**, the Insurer agrees to provide coverage as shown in the Declarations and described as follows:

## **PART 1**

### **DIRECTORS AND OFFICERS LIABILITY & COMPANY REIMBURSEMENT INSURANCE**

(To Be Read In Conjunction With Applicable Sections  
Of The Common Policy Definitions and Conditions, Parts 5 and 6)

#### **I. INSURING AGREEMENTS**

##### **A. DIRECTORS AND OFFICERS LIABILITY COVERAGE**

The Insurer shall pay on behalf of the **Insured, Loss** from any **Claim** first made during the **Policy Period** (or the Extended Reporting Period, if applicable) and reported to the Insurer pursuant to Part 6, Clause C. for **Wrongful Acts**, except for **Loss** which the **Company** actually pays on behalf of the **Insured** as indemnification.

##### **B. COMPANY REIMBURSEMENT COVERAGE**

The Insurer shall pay on behalf of the **Company, Loss** from any **Claim** first made during the **Policy Period** (or Extended Reporting Period, if applicable) and reported to the Insurer pursuant to Part 6, Clause C. for:

1. **Wrongful Acts** when and to the extent that the **Company** has indemnified the **Insured** for such **Loss** pursuant to law (common or statutory), contract and/or the charter or by-laws of the **Company**; and
2. **M&A Wrongful Acts**, but only if an independent investment banking firm has rendered a written opinion stating that such **Transaction** or acquisition is fair to the **Company** and its shareholders, and with which a consultant, retained by the Insurer and with the consent of the Named Corporation, substantially concurs.

#### **II. DEFINITIONS**

##### **A. Claim** means the service or other receipt by an **Insured** of:

1. a written demand for monetary or non-monetary relief; or
2. a civil, criminal or administrative proceeding for monetary or non-monetary relief which is commenced by:
  - a. a complaint or similar pleading;
  - b. return of an indictment (in the case of a criminal proceeding); or
  - c. notice of charges (including any appeal therefrom).

**B. Defense Costs** means reasonable and necessary costs, charges, and expenses (other than wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Costs** shall also include a daily supplemental payment for the attendance of an **Insured** at hearings, trials or depositions of \$100 per day.

##### **C. Insured** means:

1. any person who has been, now is or shall become a duly elected director or a duly elected or appointed officer of the **Company**;
2. the lawful spouse of a director or officer of the **Company**. Such spouse shall be an **Insured** only for **Wrongful Acts** of the director or officer for which they may be deemed liable as their spouse;

3. the estates, heirs, legal representatives or assigns of a deceased director or officer, or the legal representatives or assigns of a director or officer who is incompetent, to the extent that in the absence of such death or incompetence such **Claims** would have been covered by this Policy; or
4. with respect to Insuring Agreement B.2. only, the **Company**

D. **Loss** means **Defense Costs** and any money the **Insured** is legally obligated to pay as damages or in settlement. But, **Loss** shall not include:

1. criminal or civil fines or penalties imposed by law;
2. taxes or matters deemed uninsurable under the law to which this Policy shall be construed; or
3. punitive or exemplary damages or the multiple portion of any damages award.

E. **M&A Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed by the **Company** itself in connection with any actual or proposed:

1. **Transaction**; or
2. acquisition by the **Company** of some or all of the assets and/or liabilities of any other corporation or partnership.

F. **Outside Entity** means:

1. a non-profit organization under section 501(c)3 of the Internal Revenue Code of 1986 (as amended);
2. any other corporation, partnership, joint venture or other organization listed by endorsement to this Policy.

G. **Wrongful Act** means any:

1. actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed by an **Insured**, individually or otherwise, in their capacity as a director or officer of the **Company**; or
2. matter claimed against an **Insured** solely in their capacity as such; or
3. matter claimed against an **Insured** arising out of serving as a director, officer, trustee or governor of an **Outside Entity** and while in such capacity, but only:
  - a. if such service is at the written request or direction of the **Company**;
  - b. if, at the time such service began, the **Insured** did not know or could not have reasonably foreseen that such matter could lead to a **Claim** under this Policy;
4. **M&A Wrongful Act**.

### III. EXCLUSIONS

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

- a. arising out of, based upon or attributable to the committing in fact of any dishonest, criminal, or fraudulent act or any actual willful violation of any statute, rule or law by an **Insured** or the gaining in fact of any profit or advantage to which the **Insured** was not legally entitled;
- b. for an accounting of profit made in fact from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16 (b) of the Securities Exchange Act of 1934 or amendments thereto or similar provisions of any federal, state or local statutory or common law;

No **Wrongful Act** shall be imputed to any other **Insured** for the purpose of determining the applicability of the foregoing exclusions a. and b.

- c. arising out of, based upon or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any Policy of which this Policy is a renewal or replacement;

- d. arising out of, based upon or attributable to any pending or prior litigation made as of the Pending or Prior Date set forth in Item 5. of the Declarations, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation;
- e. arising out of, based upon or attributable to:
  - 1. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
  - 2. any direction or request that the **Company** or the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;
- f. brought or maintained by or on behalf of the **Company** or an **Insured** in any capacity except for:
  - 1. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insureds** and who bring and maintain the **Claim** without the solicitation, assistance or active participation of the **Company** or an **Insured**;
  - 2. a **Claim** in the form of a cross claim, third party claim or other claim for contribution or indemnity by an **Insured** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy;
- g. for any actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA**;
- h. for any actual or alleged bodily injury, mental anguish, emotional distress, libel, slander or defamation, sickness, loss of consortium, disease or death of any person, or any actual or alleged damage to or destruction of any tangible property including the loss of use thereof; or
- i. arising out of, based upon or attributable to any **Claim** to the extent coverage is provided under Part 2, Part 3 or Part 4 of this Policy.

#### IV. ALLOCATION

If both **Loss** covered by this Policy and **Loss** not covered by this Policy are incurred either because a **Claim** includes both covered and uncovered matters, or because a **Claim** is made against both the **Insured** and/or the **Company**, and others, the **Insured** and/or the **Company** and the Insurer shall use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**.

#### V. PRESUMPTIVE INDEMNIFICATION

If the **Company** is permitted or required by common or statutory law, but fails to indemnify the **Insured** for **Loss** (except by reason of its financial insolvency), any payment by the Insurer of such **Loss** shall be subject to the Insuring Clause B Deductible Amount set forth in Item 4 of the Declarations. The charter, by-laws, shareholder and board of director's resolutions of the **Company** shall be deemed to provide indemnification for such **Loss** to the fullest extent permitted by law.

**PART 2**  
**EMPLOYMENT PRACTICES LIABILITY INSURANCE**  
 (To Be Read In Conjunction With Applicable Sections  
 Of The Common Policy Definitions and Conditions, Parts 5 and 6)

#### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insured**, **Loss** from any **Claim** first made during the **Policy Period** (or the Extended Reporting Period, if applicable) and reported to the Insurer pursuant to Part 6, Clause C. and resulting from **Wrongful Acts**.

#### II. DEFINITIONS

- A. **Claim** means the service or other receipt by an **Insured** of:
  - 1. a written demand for monetary or non-monetary relief; or

2. a complaint or similar pleading initiating a judicial, administrative or arbitration proceeding (including any appeal therefrom) which subjects an **Insured** to a binding adjudication of liability for damages or other relief.

However, **Claim** shall not include a labor or grievance arbitration or other proceeding subject to a collective bargaining agreement.

B. **Defense Costs** means reasonable and necessary costs, charges, and expenses (other than wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defense of any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Costs** shall also include a daily supplemental payment for the attendance of an **Insured** at hearings, trials or depositions of \$100 per day.

C. **Insured** means:

1. the **Company**, duly elected or appointed directors, officers, and any employee of the **Insured**, while acting within the scope of his/her duties as such, including part-time and seasonal employees; provided however, independent contractors are not **Insureds**;
2. the lawful spouse of a director or officer or employee of the **Company**. Such spouse shall be an **Insured** only for **Wrongful Acts** of the director or officer or employee for which they may be deemed liable as their spouse;
3. the estates, heirs, legal representatives or assigns of a deceased director, officer or employee, or the legal representatives or assigns of a director, officer, or employee who is incompetent, to the extent that in the absence of such death or incompetence such **Claim** would have been covered by this Policy.

D. **Loss** means **Defense Costs** and any money an **Insured** is legally obligated to pay as damages or in settlement. But, **Loss** shall not include:

1. criminal or civil fines or penalties imposed by law;
2. taxes or matters deemed uninsurable under the law to which this Policy shall be construed;
3. punitive or exemplary damages or the multiple portion of any damages award.

E. **Wrongful Act** means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment;
2. breach of a written or oral employment contract or quasi-employment contract;
3. employment related misrepresentation;
4. wrongful failure to employ or promote;
5. violation of employment discrimination laws (including harassment);
6. wrongful deprivation of career opportunity;
7. wrongful discipline;
8. failure to grant tenure or negligent employee evaluation;
9. invasion of privacy;
10. employment related defamation;
11. sexual or workplace harassment of any kind;

committed by an **Insured**.

### III. EXCLUSIONS

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

- a. arising out of, based upon or attributable to the committing in fact of any dishonest, criminal, or fraudulent act or any actual willful violation of any statute, rule or law by an **Insured** or the gaining in fact of any profit or advantage to which the **Insured** was not legally entitled;

- b. for an **Insured's** obligation to pay damages determined to be owed under an express (written or verbal): (i) contract of employment or (ii) agreement to make payments in the event of the termination of employment or (iii) obligation to pay damages by reason of the assumption of another's liability in a contract or agreement. This exclusion does not apply to liability for damages that the **Insured** would have in the absence of any contract or agreement;

No **Wrongful Act** shall be imputed to any other **Insured** for the purpose of determining the applicability of the foregoing exclusions a. and b..

- c. arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment insurance, social security or any similar law; provided, however, this exclusion shall not apply to any allegation that an **Insured** took retaliatory measures against a claimant for exercising rights under any of the foregoing laws;
- d. arising out of, based upon or attributable to a lockout, strike, picket line, replacement or other similar action resulting from labor disputes or labor negotiations;
- e. arising out of, based upon or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA**, the Workers' Adjustment and Retraining Notification Act, the Fair Labor Standards Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, rules or regulations promulgated thereunder and amendments thereto or similar provisions of any federal, state or local statutory or common law; provided, however, this exclusion shall not apply to any allegation that an **Insured** took retaliatory measures against a claimant for exercising rights under the Fair Labor Standards Act or the Occupational Safety and Health Act;
- f. for any actual or alleged bodily injury, sickness, loss of consortium, disease or death of any person, or any actual or alleged damage to or destruction of any tangible property including the loss of use thereof; provided however, that this exclusion shall not apply to mental anguish, emotional distress, libel, slander or defamation resulting from an otherwise covered **Claim**;
- g. for payment of insurance or other plan benefits due or to become due; provided, however, this exclusion shall not apply to **Defense Costs**;
- h. arising out of, based upon or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of a written notice given under any policy of which this Policy is a renewal or replacement;
- i. arising out of, based upon or attributable to any pending or prior litigation made as of the Pending or Prior Date set forth in Item 5. of the Declarations, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation;
- j. for non-monetary relief; or
- k. arising out of, based upon or attributable to a **Claim** to the extent coverage is provided under Part 1, Part 3 or Part 4 of this Policy.

**PART 3**  
**FIDUCIARY LIABILITY INSURANCE**  
(To Be Read In Conjunction With Applicable Sections  
Of The Common Policy Definitions and Conditions, Parts 5 and 6)

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of the **Insured, Loss** from any **Claim** first made during the **Policy Period** (or the Extended Reporting Period, if applicable) and reported to the Insurer pursuant to Part 6, Clause C. and resulting from a **Wrongful Act**.

## II. DEFINITIONS

- A. **Administration** means (1) giving counsel to employees with respect to **Employee Benefits**; (2) interpreting **Employee Benefits**; (3) handling records in connection with **Employee Benefits**; or (4) effecting enrollment, termination or cancellation of employees under an **Employee Benefit Plan**.
- B. **Claim** means service or other receipt by an **Insured** of:
1. a written demand for monetary or non-monetary relief; or
  2. a civil, criminal or administrative proceeding for monetary or non-monetary relief which is commenced by filing of a complaint or notice of charges, including any appeal therefrom;
  3. any document initiating a fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation, Internal Revenue Service or similar government agencies located outside the United States;
- C. **Defense Costs** means reasonable and necessary costs, charges, and expenses (other than wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds. **Defense Costs** shall also include a daily supplemental payment for the attendance of an **Insured** at hearings, trials or depositions of \$100 per day .
- D. **Employee Benefits** means any **Plan**, workers' compensation insurance, unemployment insurance, social security or disability benefits.
- E. **Insured** means:
1. any **Plan** other than a multiemployer plan as defined in **ERISA**;
  2. the **Company**, but only in its capacity as a sponsor of any **Plan** or with respect to **Employee Benefits**;
  3. any natural person who at any time holds or shall have held the position of trustee of any **Plan**, other than a multiemployer plan as defined in **ERISA**, or director, officer, trustee, partner or employee of any **Plan** or of the **Company**;
  4. the lawful spouse of a director or officer or employee of the **Company**. Such spouse shall be an **Insured** only for **Wrongful Acts** of the director or officer or employee for which they may be deemed liable as their spouse;
  5. the estates, heirs, legal representatives or assigns of E.3. immediately above who are deceased, or the legal representatives or assigns of E.3 immediately above who are incompetent, to the extent that in the absence of such death or incompetence such **Claims** would have been covered by this Policy.
- F. **Loss** means **Defense Costs** and any money the **Insured** is legally obligated to pay as damages or in settlement. But, **Loss** shall not include:
1. criminal or civil fines or penalties imposed by law except:
    - a. civil penalties of up to five percent (5%) imposed pursuant to Section 502 (i) of **ERISA** and for inadvertent violation of Section 406 of **ERISA**; and
    - b. civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(1) of **ERISA** for breach of fiduciary duty;
  2. taxes or matters deemed uninsurable under the law to which this Policy shall be construed;
  3. punitive or exemplary damages or the multiple portion of any damages award;
  4. any benefits or contributions deemed to be due (or become due) under the terms of any **Plan** or that portion of any settlement or award in an amount equal to such benefits, unless and to the extent that the recovery of such benefits is payable as a personal obligation of the **Insured** who is a natural person.
- G. **Pension Benefit Plan** means any employee pension benefit plan as defined in **ERISA** and for which coverage is afforded by **ERISA**.

H. **Plan** means:

1. any **Welfare Benefit Plan** which was, is now or becomes sponsored by the **Company** solely for the benefit of the employees of the **Company**;
2. any **Pension Benefit Plan** identified in the Covered Plans Endorsement attached to this Policy;
3. any **Pension Benefit Plan** which was, on or prior to the effective date of this Policy, sponsored solely by the **Company** solely for the benefit of the employees of the **Company** provided that coverage was available in respect of such **Pension Benefit Plan** under any Policy of which this Policy is a renewal or replacement and such **Pension Benefit Plan** has been reported in writing to the Insurer as part of the **Application**;
4. any **Pension Benefit Plan** created or acquired (through merger, consolidation or otherwise) during the **Policy Period** by the **Company** solely for the benefit of the employees of the **Company** but only upon the condition that within 90 days of it becoming so sponsored, the **Company** shall have provided written notice to the Insurer of such newly created **Plan** and agreed to any additional premium or amended terms.

Coverage for **Plans** which are sold, terminated or spun-off during or prior to the **Policy Period** shall apply only with respect to **Wrongful Acts** occurring prior to the date of such sale or spin-off, or in the case of termination, prior to the final date of asset distribution of such **Plan**.

I. **Welfare Benefit Plan** means any employee welfare benefit plan, as defined in **ERISA** and for which coverage is afforded by **ERISA**.

J. **Wrongful Act** means any actual or alleged:

1. breach, by an **Insured**, of responsibilities, obligations or duties imposed upon fiduciaries of any **Plan** by **ERISA**; or
2. negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**.

III. EXCLUSIONS

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

- a. arising out of, based upon or attributable to the committing in fact of any dishonest, criminal, or fraudulent act or any actual willful violation of any statute, rule or law by an **Insured** or the gaining in fact of any profit or advantage to which the **Insured** was not legally entitled;
- b. for any actual or alleged bodily injury, mental anguish, emotional distress, libel, slander or defamation, sickness, loss of consortium, disease or death of any person, or any actual or alleged damage to or destruction of any tangible property including the loss of use thereof;

No **Wrongful Act** shall be imputed to any other **Insured** for the purpose of determining the applicability of the foregoing exclusions a. and b..

- c. any actual or alleged failure to comply with any worker's compensation, disability benefits, unemployment insurance, social security or any similar law;
- d. arising out of, based upon or attributable to:
  1. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
  2. any direction or request that the **Company** or the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;
- e. arising out of, based upon or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any Policy of which this Policy is a renewal or replacement;
- f. arising out of, based upon or attributable to any pending or prior litigation made as of the Pending or Prior Date set forth in Item 5. of the Declarations, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation;

- g. for the failure to fund a **Plan** in accordance with **ERISA** or for the failure to make or collect contributions owed to the **Plan**; provided, however this exclusion shall not apply to **Defense Costs**; or
- h. arising out of, based upon or attributable to any liability assumed under any contract or agreement, other than any contract or agreement establishing a **Plan**. This exclusion does not apply to any liability for damages that the **Insured** would have in the absence of any such contract or agreement;
- i. arising out of, based upon or attributable to any **Claim** to the extent coverage is provided under Part 1, Part 2 or Part 4 of this Policy

**PART 4**  
**SPECIAL RISK INSURANCE**

(To Be Read In Conjunction With Applicable Sections  
Of The Common Policy Definitions and Conditions, Parts 5 and 6)

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of the **Insured, Loss** from any **Claim** first made during the **Policy Period** (or the Extended Reporting Period, if applicable) and reported to the Insurer pursuant to Part 6, Clause C. and resulting from a **Wrongful Act**.

**II. DEFINITIONS**

- A. **Claim** means notice (whether by written or verbal means) to the **Insured** of a **Wrongful Act**.
- B. **Defense Costs** means reasonable and necessary costs, charges, and expenses (other than wages, salaries or fees of the directors, officers or employees of the **Insured**) incurred in defending any suit or accusation, in connection with a **Claim**, in which an **Insured Person** alleges negligence or incompetence by the **Insured** in negotiating or obtaining the release of an **Insured Person** following a **Kidnapping**, including any premium for appeal, attachment or similar bonds in connection therewith. **Defense Costs** shall also include a daily supplemental payment for the attendance of any **Insured Person** requested by the **Insured** to appear at hearings, trials or depositions of \$100 per day.
- C. **Extortion** means a demand for money or other consideration directly of the **Insured** or indirectly of the **Insured** through an **Insured Person**; provided, however, such money or other consideration demanded is surrendered away from the **Premises** of the **Insured** or is not in the physical possession of such **Insured Person** at the time of such threat.
- D. **Informant** means any person other than an **Insured Person** providing information not otherwise obtainable solely in return for a monetary payment offered by the **Insured**.
- E. **Insured** means the **Company**.
- F. **Insured Person(s)** means:
  - 1. a director, officer or employee of the **Insured**; or
  - 2. a **Relative** of such director, officer or employee of the **Insured**.
- G. **Kidnap** or **Kidnapping** means the involuntary abduction by duress or fraud of an **Insured Person** by persons who demand money or other consideration in exchange for the release of the **Insured Person**.
- H. **Loss** means **Defense Costs** and
  - 1. reasonable fees and expenses of an independent negotiator or consultant retained with prior approval of the Insurer;



2. interest on any loan taken by the **Insured** to pay **Loss** covered under this Policy; provided, however, that the Insurer shall not be liable for any interest accruing prior to thirty (30) days preceding the date of such **Extortion** payment, nor subsequent to the date of reimbursement from the Insurer for any portion of **Loss** recoverable under this Policy;
3. reasonable costs of travel and accommodations incurred by the **Insured** or an **Insured Person**;
4. the reward paid by the **Insured** or an **Insured Person** to an **Informant** for information not otherwise available which leads to the arrest and conviction of persons responsible for any **Loss** under this Policy;
5. salary of an **Insured Person** who is kidnapped at the annual rate in effect prior to a **Kidnapping** paid by the **Insured**; provided, however, that the employee shall be held for more than thirty (30) days. Salary shall be paid for a period commencing upon abduction and ceasing upon the earliest of either the release of the employee or discovery of the death of the employee, or 120 days after the Insurer receives the last credible evidence that the employee is still alive, or twelve (12) months after the date of kidnapping;
6. the sum of money or monetary value of any other consideration surrendered by or on behalf of the **Insured** in connection with a **Wrongful Act**.

**Loss** (as defined in this section) shall be contemporaneously paid or reimbursed to the **Insured**.

- I. **Premises** means any building, driveway, parking lot or similar facility maintained by the **Insured**.
- J. **Relative** means a spouse, child, stepchild, adopted child, spouse of a married child, grandchild, sister, brother, parent, parent-in-law, grandparent or grandparent-in-law of any **Insured Person**.

K. **Wrongful Act** means:

1. the **Kidnapping** of an **Insured Person**;
2. an **Extortion** in connection with a threat to kill, injure or **Kidnap** an **Insured Person**;
3. an **Extortion** in connection with a threat to cause physical damage to and/or to contaminate the **Insured's Premises** or tangible property owned by the **Insured**;

### III. EXCLUSIONS

The Insurer shall not be liable to make payment for **Loss** in connection with **Claims**:

- a. arising out of, based upon or attributable to the committing in fact of any dishonest, criminal, or fraudulent act or any actual willful violation of any statute, rule or law by the **Insured**, an **Insured Person** or authorized representative or messenger of the **Insured** while in the custody of any **Extortion** payment;
- b. arising out of, based upon or attributable to the confiscation or expropriation of any reward or **Extortion** payment by any governmental authority;
- c. arising out of, based upon or attributable to any **Claim** made prior to the Pending or Prior Date set forth in Item 5. of the Declarations; or
- d. arising out of, based upon or attributable to **Claims** to the extent coverage is provided under Part 1, Part 2 or Part 3 of this Policy.

### IV. CONDITIONS

- A. As a condition precedent to the Insurer's liability hereunder, the **Insured** shall have approved the **Extortion** payment.
- B. In the event of any **Claim** and prior to making an **Extortion** payment, the **Insured** or **Insured Person** shall make every reasonable effort to:
  1. determine that the **Kidnapping** or **Extortion** has actually occurred;
  2. give notification to an official of the **Insured** of the **Kidnap** or **Extortion** demand;

3. if it appears to be in the best interest of such **Insured Person**, notify the Federal Bureau of Investigation or other law enforcement agency having jurisdiction, and comply with their recommendations and instructions.
- C. In no event shall the Insurer be liable for more than:
1. the market value of lost, damaged or destroyed securities at the close of business on the business day immediately preceding the day on which the **Wrongful Act** occurs, or the actual cost of replacing the securities, whichever is less;
  2. the United States dollar value of any foreign currency involved in a **Loss** under this Policy based on a free currency rate of exchange in effect the day on which the **Wrongful Act** occurs;
  3. the actual cash value at the time of the **Wrongful Act** of any other consideration or the actual cost of repairing or replacing such consideration with similar quality and value, whichever is less.

## PART 5 COMMON POLICY DEFINITIONS

A. **Application** means:

1. the application for this Policy; and
2. any other material submitted therewith, including but not limited to attachments to the application and financial statements.

Both 1. and 2. above shall be deemed a part of this Policy as if physically attached hereto.

B. **Company** means the Named Corporation designated in Item 1 of the Declarations and any **Subsidiary** thereof.

C. **ERISA** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), and including any rules or regulations promulgated thereunder, and amendments thereto, or any similar federal, state or local common or statutory law in the United States, Canada or any state or other jurisdiction anywhere in the world.

D. **Interrelated Wrongful Acts** means all causally connected **Wrongful Acts** or any series of the same, similar or related **Wrongful Acts**.

E. **Policy Period** means the period of time specified in Item 3 of the Declarations.

F. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency any state or local or foreign counterpart. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and noise.

G. **Run-Off Policy** shall mean a new policy of insurance offered by the Insurer at the request of the Named Corporation in the event of a **Transaction**. The **Run-Off Policy** shall apply to **Claims** made and reported to the Insurer during the term of said Policy, but only for **Wrongful Acts** occurring prior to the effective date of said **Transaction**.

H. **Subsidiary** means:

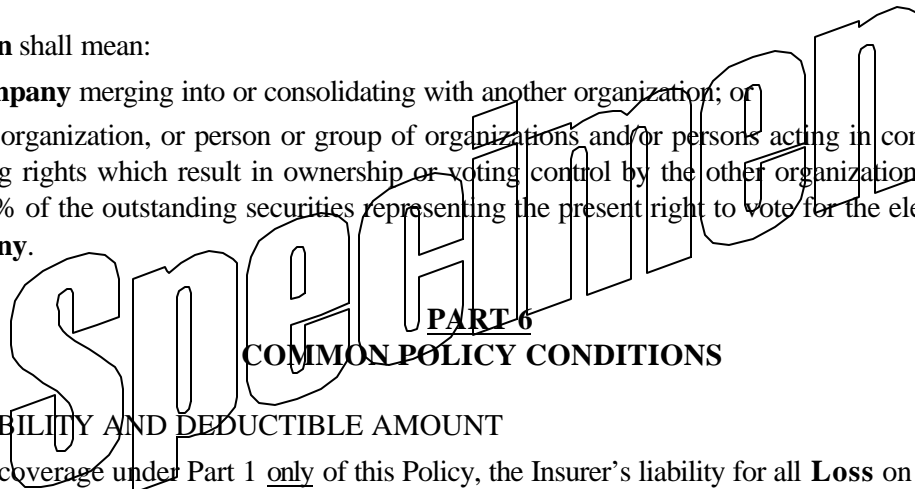
1. a corporation of which the Named Corporation owns on or before the inception of the **Policy Period** more than 50% of the issued and outstanding voting stock either directly, or indirectly through one of its **Subsidiaries** and which is set forth in the **Application**;

2. a corporation which becomes a **Subsidiary** during the **Policy Period** and whose assets total less than 20% of the total consolidated assets of the Named Corporation as of the inception date of this **Policy Period**. The Named Corporation shall provide the Insurer with full particulars of the new **Subsidiary** before the end of the **Policy Period**;
3. a corporation which becomes a **Subsidiary** during the **Policy Period** other than a corporation described in paragraph 2. above, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the Named Corporation shall have provided the Insurer with full particulars of the new **Subsidiary** and agreed to any additional premium and/or amendment of the provisions of this Policy required by the Insurer relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new **Subsidiary**.

A corporation becomes a **Subsidiary** when the **Company** owns more than 50% of the issued and outstanding voting stock, either directly, or indirectly through one or more of its **Subsidiaries**. A corporation ceases to be a **Subsidiary** when the **Company** ceases to own more than 50% of the issued and outstanding voting stock, either directly, or indirectly through one or more of its **Subsidiaries**. Coverage for **Claims** made against any **Subsidiary** or the **Insured** of any **Subsidiary**, shall only apply to **Wrongful Acts** occurring after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

J. **Transaction** shall mean:

1. the **Company** merging into or consolidating with another organization; or
2. another organization, or person or group of organizations and/or persons acting in concert acquiring securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the **Company**.



A. **LIMIT OF LIABILITY AND DEDUCTIBLE AMOUNT**

With respect to coverage under Part 1 only of this Policy, the Insurer's liability for all **Loss** on account of all **Claims** made during the **Policy Period**, whether covered under Insuring Agreement A or Insuring Agreement B or both, shall be the Limit of Liability for each **Policy Period** as set forth in Item 2(A) of the Declarations. The Insurer's liability under Insuring Agreement B shall apply only to that part of **Loss** which is in excess of the Deductible Amount set forth in Item 4(A) of the Declarations and such Deductible Amount shall be borne by the **Company** uninsured and at its own risk. If **Loss** is covered in part under Insuring Agreement A and in part under Insuring Agreement B, the Deductible Amount applicable to the **Loss** shall be the Insuring Agreement B Deductible Amount in Item 4(A) of the Declarations.

With respect to coverage under Part 2, Part 3 & Part 4 only of this Policy, the Insurer's liability for all **Loss** on account of all **Claims** made during the **Policy Period** shall be the Limit of Liability for each **Policy Period** as set forth in Item 2(B), 2(C) or 2(D) respectively of the Declarations. The Insurer's liability shall apply only to that part of **Loss** which is in excess of the respective Deductible Amount set forth in Item 4(B), 4(C) or 4(D) respectively of the Declarations and such Deductible Amount shall be borne by the **Company** uninsured and at its own risk.

The Insurer's maximum Aggregate Limit of Liability including **Defense Costs** for the **Policy Period** for Part 1, Part 2, Part 3 & Part 4 shall be the amount set forth in Item 2(E) of the Declarations. If a **Claim** falls under more than one coverage Part, except as otherwise provided in this Policy, the maximum Limit of Liability for said **Claim** shall be the highest Limit of Liability for the affected coverage Parts, not to exceed the maximum Aggregate Limit of Liability set

forth in Item 2(E) of the Declarations. The Limits of Liability for any Extended Reporting Period, if applicable, shall be a part of and not in addition to the Limits of Liability specified in the Declarations.

**B. DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)**

1. In the event that a **Claim** is made, the **Insured** and/or the **Company** shall take reasonable measures to protect their interests. If defense of suit is required, then the **Company** and/or the **Insured** shall appoint counsel subject to the Insurer's express approval and consent to such counsel and the terms of their engagement.
2. The Insurer will, pursuant to written agreement, advance covered **Defense Costs** on account of any **Claim** after the **Insured** and/or the **Company** obtains the express approval of the Insurer, such approval not to be unreasonably withheld or delayed.
3. No settlement shall be made or offer extended without the Insurer's consent, such consent not to be unreasonably withheld. The **Company** shall advise the Insurer in writing of all settlement demands received.
4. The Insurer may have counsel of its choice associated in the defense of any **Claim**. The Insurer reserves the right, but not the duty, at any time to take over control of the defense of any **Claim** and may directly negotiate the settlement thereof, as it deems expedient; but the Insurer shall not commit the **Insured** and/or the **Company** to any settlement without their consent;
5. The **Insureds** and/or the **Company** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** the **Insureds** and/or the **Company** will do nothing that may prejudice the Insurer's position or its potential rights of recovery.
6. If the **Insured** and/or the **Company** shall refuse to consent to a settlement which the Insurer has recommended in writing, and elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the Insurer's liability for such **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Defense Costs** incurred up to the date of such refusal.

**C. NOTICE/CLAIM REPORTING PROVISIONS**

1. In the event that a **Claim** is made, the **Company** shall, as a condition precedent to the obligations to the Insurer under this Policy, give written notice with full particulars as soon as practicable to the Insurer during the **Policy Period** (or Extended Reporting Period, if applicable) but not later than:
  - a. 90 days after the termination of this Policy (or Extended Reporting Period, if applicable) or;
  - b. 365 days after the **Policy Period** if this Policy is subsequently renewed with the **Company**.
2. If during the **Policy Period** the **Company** and/or the **Insured** becomes aware of any circumstances which may subsequently give rise to a **Claim** and, as soon as practicable thereafter, but before the termination of this Policy, gives written notice to the Insurer of the circumstances and the reasons for anticipating such a **Claim** with full particulars, dates and persons involved, then any **Claim** which is subsequently made will be considered made during this **Policy Period**.
3. All **Loss** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Loss**, and such **Loss** shall be deemed to have originated in the earliest **Policy Period** in which a **Claim** is first made against an **Insured** and/or the **Company** alleging any such **Wrongful Act** or **Interrelated Wrongful Acts**.
4. Notice of any **Claim** or circumstance which may give rise to a **Claim** shall be given in writing to:  
Philadelphia Insurance Companies  
1 Bala Plaza, Suite 100  
Bala Cynwyd, Pennsylvania 19004  
Attention: Claims Department  
Such notice shall be effective on the date of receipt by the Insurer at such address.

#### D. CHANGE IN CONTROL OF COMPANY

If during the **Policy Period** a **Transaction** occurs or the **Company** is taken over by a receiver or other liquidator or by state or federal officials, then coverage under this Policy shall continue until the end of the **Policy Period** (or such date to which the Insurer may agree by endorsement) but only with respect to **Claims** from **Wrongful Acts** occurring prior to such **Transaction**. Further, in the event of said **Transaction**, the **Company** shall have the right, within thirty (30) days of the end of the **Policy Period** (or such date to which the Insurer may agree by endorsement), to request an offer from the Insurer for an Extended Reporting Period or **Run-Off Policy** for a term of up to six (6) years. If elected, such Extended Reporting Period or **Run-Off Policy** shall be conditioned upon payment during the **Policy Period** by the **Insured** of any additional premium (which shall be fully earned at inception) and shall be subject to any additional terms and conditions required by the Insurer.

The **Company** shall give written notice of such **Transaction** to the Insurer as soon as practicable but no later than 45 days after the effective date thereof, together with such information the Insurer may require.

#### E. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this Policy, the Insurer has relied upon the declarations and representations in the **Application** for this Policy. All such declarations and representations are the basis of coverage under this Policy and shall be considered as incorporated in and constituting part of this Policy.

Except for material facts or circumstances known to the person(s) signing the **Application**, no statement in the **Application** or knowledge or information possessed by any **Insured** shall be imputed to any other **Insured** or to the **Company** for the purpose of determining the availability of coverage.

#### F. SUBROGATION

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

#### G. TERRITORY AND VALUATION

All premiums, limits, deductibles, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is in a currency other than United State of America dollars, 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 reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

This Policy shall extend to **Wrongful Acts** committed anywhere in the world.

#### H. ASSIGNMENT

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

#### I. OTHER INSURANCE

Such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance.

With respect to Part 1 only, in the event of a **Claim** against the **Insured** arising out of his or her serving as a director, officer, trustee, or governor of an **Outside Entity**, coverage as may be afforded by this Policy shall be specifically excess of indemnification provided by such **Outside Entity** and any insurance provided to such **Outside Entity**.

#### J. EXTENDED REPORTING PERIOD

If this Policy is terminated or nonrenewed for any reason other than nonpayment of premium, the **Company** shall have the right, upon payment of fifty percent (50%) of the annual premium set forth in Item 7. of the Declarations, to an extension of the coverage granted by this Policy for a period of twelve (12) months following the effective date of such termination or nonrenewal, but only with respect to **Wrongful Acts** occurring prior to the effective date of such termination or nonrenewal (herein referred to as the "Extended Reporting Period"). Any **Claim** subsequently made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Company** to the Insurer within thirty (30) days following the effective date of termination or nonrenewal.

The premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period. The Extended Reporting Period is not cancelable.

#### K. TERMINATION OF POLICY

This Policy shall terminate at the earliest of the following times:

1. the effective date of termination specified in a written notice by the Parent Corporation;
2. upon expiration of the **Policy Period** as set forth in Item 3. of the Declarations;
3. thirty (30) days after receipt by the **Company** of a written notice of termination from the Insurer for failure to pay a premium when due;
4. at such other time as may be agreed upon by the Insurer and the Named Corporation.

If this Policy is terminated by the Named Corporation, the Insurer shall refund the unearned premium computed at the customary short rates. Under any other circumstances, the refund shall be computed pro rata.

#### L. TERMS OF POLICY CONFORMED TO STATUTE

Terms of this Policy which are in conflict with the statutes of the State wherein this Policy is issued are hereby amended to conform to such statutes.

#### M. ACTION AGAINST THE INSURER

1. No action shall lie against the Insurer unless as a condition precedent thereto, there has been full compliance with all of the terms of this Policy, and until the amount of the **Insured's** and/or the **Company's** obligation to pay has been finally determined either by judgment after an actual trial or by written settlement agreement by the **Insured** and/or the **Company** regarding a **Claim**.
2. Any **Insured** or the legal representatives thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join the Insurer as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Insurer be impleaded by the **Insured** or their legal representatives.
3. Any coverage dispute which cannot be resolved through negotiations between any **Insured** and the Insurer shall be submitted to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel. The panel shall consist of one arbitrator selected by such **Insured**, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators.

#### N. ACCEPTANCE

This Policy embodies all agreements existing between the parties hereunder or any of their agents relating to this insurance.

O. AUTHORIZATION CLAUSE AND NOTICES

By acceptance of this Policy, it is agreed that the Named Corporation shall act on behalf of all **Insureds** with respect to the giving and receiving of any return premiums and notices that may become due under this Policy. Notice to the Named Corporation shall be directed to the individual named in the **Application**, or such other person as shall be designated by the Named Corporation in writing. Such notice shall be deemed to be notice to all **Insureds**. The Named Corporation shall be the agent of all **Insureds** to effect changes in this Policy.

P. FALSE OR FRAUDULENT CLAIMS

If an **Insured** and/or the **Company** shall proffer any **Claim** knowing the same to be false or fraudulent as regards amount or otherwise, this insurance shall become void and all insurance provided forfeited to such **Insured** and/or the **Company** from the date of proffering such false or fraudulent **Claim**.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its President and Secretary.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

S

Specimen