

EPACK ENHANCEMENT ENDORSEMENT (NEW YORK)
(For use with EPack Policy G-132823-A31 Ed. 6/01)

In consideration of the premium paid for this Policy, it is hereby understood and agreed as follows:

1. The General Terms and Conditions are amended as follows:

A. Section **II. DEFINITIONS** is amended to include the following new definition:

- **Domestic Partner** means any person qualifying as such under any federal, state or local laws or under **Named Company** or any **Subsidiary's** employee benefit plans.

B. Section **IV. ESTATES/LEGAL REPRESENTATIVES/SPOUSES** is deleted in its entirety and replaced with the following:

The estates, heirs, legal representatives, assigns, spouses and any **Domestic Partner** of **Insured Persons** shall be considered **Named Company Insureds** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and spouses only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

C. Section **VI. DEFENSE/SETTLEMENT/ALLOCATION** is amended as follows:

1. The following new provision is added:

Whenever a judgment is rendered on a **Claim** covered by this Policy, or whenever all parties to a **Claim** agree to a settlement, and such judgment or settlement involves **Loss** covered under the Directors and Officers Liability Coverage Part and the Entity Liability Coverage Part, the Insurer shall pay the amount of **Loss** due under the Directors and Officers Liability Coverage Part first up to the remaining Limit of Liability available under the Policy and shall then pay any amount of **Loss** due under the Entity Liability Coverage Part up to the remaining Limit of Liability available under the Policy. Thereafter, any remaining Limit of Liability available under the Policy shall then pay any amount of **Loss** due under any other Coverage Part.

Nothing herein shall be deemed to require the delay or postponement of the payment of any other **Claim** subsequently reported to the Insurer but on which a judgment or settlement occurs prior to the judgment or settlement on an earlier reported **Claim**, regardless of the impact such payment has on the available limits of liability for paying the **Claim** first reported to the Insurer.

Nothing in this endorsement shall be construed to increase the maximum aggregate Limit of Liability of the Insurer for all **Loss** under this Policy, regardless of the number of **Claims** made against the **Named Company Insureds**.

2. Paragraph 2. Settlement, Sub-paragraph a. Consent, is deleted in its entirety and replaced with the following:

a. Consent

The Insurer shall not settle a **Claim** without the written consent of the **Named Company**. If the **Named Company** refuses to consent to a settlement or compromise recommended by the Insurer, and acceptable to the Claimant, then the applicable limit of liability under this Policy shall be reduced to the amount for which the **Claim** could have been settled plus all **Defense Costs** incurred up to the time the Insurer made its recommendation,

and 70% of any additional **Defense Costs** and covered settlement amounts incurred after the time the Insurer made such recommendations, which amount shall not exceed the remainder of such applicable limit of liability as specified in the Declarations. This reduction in our limit of liability for such **Claim** does not apply to a settlement or compromise proposed by a mediator pursuant to paragraph b. below but rejected by the **Named Company**.

2. Solely with respect to the Employment Practices Liability Coverage Part, the General Terms & Conditions, Section **V. LIMIT OF LIABILITY/RETENTIONS**, Paragraph 7. is amended to include the following new provision:

RISK MITIGATION INCENTIVE

- The Insurer will reduce **Named Company** or any **Subsidiary's** retention for a **Claim** by 50%, up to \$25,000, whichever is less, if, within 60 days of the Insurer's request, the **Named Company** or any **Subsidiary** demonstrates, to the Insurer's reasonable satisfaction, the existence of the following four (4) conditions:
 1. A copy of the **Named Company** or any **Subsidiary's** written policy on sexual harassment;
 2. A copy of the **Named Company** or any **Subsidiary's** written policy on discrimination;
 3. A copy of the **Named Company** or any **Subsidiary's** written policy on employee grievance or complaint procedure; and
 4. Proof that all directors, officers and managers of the **Named Company** or any **Subsidiary** have completed outside training and education programs on sexual harassment within the last 18 months prior to the filing of a **Claim**.

3. The Entity Liability Coverage Part is amended as follows:

- A. Paragraph 1.a. of Section **III. EXCLUSIONS**, 1. Exclusions Applicable to All Loss is deleted in its entirety and replaced with the following:
- a. for bodily injury, sickness, disease, emotional distress, mental anguish or death of any person, or damage to or destruction of or loss of use;

4. The Fiduciary Liability Coverage Part, is amended as follows:

- A. Section **II. DEFINITIONS**, is amended to include the following new definition:
- **HIPAA Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty by the **Named Company Insureds** in the discharge of their duties in their capacities, or solely by reason of their status as fiduciaries or administrators (as defined in **ERISA or any Similar Act**) of any **Plan**, including violations of the privacy provisions of Health Insurance Portability and Accountability Act (HIPAA).
- B. Solely with respect to **HIPAA Wrongful Acts**, Definition 1., **Claim**, is deleted in its entirety and replaced with the following:
1. **Claim** means:
 - a. a written demand for monetary damages or non-monetary relief;
 - b. a civil adjudicatory proceeding or arbitration;
 - c. a formal administrative or regulatory adjudicatory proceeding; or

d. a formal civil, administrative or regulatory investigation against any **Named Company Insured**, including any appeal therefrom.

Claim shall not mean any criminal proceedings, arbitrations or investigations.

C. Definition 3., **Loss**, is amended to add the following:

Loss shall also include civil penalties up to \$25,000 in the aggregate for all **Claims** for **HIPAA Wrongful Acts**. **Loss** shall not include costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief arising from a **Claim** for a **HIPAA Wrongful Act**, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Named Company Insured's** obligation to comply with HIPAA.

Loss shall also include fines, penalties, sanctions, voluntary fee, compliance fees or user fees which any **Insured Person** becomes legally obligated to pay to correct defects of a Benefits Program pursuant to a VCR, CAP or TVC.

Solely for the purposes of the coverage provided pursuant to a VCR, CAP or TVC, the limit of liability for the above-referenced coverage shall be \$50,000. This amount is a sublimit which further reduces, and in no way will it increase, the Limits of Liability otherwise set forth on the Declaration Page.

D. Definition 7., **Wrongful Act**, is amended to add the following:

Wrongful Act shall also mean any **HIPAA Wrongful Act**.

E. Section III. **EXCLUSIONS**, Paragraph 1. Exclusions Applicable to All Loss. Sub-paragraph k.(1) is amended to include the following:

- However, criminal or civil fines or penalties imposed by law shall not include any fines, penalties, sanctions, voluntary correction fee, compliance fee or user fee imposed pursuant to the Internal Revenue Service's Voluntary Compliance Resolution Program ("VCR"), Closing Agreement Program ("CAP") or Tax Shelter Annuity Voluntary Correction Program ("TVC").

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative _____
(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)