

# ExecutivePerils Employment Practices Liability

## Plus WHIP® (EPL+WHIP®) Policy

**THIS COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE POLICY. THE LIMITS OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES.**

In consideration of payment of the premium and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy, and the representations of the Insured as set forth in the Application, the Insurer and the Insureds agree as follows:

### I. INSURING AGREEMENTS

#### A. Wage & Hour Individual Protection – WHIP®

The **Insurer** shall pay **Non-Indemnifiable Loss** on behalf of the **Executives**, resulting from **WHIP Claims** first made against **Executives** during the **Policy Period**, for a **WHIP Wrongful Act** by the **Executive**.

#### B. Indemnified WHIP® Defense Expenses Coverage

The **Insurer** shall pay **Defense Expenses** on behalf of an **Insured Entity**, resulting from **WHIP Claims** first made solely against **Executives** during the **Policy Period**, for a **WHIP Wrongful Act** by the **Executive** to the extent the **Insured Entity** has indemnified the **Executive** for such **Defense Costs**.

#### C. Employment Practices Liability

The **Insurer** shall pay **Loss** on behalf of the **Insureds**, resulting from **Claims** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for **Employment Practices Wrongful Acts** by the **Insureds**.

#### D. Third Party Liability

The **Insurer** shall pay **Loss** on behalf of the **Insureds**, resulting from **Claims** first made against the **Insureds** during the **Policy Period** or applicable Extended Reporting Period, for **Third Party Wrongful Acts** by the **Insureds**.

### II. ADDITIONAL COVERAGES

Each of the following Additional Coverages are provided to the **Insured** only if the Limit of Liability is greater than \$0 as specifically indicated on the Declarations. If the Limit of Liability on the Declarations is \$0, there is no coverage provided under the Coverage Section for any **Matter, Loss**, or other amounts thereunder. Continuity of Claims Coverage is provided if selected with an "x" on the Declarations.

#### A. Employee Privacy Violation Defense Coverage

The **Insurer** shall pay **Defense Expenses** on behalf of the **Insureds**, for an **Employee Privacy Violation Claim** first made against the **Insureds** during the **Policy Period** or Extended Reported Period, if applicable. Such coverage will be subject to the following:

1. The maximum coverage available pursuant to this Additional Coverage for **Defense Expenses** from each **Employ Privacy Violation Claim** shall be subject to the Per Claim Sublimit of Liability and in excess of the

Retention indicated in Item 5.A of the Declarations. The maximum coverage available pursuant to this Additional Coverage for all **Defense Expenses** from all **Employee Privacy Violation Claims** shall be subject to the applicable Aggregate Sublimit of Liability stated in Item 5.A of the Declarations. Such Sublimit of Liability shall be part of, and not in addition to, the Coverage Section Limit of Liability set forth in Item 4. of the Declarations.

2. It shall be the duty of the **Insureds** to defend any **Employee Privacy Violation Claim**. The **Insurer** shall have no duty to defend **Employee Privacy Violation Claims** for which coverage is provided under this Section II. The **Insured** shall retain counsel for the investigation and defense of such **Employee Privacy Violation Claim**. The **Insurer** shall not have any duty to defend any **Employee Privacy Violation Claim**, provided that the **Insurer** shall have the right to: associate with the **Insureds** in the defense and settlement of any **Employee Privacy Violation Claim**; and make any investigation it deems appropriate regarding any **Employee Privacy Violation Claim**.
3. At the written request of the **Insureds**, the **Insurer** shall advance **Defense Expenses** excess of the applicable Retention prior to the final disposition of any **Employee Privacy Violation Claim**, provided that the **Insureds** shall repay such **Defense Expenses** if it is subsequently determined that such **Defense Expenses** are not covered under this **Policy**.
4. The **Insureds** shall not admit nor incur any **Defense Expenses** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any **Defense Expenses** to which it has not consented.

Section XII. Allocation shall not apply to any **Employee Privacy Violation Claim**.

#### B. **Immigration Defense Coverage**

The **Insurer** shall pay **Defense Expenses** on behalf of the **Insureds** resulting from an **Immigration Claim** for an **Immigration Wrongful Act** first made against the **Insureds** during the **Policy Period** or Extended Reported Period, if applicable. Such coverage shall be subject to the following:

1. The maximum coverage available pursuant to this Additional Coverage for **Defense Expenses** from each **Immigration Claim** shall be subject to the Per Claim Sublimit of Liability and in excess of the Retention indicated in Item 5.B of the Declarations. The maximum coverage available pursuant to this Additional Coverage for all **Defense Expenses** from all **Immigration Claims** shall be subject to the applicable Aggregate Sublimit of Liability stated in Item 5.B. of the Declarations. Such Sublimit of Liability shall be part of, and not in addition to, the Coverage Section Limit of Liability set forth in Item 4. of the Declarations.
2. It shall be the duty of the **Insureds** to defend any **Immigration Claim**. The **Insurer** shall have no duty to defend **Immigration Claims** for which coverage is provided under this Section II. The **Insured** shall retain counsel for the investigation and defense of such **Immigration Claim**. The **Insurer** shall not have any duty to defend any **Immigration Claim**, provided that the **Insurer** shall have the right to: associate with the **Insureds** in the defense and settlement of any **Immigration Claim**; and make any investigation it deems appropriate regarding any **Immigration Claim**.
3. At the written request of the **Insureds**, the **Insurer** shall advance **Defense Expenses** excess of the applicable Retention prior to the final disposition of any **Immigration Claim**, provided that the **Insureds** shall repay such **Defense Expenses** if it is subsequently determined that such **Defense Expenses** are not covered under this **Policy**.
4. The **Insureds** shall not admit nor incur any **Defense Expenses** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any **Defense Expenses** to which it has not consented.

Section XII. Allocation shall not apply to any **Immigration Claim**.

#### C. **Joint Employer Co-Defendant Liability Defense Expenses**

The **Insurer** shall pay **Defense Expenses** on behalf of the **Insureds** resulting from a **Joint Employer Claim** for an **Employment Practices Wrongful Act** first made against the **Insureds** during the **Policy Period** or Extended Reported Period, if applicable. Such coverage shall be subject to the following:

1. The maximum coverage available pursuant to this Additional Coverage for **Defense Expenses** from each **Joint Employer Claim** shall be subject to the Per Claim Sublimit of Liability and in excess of the Retention indicated in Item 5.C. of the Declarations. The maximum coverage available pursuant to this Additional Coverage for all **Defense Expenses** from all **Joint Employer Claims** shall be subject to the applicable Aggregate Sublimit of Liability stated in Item 5.C. of the Declarations. Such Sublimit of Liability shall be part of, and not in addition to, the Coverage Section Limit of Liability set forth in Item 4. of the Declarations.
2. It shall be the duty of the **Insureds** to defend any **Joint Employer Claim**. The **Insurer** shall have no duty to defend **Joint Employer Claims** for which coverage is provided under this Section II., even if the "Duty to Defend" option is indicated on the Declarations. The **Insured** shall retain counsel for the investigation and defense of such **Joint Employer Claim**. The **Insurer** shall not have any duty to defend any **Joint Employer Claim**, provided that the **Insurer** shall have the right to: associate with the **Insureds** in the defense and settlement of any **Joint Employer Claim**; and make any investigation it deems appropriate regarding any **Joint Employer Claim**.
3. At the written request of the **Insureds**, the **Insurer** shall advance **Defense Expenses** excess of the applicable Retention prior to the final disposition of any **Joint Employer Claim**, provided that the **Insureds** shall repay such **Defense Expenses** if it is subsequently determined that such **Defense Expenses** are not covered under this **Policy**.
4. The **Insureds** shall not admit nor incur any **Defense Expenses** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any **Defense Expenses** to which it has not consented.

#### D. **Workplace Violence Coverage**

The **Insurer** shall reimburse the **Named Insured** for **Workplace Violence Expenses** incurred by an **Insured Entity** resulting from any **Workplace Violence** which takes place during the **Policy Period**.

The maximum coverage available pursuant to this Additional Coverage for **Workplace Violence Expenses** from a **Workplace Violence** event shall be subject to the Per Claim Sublimit of Liability and in excess of the Retention stated in Item 5.D of the Declarations. The maximum coverage available pursuant to this Additional Coverage for all **Workplace Violence Expenses** from all **Workplace Violence** shall be subject to the applicable Aggregate Sublimit of Liability stated in Item 5.D of the Declarations. Such Limit of Liability shall be part of, and not in addition to, the Coverage Section Limit of Liability set forth in Item 4. Of the Declarations.

#### E. **Reserve Sub Limit Coverage**

Solely with respect to Insuring Agreement A., if the Policy Aggregate Limit of Liability indicated in Item 6. of the Declarations is exhausted in full, the **Insurer** shall reinstate such Limit of Liability for other **Claims** first made during the **Policy Period** up to the amount indicated as the Reserve Limit for as set forth in Item E. of the Declarations ("Reserve Limit"), subject to the below. Coverage under this Section II. is subject to all terms and conditions of the Policy.

Such Reserve Sub Limit:

1. is solely available to pay covered **Loss** for a **Claim** under Insuring Agreement A. that did not incur **Loss** that contributed to the exhaustion of the Limit of Liability ("Reinstated Liability Coverage"), provided however that if subject to the Shared Aggregate Limit of Liability incurred **Loss** that contributed to the exhaustion of the Shared Aggregate Limit of Liability, no Reserve Limit shall take effect; and

- is not available for any **Claim** that is a **Related Claim** to any **Claim** that incurred **Loss** that contributed to the exhaustion of the Limit of Liability.

The maximum amount payable by the **Insurer** for the Reinstated Liability Coverage, shall be the Insuring the amount indicated in Item 5.D. of the Declarations.

It is a condition precedent to coverage hereunder that the **Insured** timely submit all invoices and other information reasonably requested by the **Insured** for all **Claims**.

#### F. **Continuity of Claims Coverage**

- Notwithstanding Section VI. of the General Terms and Conditions, Related Claims, and solely for Insuring Agreements C. and D., if a **Prior EPL Policy** is listed in Item 2. of the Declarations, and a **Claim** for a **Wrongful Act** that is an **EEOC Charge** or **Written Demand** was commenced during the policy period of such **Prior EPL Policy** and notice of such **EEOC Charge** or **Written Demand** was not given under such **Prior EPL Policy**, then:

- such **EEOC Charge** or **Written Demand**; and
- any **Related Claim** commenced during the **Policy Period** that is a: (i) civil lawsuit, arbitration or alternative dispute resolution proceeding; (ii) administrative or regulatory proceeding; or (iii) administrative or regulatory investigation (each a "Subsequent Related Claim").

shall be deemed a **Claim** first made during the **Policy Period**.

- Coverage for any **EEOC Charge, Written Demand**, or Subsequent Related Claim described above shall only be available if:
  - no **Claim Manager** was aware of such **EEOC Charge** or **Written Demand** prior to the expiration of the time to give notice of such **Claim** under the **Prior EPL Policy**;
  - no **Related Claim** to such **EEOC Charge** or **Written Demand** that is a: (i) civil lawsuit, arbitration or alternative dispute resolution proceeding; (ii) administrative or regulatory proceeding; or (iii) administrative or regulatory investigation, was commenced prior to the **Policy Period**.
  - such **EEOC Charge** or **Written Demand** would have been covered under the **Prior EPL Policy** had notice of such **Claim** been given under the **Prior EPL Policy**; and
  - written notice is given to the **Insurer** of such **Claim** no later than ninety (90) days after the earlier of: (i) the date that any **Claim Manager** became aware of such **Claim**; or (ii) the end of the **Policy Period**.
- Coverage for any **EEOC Charge, Written Demand**, or Subsequent Related Claim described above shall only apply to **Loss** incurred after the earliest date that: (i) any **Claim Manager** became aware of such **EEOC Charge** or **Written Demand**; or (ii) the date the Subsequent Related Claim was commenced.
- The maximum coverage available under this **Policy** for any such **EEOC Charge, Written Demand**, or Subsequent Related Claim shall be the lesser of the coverage available under the **Prior EPL Policy** or this **Policy**, taking into account all of the terms, conditions and exclusions of each policy, including, without limitation, the applicable retention or deductible and available limit of liability under each policy as reduced by payments of **Loss**.
- If this **Policy** is a renewal of the **Prior EPL Policy** issued by the **Insurer**, or any affiliate of the **Insurer**, then this Section II.A. shall not apply and no coverage shall be available hereunder.

### III. **DEFINITIONS**

In addition to the Definitions set forth in the General Terms and Conditions, the terms in bold type used in this Coverage Section, whether singular or plural, will have the meanings provided below:

- A. **Application** means the application for this Policy, or any policy of which this is a direct renewal of a policy issued by the **Insurer**, including any correspondence or attachments submitted in connection therewith.
- B. **Benefits** means perquisites, fringe benefits, retirement benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to, or for the benefit of, an individual arising out of the employment or contractual relationship with the **Insured Entity**. **Benefits** shall not include salary, wages, commissions, bonuses, **Stock Benefits** or non-deferred cash incentive compensation.
- C. **Biometric Wrongful Act** means any actual or alleged violation of responsibilities, duties, or obligations under any law governing collection, possession, usage, retention, storage, transmission, dissemination, protection, or destruction of biometric information.
- D. **Claim** means:
1. the receipt of a written demand for monetary or non-monetary relief;
  2. a civil proceeding or suit commenced by the receipt of, or service of, a complaint or similar document;
  3. a formal administrative or regulatory proceeding, including, without limitation, any proceeding before the Equal Employment Opportunity Commission, any state or local fair employment practices agency, commenced by the filing of a notice of charges or similar document, or by the service upon any **Insured** of an **EEOC Charge**;
  4. an administrative or regulatory proceeding brought by the Office of Federal Contract Compliance Programs ("OFCCP") following and resulting from an audit (provided that the audit itself shall not be considered a **Claim**), commenced by the filing of a notice of charges or similar document;
  5. an administrative or regulatory investigation of any **Insured** once such **Insured** is served with a formal order of investigation or notice of charges identifying the **Insured** as a target of an investigation;
  6. an arbitration, mediation or other dispute resolution proceeding commenced by a written request or demand for arbitration, mediation or other alternative dispute resolution proceeding; or
  7. written request to toll or waive any applicable statute of limitations with respect to a potential **Claim** as set forth in paragraphs 2. or 3. above;

alleging or in connection with a **Wrongful Act** for which coverage is provided under this Coverage Section.

Notwithstanding the above, **Claim** excludes any: (i) criminal proceeding or investigation; (ii) labor or grievance proceeding initiated pursuant to a collective bargaining agreement.

**Claim** shall not include any routine or regularly scheduled oversight, compliance, audit, examination or inspection of any **Insured**.

For the purposes of Sections

**Claim** shall be deemed first made at the time an **Insured** first receives written notice of such **Claim**.

- E. **Claim Manager** means the Chief Executive Officer, Chief Financial Officer, member of the in-house Risk Management or Law Departments, or Director of the Human Resources Department, or any functionally equivalent position within an **Insured Entity**.
- F. **Defense Expenses** means:
1. the reasonable fees and expenses incurred by counsel retained to defend an **Insured** in a **Claim** or other proceeding for which coverage is provided under this Coverage Section; and

2. the cost of appeal, attachment and similar bonds, provided however, that the **Insurer** is not obligated to apply for or furnish such bonds.

**Defense Expenses** do not include regular or overtime wages, salaries, fees, benefits, any other compensation or overhead of any **Insured**.

- G. **EEOC Charge** means any written charge filed by an **Employee**, applicant for employment with an **Insured Entity**, or **Independent Contractor**, with the Equal Employment Opportunity Commission or any state or local fair employment practices agency.

**EEOC Charge** excludes any lawsuit, proceeding, or investigation initiated by the Equal Employment Opportunity Commission or any state or local fair employment practices agency.

- H. **Employee** means any natural person whose labor or service was, is or shall be engaged and directed by an **Insured Entity**, including full-time, part-time, seasonal, leased, loaned or temporary employees, interns or volunteers. **Employee** shall not include any **Independent Contractor**.

- I. **Employee Privacy Violation** means an **Insured Entity's** failure to:

1. secure an **Employee Record** from unauthorized access; or
2. provide any legally required notice to an **Employee** whose **Employee Record** was, or may have been, subject to unauthorized access.

- J. **Employee Privacy Violation Claim** means any **Claim** arising from, based upon, or attributable to any actual or alleged **Employee Privacy Violation**, regardless of whether such **Claim** also includes non-**Employee Privacy Violation** allegations.

- K. **Employee Record** means an **Employee's** last name together with either a first name or first initial in combination with such **Employee's**:

1. social security number, driver's license number or other personal identification number (including without limitation, an employee ID number or student ID number);
2. financial account number (including, without limitation, a bank account number, retirement account number, or healthcare spending account number);
3. credit, debit or other payment card number; or
4. individually identifiable health information as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

- L. **Employment Practices Wrongful Act** means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment, including constructive dismissal, discharge, or termination;
2. employment discrimination based on any protected status specified under applicable federal, state or local law, including the following (if applicable): age, gender, race, color, national origin, religion, creed, sexual orientation or preference, marital status, gender identity or expression, pregnancy, disability, health status, HIV status, military or veteran status, genetic makeup or political affiliation;
3. sexual harassment or other workplace harassment, including, without limitation, hostile work environment, bullying, or quid pro-quo;
4. wrongful deprivation of a career opportunity, demotion, failure to employ or promote, discipline of employees, or failure to grant tenure;
5. breach of any oral, written, or implied employment contract or agreement including, without limitation, any obligation arising out of any employee manual, handbook, or policy statement;

6. **Retaliation;**

7. violation of the Family and Medical Leave Act; or

8. provided that the following conduct relates to matters described in paragraphs 1. through 7. above:

(a) invasion of privacy;

(b) infliction of emotional distress or mental anguish;

(c) employment related defamation, including, without limitation, a negative or defamatory employment reference;

(d) employment-related misrepresentation;

(e) failure to provide or enforce adequate or consistent corporate employment policies and procedures; or

(f) negligent hiring, retention, supervision, evaluation or training of **Employees;**

committed or attempted by any **Insured Person** in their capacity as such, or by any **Insured Entity;** against any **Employee,** applicant for employment with any **Insured Entity** or **Independent Contractor.**

Without limitation, the conduct described in a. and b. above shall include matters carried out by any means in any location, including the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected: (i) on or off the premises of any **Insured Entity;** or (ii) through any computer or device owned or leased by any **Insured Entity, Insured Person,** or others.

M. **ERISA** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996), the English Pension Scheme Act 1993 or the English Pensions Act 1995; all as amended; any similar statutory or common law anywhere in the world; or any rule or regulation promulgated under any such Act or law.

N. **Executive** means any natural person who is, was or will be a duly elected or appointed director, managing director, managing member, member of the board of managers, officer, in-house general counsel, director of human resources or similar position, management committee member, member of the advisory board, member of the board of governors, or trustee, of an **Insured Entity.**

**Executive** also means the holder of a functionally equivalent position to those described above, in any **Insured Entity** incorporated, formed or organized anywhere in the world.

O. **Financial Impairment** means the bankruptcy, liquidation, receivership or insolvency of an entity, or an entity's status as a debtor-in-possession under United States bankruptcy law or the equivalent of a debtor-in-possession under the law of any other country.

P. **Immigration Claim** means any **Claim** commenced by the service upon the **Insured** of a notice of inspection, audit or investigation by any governmental agency for an **Immigration Wrongful Act.**

Q. **Immigration Wrongful Act** means any actual or alleged hiring, harboring, employment, or attempted employment of undocumented immigrants or potential undocumented immigrants, which results in a violation of the Immigration Reform and Control Act of 1986 or any other similar federal or state regulations.

R. **Independent Contractor** means any natural person working for an **Insured Entity** in the capacity of an independent contractor pursuant to an express contract or agreement with an **Insured Entity** governing the nature of such person's engagement.

S. **Insured** means any **Insured Entity** and any **Insured Person.**

T. **Insured Entity** means the **Named Insured** and any **Subsidiary** thereof, and any entity listed as an **Insured Entity** in a Schedule or Endorsement attached to this **Policy. Insured Entity** shall also include any such entity as

a debtor-in- possession under United States bankruptcy law or the equivalent of a debtor-in-possession under the law of any other country.

U. **Insured Person** means any:

1. **Executive;**
2. **Employee;** or
3. **Independent Contractor**, but only if an **Insured Entity** agrees, in writing within thirty (30) days of the making of a **Claim**, to provide indemnification to such **Independent Contractor** for any **Loss** arising out of such **Claim**, or has agreed, but is unable to provide indemnification due to **Financial Impairment**.

V. **Insurer** means the insurance company identified in Item 2. of the Declarations.

W. **Joint Employer Claim** shall mean a **Claim** for an **Employee Practices Wrongful Act** brought and maintained against both an **Insured** and an independent entity (which has a current business contract with an **Insured Entity**), as codefendants, and which alleges that the **Insured** and such entity are both liable for such **Employment Practices Wrongful Acts**.

X. **Loss** means the amount that the **Insureds** are legally obligated to pay resulting from a **Claim**, including, without limitation, damages (including front pay and back pay), settlements, judgments, pre- and post-judgment interest, claimant's attorney's fees awarded by the court in a judgment, and **Defense Expenses**.

**Loss** shall also include:

1. punitive, exemplary and multiple damages; and
2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act, where insurable by law.

The insurability of such damages shall be governed by the laws of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the **Insurer**, or to the **Claim** giving rise to such damages.

**Loss** does not include:

1. taxes, fines or penalties;
2. amounts uninsurable under the law pursuant to which this Coverage Section is construed;
3. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the Insureds;
4. non-monetary relief, including injunctive relief and the costs to comply with any request or order granting such relief;
5. future compensation or **Benefits** of a claimant who was, is, or shall be, hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of a **Claim**;
6. **Stock Benefits**;
7. compensation earned by or due to the claimant in the course of employment but not paid by an **Insured Entity**, other than back pay or front pay;
8. costs or amounts for or arising out of a **Biometric Wrongful Act**.
9. costs or amounts resulting from any **Employee Privacy Violation Claim** other than **Defense Expenses** under Additional Coverage A.;
10. the cost of conducting any audit by the OFCCP.

Y. **Matter** means a **Claim**, **WHIP Claim**, **Employee Privacy Violation Claim**, **Immigration Claim**, and **Joint Employer Claim**.



- Z. **Named Insured** means the entity identified in Item 1. of the Declarations.
- AA. **Non-Indemnifiable Loss** means any **Loss** incurred by **Insured Persons** that all **Insured Entities** cannot indemnify because of legal prohibition or **Financial Impairment**.
- BB. **Policy** means the Declarations, all attached Coverage Sections, all Schedules and Endorsements attached hereto, and the **Application**
- CC. **Policy Period** means the period of time running from the Effective Date to the Expiration Date stated in Item 3. of the Declarations, or the effective date of any earlier cancellation or termination of the **Policy**
- DD. **Prior EPL Policy** means the policy immediately preceding this **Policy** as specified in Item 2. of the Employment Practices Liability Declarations, of which this **Policy** is a replacement.
- EE. **Related Matter** means any **Matter** having, as a common nexus, the same or related **Wrongful Acts**, facts, circumstances, situations, transactions, decisions, or events, or series of causally connected **Wrongful Acts**, facts, circumstances, situations, transactions, decisions or events.
- FF. **Retaliation** means any negative treatment of an **Employee** or **Independent Contractor** in response to an **Employee** or **Independent Contractor**:
1. exercising his or her rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
  2. refusing to violate any law;
  3. assisting, testifying in, or cooperating with, a proceeding or investigation regarding alleged violations of law;
  4. disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law;
  5. filing any claim under the Federal False Claims Act, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any similar law that protects a "whistleblower"; or
  6. participating in any strike, work stoppage or slowdown.
- GG. **Stock Benefits** means any offering, plan or agreement between any **Insured Entity** and any **Insured Person** granting stock, stock options or stock appreciation rights in any **Insured Entity** to such **Insured Person**, including, without limitation, restricted stock or any other stock grant.
- HH. **Subsidiary** means any:
1. corporation in which, and for as long as, the **Named Insured** owns or controls, either directly or indirectly, more than fifty percent (50%) of the outstanding securities representing a present right to vote for the election of the board of directors of such corporation.
  2. limited liability company in which, and for as long as, the **Named Insured** owns or controls, either directly or indirectly, the right to elect, appoint or designate more than 50% of the members of the board of managers or management committee of such limited liability company.
  3. joint venture corporation or limited liability company in which, and for as long as, the **Named Insured**:
    - (a) owns or controls, either directly or indirectly, exactly fifty percent (50%) of the outstanding securities representing a present right to vote for the election of the board of directors of such corporation or the right to elect, appoint or designate exactly fifty percent (50%) of the members of the board of managers or management committee of such limited liability company; and
    - (b) solely controls the management and operations of such organization pursuant to a written agreement with the other owners of such organization.

4. foundation, charitable trust, or political action committee in which, and for as long as, the **Named Insured** exclusively sponsors such entity or organization; or
5. any limited partnership in which, and for as long as the **Named Insured** owns or controls, directly or indirectly, more than fifty percent (50%) of the limited partnership interest of such limited partnership; and any **Insured Entity** is the sole general partner of such limited partnership.

II. **Third Party** means any natural person who is a customer, vendor, service provider or other business invitee of any **Insured Entity**. **Third Party** shall not include any **Insured Person**.

JJ. **Third Party Wrongful Act** means any actual or alleged:

1. discrimination based on any protected status specified under applicable federal, state or local law, including the following (if applicable): age, gender, race, color, national origin, religion, creed, sexual orientation or preference, marital status, gender identity or expression, pregnancy, disability, health status, HIV status, military or veteran status, genetic makeup, political affiliation; or
2. harassment, including sexual harassment;

committed by any **Insured Person** in their capacity as such; against any **Third Party**.

KK. **WHIP Claim** means:

1. a civil proceeding or suit commenced against an **Executive** by the receipt of, or service of, a complaint or similar document;
2. a formal administrative or regulatory proceeding commenced against an **Executive**, including, without limitation, any proceeding before the Department of Labor, any state or local fair employment practices agency, commenced by the filing of a notice of charges or similar document;
3. an administrative or regulatory investigation commenced against an **Executive** once such **Executive** is served with a formal order of investigation or notice of charges identifying the **Executive** as a target of an investigation;

alleging a **WHIP Wrongful Act** for which coverage is provided under this Policy.

Notwithstanding the above, a **WHIP Claim** excludes any: (i) criminal proceeding or investigation; or (ii) labor or grievance proceeding initiated pursuant to a collective bargaining agreement.

A **WHIP Claim** shall not include any routine or regularly scheduled oversight, compliance, audit, examination or inspection of any **Executive**.

A **WHIP Claim** shall be deemed first made at the time an **Executive**:

1. first receives written notice of such **WHIP Claim**, for Insuring Agreement A; or
2. first receives written notice that a **WHIP Claim** is made solely against an **Executive**, for Insuring Agreement B.

LL. **WHIP Wrongful Act** means an actual or alleged violation of the Fair Labor Standards Act, other than the Equal Pay Act, or any other federal, state or local law or statute concerning wage, hour and payroll practices, or amendments to or regulations promulgated under any such law that alleges an **Executive** is personally liable for amounts due, including damages and unpaid wages, as a result of such violation.

MM. **Workplace Violence** means any intentional and unlawful act:

1. of deadly force involving the use of a lethal weapon; or
2. the threat of deadly force involving the display of a lethal weapon.

which occurs on or in the buildings, facilities or properties occupied by the **Insured Entity** for the purpose of conducting its daily business activities, and which did or could result in bodily injury or death to an **Insured Person**.

NN. **Workplace Violence Expenses** means the reasonable fees and expenses, or cost of:

1. an independent security consultant for up to ninety (90) days following the date **Workplace Violence** occurs.
2. an independent public relations consultant for up to ninety (90) days following the date **Workplace Violence** occurs.
3. a counseling seminar for all **Employees** conducted by an independent consultant following the date **Workplace Violence** occurs;
4. independent security guard services for up to fifteen (15) days following the date **Workplace Violence** occurs; and
5. an independent forensic analyst for up to one hundred and twenty (120) days following the date **Workplace Violence** occurs.

OO. **Written Demand** means any **Claim** that is a written demand or request as described in Section III. Definitions, paragraphs C.1 or 7.

PP. **Wrongful Act** means any **Employment Practices Wrongful Act, Third Party Wrongful Act** or **WHIP Wrongful Act**.

#### IV. ESTATES, TRUSTEES AND SPOUSES

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Coverage under this **Policy** shall be extended to also apply to a:

- A. Lawful spouse or domestic partner (whether by reason of statutory law, common law or otherwise) of any **Insured Person**, but only for otherwise covered **Claims** made against such person due to their status as the lawful spouse or domestic partner of the **Insured Person**, and only for **Claims** based upon or arising out of **Wrongful Acts** committed in the course of the **Insured Person's** duties for the **Insured Entity**;
- B. Representative of the estate of a deceased **Insured Person**, and only for **Claims** based upon or arising out of **Wrongful Acts** committed in the course of the **Insured Person's** duties for the **Insured Entity**; and
- C. Trustee, guardian, receiver or other fiduciary of a bankrupt or insolvent **Insured Person**, or an **Insured Person** that has been declared incompetent, and only for **Claims** based upon or arising out of **Wrongful Acts** committed in the course of the **Insured Person's** duties for the **Insured Entity**.

#### V. LIMITS OF LIABILITY AND RETENTION

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##### A. Limits of Liability

###### 1. Aggregate Limit of Liability

The **Insurer's** liability for **Loss** and **Defense Expenses** for all covered **Matters** will not exceed the applicable Aggregate Limit of Liability stated in Item WWWW. of the Declarations.

If the Shared Aggregate Limit of Liability set forth in Item 6. of the Declarations is elected, as indicated in Item 4. of the Declarations, for one or more \_\_\_\_\_, the amount stated in Item \_\_. shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss** under this **Policy**, combined.

The maximum aggregate amount that the **Insurer** shall pay for all **Loss** arising from a single **Matter** shall not exceed the greatest Limit of Liability of any applicable Insuring Agreement.

## 2. **Limit of Liability – Insuring Agreements and Additional Coverages**

The **Insurer's** liability for **Loss** and **Defense Expenses** for all covered **Matters** under any one Insuring Agreement or Additional Coverage will not exceed the Limit of Liability for that Insuring Agreement or Additional Coverage stated in Item \_\_\_ of the Declarations.

## 3. **Coordination of Limits Between Insuring Agreements**

The maximum aggregate amount that the **Insurer** shall pay for all **Loss** arising from a single **Matter** shall not exceed the greatest Limit of Liability of any applicable Insuring Agreement or Additional Coverage.

## B. **Payment of Defense Expenses**

**Defense Expenses** are part of, and not in addition to, the applicable Limit of Liability, and payment of **Defense Expenses** by the **Insurer** shall reduce and exhaust such Limits of Liability.

## C. **Exhaustion of Limits**

Once the applicable Aggregate Limit of Liability is exhausted by the payment of **Loss, Defense Expenses** or other covered amounts under this **Policy**, as indicated in the Declarations, the **Insurer** shall have no further obligation to defend any **Insured**, pay **Loss** or **Defense Expenses** with respect to any **Matter**, or pay any other covered amounts, under the applicable Coverage under this **Policy**.

## D. **Retention**

1. The **Insurer's** obligation to pay **Loss** or **Defense Expenses** with respect to any **Matter** under this **Policy** shall only apply once the applicable Retention has been paid in full. The **Insured** will be liable for payment of the applicable Retention amount as stated in the Declarations with respect to any **Matter** for which coverage is provided by this **Policy**. The **Insured** shall bear, uninsured at its own risk, the full amount of any applicable Retention.
2. No Retention will apply to a **WHIP Claim** under Insuring Agreement A.
3. If any **Matter** is subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions will not exceed the largest applicable Retention. If any **Matter** gives rise to coverage under two or more coverages, the **Insurer** shall have no obligation to pay **Loss**, including **Defense Expenses**, until the largest Retention that is applicable to such **Matter** under this **Policy** has been paid in full.

## VI. **EXCLUSIONS**

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### A. **Exclusions Applicable to All Insuring Agreements and Additional Coverages**

The **Insurer** shall not pay **Loss** in connection with any **Matter**:

#### 1. **Prior Notice**

based upon, arising out of, or in any way related to, any actual or alleged **Wrongful Act, WHIP Wrongful Act**, fact, circumstance, event, situation or incident for which notice was given and accepted under any other employment practices liability, management liability or similar insurance policy of which this policy is a renewal or replacement;

#### 2. **Prior and/or Pending Litigation**

based upon, arising out of, or in any way related to, any demand, investigation, suit or proceeding made or

initiated against any **Insured** on or prior to the applicable Prior and/or Pending Litigation Date set forth in Item 4. of the Declarations, or any **Wrongful Act, WHIP Wrongful Act**, fact, circumstance, event, situation or incident underlying or alleged in any such prior demand, investigation, suit or proceeding;

3. **Bodily Injury/Property Damage**

for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;

provided however, that this exclusion shall not apply to any **Claim** for infliction of emotional distress or mental anguish as part of a **Wrongful Act**;

4. **Workers' Compensation, Unemployment, Social Security, Benefits**

for any violation of: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits laws; (ii) **ERISA** (except Section 510 thereof); (iii) the National Labor Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act; or any federal, state, local or foreign laws similar to those mentioned in(i) through (vi) above;

provided however, that this exclusion shall not apply to any **Claim** for **Retaliation**;

5. **Wage and Hour/FLSA**

for any actual or alleged violation of the Fair Labor Standards Act, other than the Equal Pay Act, or any other federal, state, local or foreign law or statute concerning wage, hour and payroll practices, or amendments to or regulations promulgated under any such law, including but not limited to unpaid wages, improper payroll deductions, improper employee classification, failure to maintain accurate time records, or failure to grant meal and rest periods;

provided however, that this exclusion shall not apply to: (i) **Loss** on account of any **Claim** for **Retaliation**; (ii) Insuring Agreement A.; or (iii) **Defense Expenses** under Insuring Agreement B.

6. **Contract**

for any liability of others assumed by any **Insured** under any contract or agreement;

provided however, that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement; or

7. **Breach of Independent Contractor Agreement**

based upon, arising out of, or in any way related to, any actual or alleged breach of or liability assumed under any contract or agreement between an **Insured Entity** and an **Independent Contractor**.

B. Other than **Defense Expenses**, the **Insurer** shall not pay **Loss** for any **Matter** against an **Insured**:

1. for costs to comply with non-monetary relief including any accommodation required by the Americans with Disabilities Act or any similar law;
2. for employment termination severance payments; provided however, that this exclusion shall not apply to any payments negotiated with and consented to by the **Insurer** as part of a settlement;
3. for **Benefits** or their equivalent value; provided however, that this exclusion shall not apply to any **Claim** for wrongful dismissal, discharge or termination of employment; or
4. for any breach of any written employment contract or agreement; provided however, that this exclusion shall

not apply to any liability that would have been incurred in the absence of such written employment contract or agreement.

### C. **Antitrust/Unfair Trade Practices**

With respect to Additional Coverage D., the coverage provided under this Coverage Section will not apply to any **Claim** based upon, arising out of, or in any way related to, any actual or alleged price discrimination or violation of any anti-trust or other law designed to protect competition or prevent unfair trade practices.

## V. REPORTING OF MATTERS AND POTENTIAL MATTERS

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### A. **Notice of Matters**

1. As a condition precedent to coverage for any **Matter** first made during the **Policy Period**, the **Insurer** must receive written notice from the **Insured** at the address stated in Item ppp. of the Declarations of any **Matter**, as soon as practicable after the Chief Executive Officer, Chief Financial Officer, In-House General Counsel, Risk Manager of the **Insured Entity**, or any individual in a functionally equivalent position, becomes aware of such **Matter**, but in no event later than sixty (60) days after the end of the **Policy Period**; or if an Extended Reporting Period applies, no later than the expiration of the applicable Extended Reporting Period.
2. Solely with respect to Insuring Agreement C., it is a condition precedent to coverage thereunder for any **Claim** brought in the form of an administrative investigation or proceeding, that, in the event that this **Policy** renews with the **Insurer**, the **Insurer** receives written notice of such **Claim** from the **Insured** at the address stated in Item 9. of the Declarations, (i) within one year from the effective date of the renewal policy, or (ii) before the termination of that renewal policy's policy period, whichever is earlier. If this **Policy** does not renew, then paragraph A.1. above applies to such **Claim**.
3. The noticed required by paragraphs 1. and 2. above, must include:
  - (a) a copy of the actual complaint; written demand or other documentation evidencing the **Matter**;
  - (b) a description of the **Wrongful Act** underlying the **Matter**, including the date and where it took place; and
  - (c) the identity of any parties which may be involved.

### B. **Notice of Potential Matters**

1. Solely for Insuring Agreements C. and D., if during the **Policy Period**, the **Insured** first becomes aware of a **Wrongful Act** which the **Insured** reasonably believes may result in a **Matter** against an **Insured** for which coverage may be provided under this **Policy**, the **Insured** may provide written notice of such **Wrongful Act** to the **Insurer** at the address stated in Item 9. of the Declarations. If the **Insurer** receives such written notice complying with the terms of this Section V.B. during the **Policy Period**, then any subsequent **Matter** against the **Insured** arising out of such **Wrongful Act** will be deemed to have been first made on the date that such notice was received by the **Insurer**, and all terms and conditions in effect at that time shall apply.
2. The notice required by paragraph 1. above must include:
  - (a) a description of the **Wrongful Act**, including the date and where it took place;
  - (b) the identity of any parties which may be involved, including any potential claimant;
  - (c) the nature of the injury or loss;
  - (d) the manner in which the **Insured** first became aware of the **Wrongful Act**; and
  - (e) the reasons the **Insured** believes the **Wrongful Act** is likely to result in a **Matter**.

3. The **Insurer** may, at the **Insurer's** option, investigate any such **Wrongful Act** and, if in its sole discretion the **Insurer** deems it appropriate, assign counsel for the **Insured** to investigate, resolve or settle any potential **Matter** in connection with the **Wrongful Act**. If the **Insurer** decides to investigate, resolve or settle any potential **Matter**, the applicable **Retention** must be paid by the **Insured**, and any **Defense Expenses** or settlement amount paid by the **Insurer** will reduce the applicable Limit of Liability.

## VI. RELATED MATTERS

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All **Related Matters** will be considered a single **Matter**, which shall be deemed first made on the earliest of: (i) the date the first of such **Matter** was made; or (ii) the date that any **Insured** first provided notice of a potential matter under any insurance policy; whether prior to or during the **Policy Period**, or during any extended reporting period or run-off period. The Retention and Limits of Liability applicable at the time such **Matter** is deemed first made shall apply.

## VIII. DEFENSE AND SETTLEMENT OF MATTERS

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### A. Duty to Defend/Settlement

1. The **Insurer** will have the right and duty to defend, with counsel selected by the **Insurer**, any Insured in connection with any **Matter** under all Insuring Agreements to which this **Policy** applies. The **Insurer** will have the right and duty to defend even if the allegations in a **Matter** are false, groundless or fraudulent.
2. It shall be the duty of the **Insured** to defend any **Matter** for which coverage is provided under any Additional Coverage listed in Section II. Of this **Policy**.
3. Subject to Section \_\_\_\_, **Defense Expenses** incurred in the defense of such **Claims** will be part of, and not in addition to, the applicable Limit of Liability. **Defense Expenses** will erode and may exhaust the applicable Limit of Liability.
4. The **Insurer** will have no duty to defend or continue to defend any **Matter** after the applicable Limit of Liability has been exhausted by the payment of **Loss, Defense Expenses** or other amounts for which coverage is provided under this **Policy**.
5. The **Insurer** may not settle any **Matter** without the **Named Insured's** prior written consent, which the **Named Insured** shall not unreasonably withhold. Provided however, that the **Insurer** may settle any **WHIP Claim** covered under Insuring Agreement A. with the **Executive's** prior written consent. If the **Executive** withholds consent to any such settlement acceptable to a Claimant, the **Insurers** liability for all **Loss** on account of such **Whip Claim** shall not exceed the sum of:
  - (a) The amount which the **Insurer** could have settled such **Claim**; and
  - (b) **Defense Expenses** accrued as of the date such settlement was proposed by the **Insurer** to the **Executive**.

### B. Reimbursement Additional Coverages

1. The **Insurer** shall advance covered **Defense Expenses** or **Workplace Violence Expenses** under any Additional Coverage, if purchased, for a **Matter** or **Workplace Violence** reported pursuant to Section V. above, on a current basis, after receipt by the **Insurer** of bills detailing such **Defense Expenses** or **Workplace Violence Expenses** and all other information requested by the **Insurer** with respect to such bills, until the applicable Limit of Liability set forth in the Declarations has been exhausted.
  - (a) Any advancement of **Defense Expenses** or **Workplace Violence Expenses** shall be repaid to the

**Insurer** by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Expenses** or **Workplace Violence Expenses** are not insured under this **Policy**.

- (b) Any advancement of **Defense Expenses** or **Workplace Violence Expenses** by the **Insurer** shall reduce the Limit of Liability set forth in the Declarations. If the **Insurer** recovered any such **Defense Expenses** paid, the amount of such **Defense Expenses** less all costs incurred by the **Insurer** to obtain such recovery shall be reinstated to the Limit of Liability set forth in the Declarations.

## IX. PRESUMPTION OF INDEMNIFICATION

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The **Insured Entity** will be conclusively deemed to have indemnified all **Executives** to the extent that the **Insured Entity** is permitted or required to indemnify them to the fullest extent permitted by law, common or statutory.

## X. DUTY OF COOPERATION

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Each and every **Insured** has a duty to cooperate with the **Insurer** in the investigation, defense and settlement of any **Matter**. The **Insureds** will not take any action that would prejudice or otherwise impair the **Insurer's** rights to defend or settle any **Matter**. The **Insureds** will cooperate with the **Insurer** and provide the **Insurer** with any information that the **Insurer** reasonably requests in connection with any **Matter** for which coverage is sought or provided under this **Policy**.

Notwithstanding the above, the failure of any **Insured Person** to cooperate shall not impair the rights of any other **Insured Person** under the Policy.

## XI. ALLOCATION

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With respect to the coverage under this **Policy**

- A. If in any **Matter**, the **Insureds** who are afforded coverage for a **Matter** incur **Loss** that is covered by this **Policy** and loss that is not covered by this **Policy** because such **Matter** includes both covered and uncovered matters or parties, one hundred percent (100%) of **Defense Expenses** incurred by such **Insured** shall be covered **Loss**, and all **Loss** other than **Defense Expenses** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the covered parties to the covered matters.

## XII. SUBROGATION

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- A. In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all of the **Insureds'** rights against any person or entity. The **Insureds** will do everything necessary to preserve such rights, including executing any documents needed to permit the **Insurer** to bring suit in the **Insured's** name and otherwise assisting the **Insurer** in the pursuit of any recovery. The **Insureds** will not take any action that would prejudice or otherwise impair the **Insurer's** position or any rights of recovery.
- B. Solely with respect to Insuring Agreements A. and C. and without effecting any other rights or remedies, the **Insurer** shall waive its right to subrogate against any **Insured**.

## XIII. RESPONSIBILITIES OF NAMED INSURED

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- A. By acceptance of this **Policy**, the **Named Insured** agrees that it shall be considered the sole agent of, and shall act on behalf of, each **Insured** with respect to:
1. the payment of premiums and the receiving of any return premiums that may become due under this **Policy**;
  2. the negotiation, agreement to and acceptance of endorsements; and



3. the giving or receiving of any notice provided for in this **Policy**;

Each **Insured** agrees that the **Named Insured** shall act on its behalf with respect to all such matters, provided however that an **Executive** may also provide notice of any **Matter**.

#### **XIV. REPRESENTATIONS/SEVERABILITY/NON-RESCINDABLE**

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A. The **Named Insured** represents that all statements and information provided in the **Application** including any correspondence or attachments submitted in connection therewith are true, accurate and complete, and agrees that such statements and information are material to the risk insured, and that the **Insurer** issued this **Policy** on the basis of those statements and information.

With respect to all statements and representations contained in the **Application**, no knowledge possessed by any one **Insured Person** will be imputed to any other **Insured Person**.

B. However, the **Insureds** agree that in the event any such statements or representations in the **Application** are untrue or inaccurate and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer**, then no coverage will be afforded under this **Policy** with respect to the following **Insureds**, for any **Claim** based upon or arising out of the information that was not truthfully or accurately disclosed in the **Application**:

1. any **Insured Person** who knew, as of the Effective Date of this **Policy**, that the statement or representation was untrue;
2. any **Insured Entity**, with respect to indemnification coverage, to the extent it indemnifies any **Insured Person** referenced in 1. above; and
3. any **Insured Entity**, if any past or present Chief Executive Officer, Chief Financial Officer, General Counsel or Director of Human Resources of the **Named Insured**, or any individual in a functionally equivalent position, or person who signed the **Application**, knew that the statement or representation was untrue.

Whether an **Insured Person** had such knowledge will be determined without regard to whether the **Insured Person** actually knew the **Application**, or any other application, completed for this **Policy**, contained any such untrue statement or representation.

#### **XV. CORPORATE TRANSACTIONS**

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##### **A. Acquisition of Another Entity**

If before or during the **Policy Period**, an **Insured Entity** acquires another entity such that the acquired entity becomes a **Subsidiary**; then coverage shall be provided for such **Subsidiary** and its **Insureds**, solely for **Claims** for **Wrongful Acts** which first take place after such acquisition, and subject to all terms, conditions and exclusions of this **Policy**.

##### **B. Cessation of Subsidiaries**

If before or during the **Policy Period**, an **Insured Entity** ceases to be a **Subsidiary**; then coverage for such **Subsidiary** and its **Insureds** shall continue until termination of this **Policy** or any renewal thereof, but only for **Claims** for **Wrongful Acts** which take place while such **Insured Entity** was a **Subsidiary**, and subject to all terms, conditions and exclusions of this **Policy** or

##### **C. Conversion of Coverage Under Certain Circumstances**

1. If during the **Policy Period**, any of the following events occur:
  - (a) another entity, person or group of entities or persons acting in concert, acquires more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors,

trustees, members of the Board of Managers or management committee members of the **Named Insured**;

- (b) the acquisition of all or substantially all of the **Named Insured's** assets, by another entity, person or group of entities or persons acting in concert, or the merger of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
- (c) the **Named Insured** emerges from bankruptcy as of the effective date stated in the plan of reorganization;

then coverage under this **Policy** shall continue until the expiration of the current **Policy Period**, solely for **Claims** and **WHIP Claims** for **Wrongful Acts** and **WHIP Wrongful Acts** taking place prior to such event;

- 2. The Named Insured shall give written notice of such event to the Insurer as soon as practicable together with such information as the Insurer may require. The entire premium for this Policy shall be deemed fully earned as of the effective date of such event. Notice of circumstances shall not be accepted by the Insurer in the event of a Conversion of Coverage pursuant to the above.
- 3. The **Named Insured** may request a quote for an extension of coverage ("Run-Off Coverage") for Insuring Agreements C. and D., for **Claims** arising out of **Wrongful Acts** which occurred prior to the effective date of any conversion of coverage, provided that the **Insurer** may offer such terms and conditions, including additional premium, in its sole discretion. In the event of a Conversion of Coverage, the **Insureds** shall not be entitled to an Extended Reporting Period under Section XV. of these General Terms and Conditions.

## **XVI. EXTENDED REPORTING PERIOD**

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- A. If this **Policy** does not renew or otherwise terminates for a reason other than for failure to pay premium ("Termination of Coverage"), then the **Named Insured** shall have the right to purchase an Extended Reporting Period for the Additional Period and Additional Premium set forth in Item 7. of the Common Declarations.
  - 1. In the event of a Termination of Coverage and upon request from the **Named Insured**, the **Insurer** shall, in its sole discretion, provide a quote for additional periods other than as set forth in Item 7. of the Common Declarations. Any such additional quote offered shall be subject to such additional premium and terms as the **Insurer** may require.
  - 2. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew by the **Insurer**, and therefore shall not be considered a Termination of Coverage.
  - 3. This right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase the Extended Reporting Period, together with payment of the applicable Additional Premium, is received by the **Insurer** within sixty (60) days after the effective date of the Termination of Coverage.
- B. If an Extended Reporting Period is purchased, then coverage otherwise afforded by this **Policy** shall be extended to apply to **Claims**:
  - 1. first made during such Extended Reporting Period and reported to the **Insurer** pursuant to Section V.A. Notice of Claims above; and
  - 2. only to the extent such **Claims** are for **Wrongful Acts** taking place before the effective date of such Termination of Coverage.

Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the **Policy Period** immediately preceding the Extended Reporting Period. Notice of Potential Claims as described in Section V.B. above, will not be accepted by the **Insurer** during the Extended Reporting Period.

- C. The entire premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.
- D. The limit of liability for the Extended Reporting Period is part of and not in addition to the applicable Aggregate Limit of Liability for the **Policy Period** immediately preceding the Extended Reporting Period. The Extended Reporting Period does not increase or reinstate such Limit of Liability.
- E. Section XI. Extended Reporting period does not apply to Insuring Agreement A. and Insuring Agreement B.

## **XVII. NO ACTION AGAINST INSURER**

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No action may be brought against the **Insurer** unless, as a condition precedent, the **Insured** has complied with all of the **Policy's** terms and conditions, and the **Insured's** obligations to pay have been finally determined by judgment entered against the **Insured** after actual trial or arbitration hearing, or by written agreement among the **Insurer**, the **Insured** and the claimant. Nothing in this **Policy** gives any person or entity the right to join the **Insurer** in any proceeding against the **Insured** to determine the **Insured's** liability.

## **XVIII. OTHER INSURANCE**

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- A. For Insuring Agreements C. and D., to the extent that any **Matter** is covered under this Policy and any other insurance policy, the coverage provided under this **Policy** shall be primary.
- B. Notwithstanding the above:
  - 1. regarding any **Matter** made against a leased or temporary **Employee** or an **Independent Contractor**, coverage under this Coverage Section shall be excess of, and not contribute with, any applicable valid and collectible insurance insuring the employee leasing company, temporary employee agency, or **Independent Contractor**; and
  - 2. regarding any **Claim** made by or on behalf of a **Third Party**, coverage under this Coverage Section shall be excess of, and not contribute with, any other applicable valid and collectible insurance which insures the **Insureds** on a duty to defend basis;

regardless of whether such other insurance is 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 insurance to this **Policy's** policy number.

- C. For Insuring Agreements A. and B., to the extent that any **Whip Claim** is covered under this **Policy** and any other insurance policy, this **Policy** shall be excess of and not contribute with any applicable valid and collectible insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent, providing difference in conditions coverage, or otherwise.

## **XIX. CANCELLATION AND NON-RENEWAL**

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- A. The **Insurer** may cancel this **Policy** only for failure to pay a premium when due, in which case twenty (20) days written notice will be given to the **Named Insured**. Payment in full must be received by the **Insurer** within twenty (20) days of the **Named Insured's** receipt of such notice of cancellation.
- B. The **Named Insured** may cancel this **Policy** by providing advance written notice to the **Insurer**. Provided that this **Policy** may not be terminated by the **Named Insured** after the effective date of any event described in Section XIV.C. Conversion of Coverage Under Certain Circumstances.
  - 1. If the **Named Insured** cancels the **Policy**, the notice must state the date on which the cancellation will become effective. Any return of premium due as a result of cancellation by the **Named Insured** will be

computed on a pro rata basis.

2. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.
- C. The **Insurer** is not required to renew this **Policy** upon its expiration.

## XX. NOTICES

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- A. All notices of **Matters** or potential matters to the **Insurer**, shall be deemed notice under the **Policy** in its entirety. All such notices to the **Insurer** under this **Policy** shall be given in writing to the respective addresses set forth in Item 9. of the Common Declarations.
- B. All other notices to the **Insurer** under this **Policy** shall be given in writing to the address set forth in Item **pppp**. of the Common Declarations.

Any notice to the **Insurer** as described above shall be effective on the date of receipt by the **Insurer**.

## XXI. BANKRUPTCY

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The bankruptcy or insolvency of an **Insured** will not relieve the **Insurer** of its obligations under this **Policy**, nor does it limit any of the **Insurer's** rights or defenses under the **Policy**.

## XXII. NO ASSIGNMENT OF INTERESTS; MODIFICATION

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No **Insured** may assign any rights, duties or interests under this **Policy** without the **Insurer's** written consent. Any assignment without the **Insurer's** written consent will be void. No change in or modification of this Policy shall be effective except when made by written endorsement to this **Policy**.

## XXIII. TERRITORY

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This **Policy** applies worldwide.

## XXIV. COMPLIANCE WITH ECONOMIC OR TRADE SANCTIONS

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No payment may be made by the **Insurer** to the extent that any laws or regulations, trade sanctions, economic sanctions, embargos or similar programs, prohibit the Insurer from making such payment; including such laws, regulations or programs effective in the United States, European Union, or any other country or territory; or to the extent that the **Insured** or **Insurer** is required to be licensed or registered to make or receive payments in a country or territory.

## XXV. VALUATION AND CURRENCY

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All amounts referenced in this **Policy**, or payments made by the **Insurer**, will be in United States currency.

Except as otherwise provided in this **Policy**, if a judgment is rendered, a settlement is denominated or any element of loss under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States of America dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.

## XXVI. NON-WAIVER

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The **Insurer's** failure to exercise any of the **Insurer's** rights or enforce any provisions of this **Policy** will not be

construed as a waiver of any other rights or provisions of the **Policy**.

## **XXVII. ENTIRE AGREEMENT**

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This **Policy** constitutes the entire agreement between the **Insurer** and the **Insureds**. No changes may be made to this Policy except in a written endorsement agreed to and issued by the **Insurer**.

## **XXVIII. HEADINGS**

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Titles and headings used in this **Policy** are for convenience only and in no way limit, expand or otherwise affect the substance of the corresponding text.

SPECIMEN