

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of Named Company, any Subsidiary or any Insured Person Loss resulting from any Claim first made against the Named Company Insureds during the Policy Period or the Extended Reporting Period, if applicable, by or on behalf of a natural person who is an Employee or applicant for employment for a Wrongful Employment Practice.

**II. DEFINITIONS**

For purposes of coverage under this Coverage Part:

1. **Claim** means:
  - a. a written demand for monetary damages, or
  - b. a formal civil, administrative, or regulatory proceeding or investigation or an arbitration,  
against any Named Company Insured, including any appeal therefrom.
2. **EEOC Proceeding** means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address Wrongful Employment Practices.
3. **Employee** means all past, present or future full-time or part-time employees of Named Company or any Subsidiary, including seasonal and temporary employees and employees leased or loaned to Named Company Insured or any Subsidiary.
4. **Insured Persons** means all past, present or future duly elected or appointed directors and/or officers, and all Employees of Named Company or any Subsidiary, and managers in the event the Named Company or such Subsidiary is a limited liability company.
5. **Loss** means damages (including back pay and front pay), settlements, judgments (including any award of pre-judgment interest) and Defense Costs for which Named Company, any Subsidiary or any Insured Person is legally obligated to pay on account of a covered Claim. Loss shall not include: (i) criminal or civil fines or penalties imposed by law; (ii) taxes; (iii) any amounts for which there is no legal recourse against Named Company, any Subsidiary or the Insured Persons; (iv) matters which are uninsurable under the law pursuant to which this Policy shall be construed or (v) any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days.
6. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by the Insured Persons in their capacity as such or by Named Company or any Subsidiary.



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7. **Wrongful Employment Practice** means any **Wrongful Act** based on either disparate impact or vicarious liability and constituting or relating to:
- a. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
  - b. employment-related misrepresentation;
  - c. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866;
  - d. sexual harassment or other unlawful harassment in the work place;
  - e. wrongful deprivation of career opportunity or failure to employ or promote;
  - f. wrongful discipline of employees;
  - g. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
  - h. negligent evaluation of employees;
  - i. failure to adopt adequate workplace or employment policies and procedures;
  - j. employment-related defamation or invasion of privacy; or
  - k. employment-related wrongful infliction of emotional distress.

### III. EXCLUSIONS

1. Exclusions Applicable to All Loss

The Insurer shall not be liable to pay any **Loss** under this Coverage Part in connection with any **Claim** made against **Named Company**, any **Subsidiary** or **Insured Persons**:

- a. for any actual or alleged bodily injury (other than emotional distress or mental anguish), sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use;
- b. based upon, directly or indirectly arising out of, or in any way involving:
  - (1) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any prior policy, regardless of whether such prior policy affords coverage for such proceeding or arbitration; or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;



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c. based upon, directly or indirectly arising out of, in any way involving or constituting any civil, criminal, administrative or regulatory proceeding (including an **EEOC Proceeding**), investigation or arbitration against any of the **Named Company Insureds**:

- (1) pending prior to or on the Prior or Pending Date set forth in the Coverage Schedule of the Declarations; or
- (2) which has been the subject of any notice given under any prior policy, regardless whether such prior policy affords coverage for such proceeding, investigation, or arbitration;

or any fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration; provided however, if such prior proceeding is an **EEOC Proceeding**, this exclusion shall not apply to any **Claim** by **Employees** who did not bring such prior **EEOC Proceeding**;

d. based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Named Company Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to **Named Company** or any **Subsidiary**, their security holders, or their creditors resulting from any of the aforementioned matters; provided however, this exclusion shall not apply to any **Claim** for retaliatory treatment of the claimant by the **Named Company Insureds** on account of the claimant's actual or threatened disclosure of the matters described in this exclusion;

e. where such **Named Company Insured** gained any profit, remuneration or pecuniary advantage to which they were not legally entitled. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **Named Company** and any **Subsidiary**;

f. where such **Named Company Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **Named Company** and any **Subsidiary**;



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- g. based upon, directly or indirectly arising out of, or in any way involving a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations, or the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state, local or common law;
- h. based upon, directly or indirectly arising out of, or in any way involving any actual or alleged violation of (i) ERISA or any Similar Act, (ii) any law governing workers' compensation, unemployment insurance, social security, disability or similar law, (iii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (iv) the Fair Labor Standards Act (except the Equal Pay Act), (v) the National Labor Relations Act, (vi) the Occupational Safety and Health Act of 1970 (OSHA), or (vii) any similar federal, state or local law. However, this exclusion shall not apply to any Claim for a Wrongful Employment Practice based upon a claimant's exercise of a right pursuant to any such laws; or
- i. for:
  - (1) any Wrongful Act by Insured Persons of any Subsidiary, or by such Subsidiary, occurring before the date such entity became a Subsidiary, or
  - (2) any other Wrongful Act whenever occurring, which, together with a Wrongful Act described in (1) above, would constitute Interrelated Wrongful Acts.

j. which constitutes:

- (1) the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;
- (2) the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;
- (3) damages determined to be owing under an express contract with or express severance obligation of Named Company or any Subsidiary. However, this exclusion shall not apply if and to the extent that liability would have attached to the Named Company Insureds in the absence of the express contract with or obligation of Named Company or any Subsidiary; or



- (4) medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had **Named Company** or any **Subsidiary** provided the claimant with a continuation or conversion of insurance.

Specimen



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### FAILURE TO AFFORD PARTNERSHIP EXCLUSION

In consideration of the premium paid for this Policy, it is agreed that the Employment Practices Liability Coverage Part, Section III, **EXCLUSIONS**, Paragraph 1, Exclusions Applicable to all **Loss** is amended to add the following new Exclusion:

The Insurer shall not be liable to pay any **Loss** under this Coverage Part, in connection with any **Claim** made against **Named Company**, any **Subsidiary** or **Insured Persons** based upon, directly or indirectly arising out of, or in any way involving failure of the claimant to be afforded partnership status or any other equity participation in the **Named Company** or any **Subsidiary**.

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)

SAMPLE



**FAILURE TO AFFORD PARTNERSHIP COVERAGE**

In consideration of the premium paid for this Policy, it is agreed that the Employment Practices Liability Coverage Part, Section II, **DEFINITIONS**, the Definition of **Wrongful Employment Practice**, is amended to add the following new language:

**Wrongful Employment Practice** shall also include failure of the claimant to be afforded partnership status or any other equity participation in the **Named Company** or any **Subsidiary**.

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)

SAMPLE

NOTICE: THIS IS A CLAIMS MADE POLICY. EXCEPT TO SUCH EXTENT AS MAY BE PROVIDED HEREIN, THIS POLICY IS LIMITED TO LIABILITY FOR THOSE CLAIMS THAT ARE FIRST MADE AGAINST YOU DURING THE POLICY PERIOD. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS WITH YOUR INSURANCE AGENT OR BROKER.

THIS IS A "DEFENSE WITHIN LIMITS" POLICY. UNDER THIS POLICY, ALL DEFENSE COSTS ARE INCLUDED WITHIN BOTH THE APPLICABLE LIMIT OF LIABILITY AND RETENTION. THIS COULD RESULT IN THE LIMIT OF LIABILITY BECOMING COMPLETELY EXHAUSTED BY THE PAYMENT OF DEFENSE COSTS, IN WHICH CASE, NO FURTHER COVERAGE IS PROVIDED BY THIS POLICY. PLEASE DISCUSS WITH YOUR AGENT OR BROKER.

The Insurer and the Named Company Insureds agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the Application furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer:"

## I. TERMS AND CONDITIONS

The terms and conditions of each Coverage Part apply only to that Coverage Part and shall not apply to any other Coverage Part. If any provision in the General Terms & Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

## II. DEFINITIONS

For purposes of this Policy, words in bold have the meaning set forth below. However, any bolded word referenced in these General Terms & Conditions but defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that Coverage Part.

1. **Application** means all signed applications for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any affiliate of the Insurer of which this Policy is a renewal or replacement. Application includes any materials submitted or required to be submitted therewith. An "affiliate of the Insurer" means an insurer controlling, controlled by or under common control with the Insurer.
2. **Claims-Made Relationship** means that period of time between the effective date of the first claims-made policy issued by the Insurer to the Named Company and the termination, cancellation or non-renewal of the last consecutive claims-made policy between the Named Company and the Insurer, where there has been no gap in coverage, but does not include any period covered by Extended Reporting Period coverage.
3. **Coverage Part** means only those coverage parts designated as included in the Declarations.
4. **Defense Costs** means all fees charged by attorneys designated by the Insurer, or by the Named Company, with the Insurer's written consent and all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim if incurred by the Insurer, or by the Named Company Insureds with the written consent of the Insurer, including the costs of appeal, attachment or similar bonds. The Insurer has no obligation to provide such bonds. Defense Costs shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, and employees of Named Company or any Subsidiary.



5. ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.
6. Executive Officer means:
  - a. with respect to Named Company or any Subsidiary, its chairperson, chief executive officer, president, chief financial officer and in-house general counsel, and, under the Employment Practices Liability Coverage Part (if included) only, the director of human resources or equivalent position; and
  - b. with respect to a Plan, its natural person fiduciaries as defined in ERISA or any Similar Act.
7. Financial Insolvency means, with respect to any organization or Plan covered under any Coverage Part designated as "Included" in the Declarations and attached hereto:
  - a. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such organization or Plan; or such organization or Plan becoming a debtor in possession; and
  - b. the inability of such organization or Plan financially or under applicable law to advance Defense Costs or indemnify the Insured Persons for Loss.
8. Interrelated Wrongful Acts means any Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.
9. Named Company means the company named in Item 1 of the Declarations, including such company as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
10. Named Company Insureds means all organizations, Plans and Insured Persons covered under under any Coverage Part.
11. Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.
12. Policy Premium means the original premium and the fully annualized amount of any additional premiums, other than the Extended Reporting Period premium, charged by the Insurer before or during the Policy Period.
13. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
14. Single Loss means all Loss arising from each Claim;
15. Subsidiary means any entity in which and so long as more than 50% of the voting stock is owned by Named Company, either directly or indirectly:
  - a. on or before the effective date of this Policy; or
  - b. after the effective date of this Policy by reason of being created or acquired by Named Company or any Subsidiary after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XIV. 1,



including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

16. Takeover means:
- a. the acquisition by another entity or person, or group of entities or persons acting in concert, of (i) the ownership or control of voting stock of Named Company resulting in the ownership or control of more than 50% of the voting stock of Named Company or (ii) assets of Named Company resulting in the ownership of more than 50% of the total consolidated assets of Named Company as of the date of Named Company's most recent audited consolidated financial statement prior to such acquisition;
  - b. the merger of Named Company into another entity such that Named Company is not the surviving entity; or
  - c. the consolidation of Named Company with another entity.

### III. EXTENDED REPORTING PERIOD

The provisions of this Extended Reporting Period coverage will not apply, except for the 60 day automatic Extended Reporting Period, if the Claims-Made Relationship has been less than one year and the policy has been terminated for non-payment of premium or fraud.

1. In the event of policy cancellation or non-renewal, decrease in policy limits, reduction of coverage, increased retention, new exclusion, or any other change in coverage less favorable to the Named Company Insureds, a sixty (60) day automatic Extended Reporting Period extension will be granted to the first Named Company Insured, at no charge, in which any Claim reported will be considered as having been made before the termination date.

The limit of liability for this extension period will be the remaining limit applicable to the expiring policy. In addition, the first Named Company Insured has the option to purchase additional Extended Reporting Period coverage.

2. Within 30 days after termination, the Insurer will notify the first Named Company Insured, in writing, of the automatic Extended Reporting Period and the availability of, the premium for, and the importance of purchasing additional Extended Reporting Period coverage.
3. The first Named Company Insured shall have the greater of sixty (60) days from the effective date of termination of coverage or thirty (30) days from the date of mailing or delivery of the advice of the availability to purchase additional Extended Reporting Period coverage, to submit written acceptance of the Extended Reporting Period coverage.
4. The premium to be charged for the Extended Reporting Period coverage will be based upon the rates for such coverage in effect on the date the policy was issued or last renewed.
5. Upon termination of coverage:
  - a. any return premium due the Named Company shall be credited toward the premium for the additional Extended Reporting Period coverage, if the first Named Company Insured elects such coverage; or
  - b. where premium is due to the Insurer for coverage during the Claims-Made Relationship, any monies received by the Insurer from the Named Company named as payment for the



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Extended Reporting Period coverage, shall be first applied to such premium owing for the policy.

6. If the first Named Company Insured has been placed in receivership, liquidation or bankruptcy or permanently ceases operations, then anyone qualifying as an insured under the definition of Named Company Insureds has the right to Extended Reporting Period coverage issued in the first Named Company Insured's name for the benefit of all who qualify as Named Company Insureds. The request for such Extended Reporting Period coverage must be made within one hundred twenty (120) days of the termination of coverage.
7. Only one such Extended Reporting Period coverage endorsement shall be issued and the extended period for such coverage shall be either one (1) or three (3) years. This extension period includes the automatic sixty (60) day extension specified in Item 1., above.
8. Limits of liability for such coverage shall be equal to 100% of the terminated policy's annual aggregate limit where a Claims-Made Relationship has continued for three (3) years or more.
9. If the Claims Made Relationship has continued for less than three (3) years, the limit of liability shall be equal to the greater of:
  - a. the amount of coverage remaining in such policy's annual aggregate liability limit; or
  - b. 50 percent of such policy's annual aggregate liability limit.
10. Extended Reporting Period coverage ends at the same time as the last installment period for which premium has been paid the Named Company fails to pay the premium when due for the next installment period.

#### IV. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns and spouses of Insured Persons shall be considered Named Company Insureds under any Coverage Part; 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, where such Claim seeks damages from marital community property, jointly held property or property transferred from the Insured Person to the spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign or spouse. All terms and conditions of this Policy, including without limitation the retention, applicable Loss incurred by the Insured Person shall also apply to loss incurred by such estates, heirs, legal representatives, assigns and spouses.

#### V. LIMIT OF LIABILITY/RETENTIONS

1. This Policy is offered with one of the following options as set forth in item 5 of the Declarations:
  - a. a Single Limit of Liability and Single Retention,
  - b. a Single Limit of Liability and Scheduled Retentions, or
  - c. the Scheduled Limits of Liability and Scheduled Retentions.
2. Where the Single Limit of Liability Option and Single Retention Option has been selected:
  - a. the limit of liability set forth in Item 5 of the Declarations shall be the maximum aggregate limit of liability of the Insurer for all Loss under this Policy, regardless of the number of



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Coverage Parts purchased or Claims made against or Losses incurred by the Named Company Insureds. Subject to Section VI. paragraph 2. below, the Insurer's obligations under this Policy shall be completely fulfilled and extinguished if the limit of liability is exhausted by payment of Loss;

- b. the single retention set forth in Item 5 of the Declarations shall apply to each Single Loss.
3. Where the Single Limit of Liability Option and Scheduled Retentions Option has been selected:
  - a. the limit of liability set forth in Item 5 of the Declarations shall be the maximum aggregate limit of liability of the Insurer for all Loss under this Policy, regardless of the number of Coverage Parts purchased or Claims made against or Losses incurred by the Named Company Insureds. Subject to Section VI. paragraph 2. below, the Insurer's obligations under this Policy shall be completely fulfilled and extinguished if the limit of liability is exhausted by payment of Loss;
  - b. Separate Retentions as set forth in Item 5 of the Declarations as the Scheduled Retentions shall apply to each Single Loss under each Coverage Part.
4. Where the Scheduled Limits of Liability and Scheduled Retentions Option has been selected:
  - a. the scheduled Limits of Liability set forth in Item 5 of the Declarations as the Scheduled Limits of Liability for each Coverage Part shall be separate Limits of Liability for each such Coverage Part and shall be the maximum aggregate limit of liability of the Insurer for all Loss under the respective Coverage Part, regardless of the number of Claims made against the Named Company Insureds;
  - b. Separate Retentions as set forth in Item 5 of the Declarations as the Scheduled Retentions shall apply to each Single Loss under each Coverage Part.
5. Subject to Section VI. paragraph 2. below, if the limit of liability for any Coverage Part is exhausted by payment of Loss, the Insurer's obligations under such Coverage Part shall be deemed completely fulfilled and extinguished.
6. The Insurer shall pay Loss as it becomes due and payable to the Named Company Insureds.
7. Retentions
  - a. Subject to paragraph b. below, the Insurer's obligation to pay Loss is in excess of any applicable retentions. The Insurer will have no obligation to pay all or any portion of any applicable retention. Should the Insurer, in its sole discretion, pay any retention, then the Named Company shall have the obligation to reimburse the Insurer for such amounts.
  - b. No retention applies with respect to any Claim against any Insured Persons if the Named Company, any Subsidiary and/or any Plan are not permitted to advance Defense Costs or to indemnify such Insured Persons for Loss by reason of:
    - (i) Financial Insolvency; or
    - (ii) a good faith determination by Named Company, any Subsidiary and/or any Plan that such payment is not permitted under the broadest construction of applicable law.

If Named Company, any Subsidiary and/or any Plan fail to pay the retention applicable to any such Claim for any reason other than (i) or (ii) above, then the Insurer on behalf of the



Insured Persons shall advance Defense Costs and pay Loss without regard to such retention, but Named Company, any Subsidiary and/or any Plan further agree that they shall reimburse the Insurer for such amounts up to and including the applicable retention.

- c. Subject to Section XIII below, if a Single Loss is covered under more than one Coverage Part and if more than one retention applies to such Single Loss, the maximum total retention amount applicable to such Single Loss shall be the highest of such applicable retentions.
8. Post-judgment interest is a supplementary payment that is in addition to the Limits of Liability.

## VI. DEFENSE/SETTLEMENT/ALLOCATION

### 1. Defense of Claims

The Insurer has the right and duty to defend all Claims, even if the allegations are groundless, false or fraudulent. The Insurer shall have the right to appoint counsel and to make such investigation and defense of a Claim as it deems necessary. The Named Company Insureds shall:

- a. have the right to consent to the Insurer's choice of defense attorney, which consent shall not be unreasonably withheld;
- b. participate in and assist in the direction of the defense of any claim; and
- c. consent to any settlement, which consent shall not be unreasonably withheld.

Subject to paragraph 2. below, the Insurer's obligation to defend any Claim or pay any Loss, including Defense Costs, shall be completely fulfilled and extinguished if the limit of liability has been exhausted by payment of Loss.

### 2. Limitation on the Insurer's Duty to Defend

If the Insurer concludes that the limit of liability applicable to a Claim may become exhausted prior to the conclusion of any Claim, we will notify the Named Company Insureds, in writing, to that effect.

When the limit of liability applicable to a Claim has actually been exhausted prior to the conclusion of the Claim, the Insurer will notify the Named Company, in writing, as soon as practicable, that such limit has been exhausted and that the Insurer's duty to defend such Claim and any other Claim has ended.

The Insurer will initiate, and cooperate in, the transfer of control to the Named Company, of any Claims which were subject to that limit of liability and which were reported to the Insurer prior to the exhaustion of such limit. The Named Company Insureds must cooperate in the transfer of control of such Claims.

The Insurer agrees to take the necessary steps as the Insurer deems appropriate to avoid a default in, or continue the defense of, such Claims until such transfer has been completed, provided that the Named Company Insureds are cooperating in completing such transfer.

The Named Company must reimburse the Insurer for expenses the Insurer incurs in taking those steps the Insurer deems appropriate to avoid a default in, or continuing the defense of, any Claim.



The Insurer will not take any action with respect to any Claim that would have been subject to such limit of liability, had it not been exhausted, if the Claim is reported to the Insurer after that limit has been exhausted.

The exhaustion of any limit by payment of any Claim, and the resulting end of the Insurer's duty to defend, will not be affected by the Insurer's failure to comply with any of the terms and conditions of this provision.

3. Settlement

a. Consent

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. 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.

b. Mediation

If, prior to institution of arbitration proceedings or service of suit or within 60 days of the institution of such proceedings or service of suit, the Insurer and the Named Company agree to use a process of non binding intervention by a neutral third party to resolve any Claim reported to the Insurer, and if such Claim is resolved through such process, the Insurer will reduce the retention applicable to such claim by fifty percent or ten thousand dollars (\$10,000.00), whichever is less.

4. Cooperation of Named Company Insureds

The Named Company Insureds shall not admit liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any Loss to which it has not consented. The Named Company Insureds agree that they shall not knowingly take any action which increases the Insurer's exposure for Loss under this Policy.

5. Payment of Loss in Excess of Retentions

The Insurer is liable to pay only that amount of a covered Single Loss in excess of the applicable retention, if any, up to the applicable limit of liability. The retention shall be uninsured.

**VII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**

1. If, during the Policy Period or any Extended Reporting Period, if applicable, any Claim is first made against the Named Company Insureds the Named Company Insureds shall, as a condition precedent to the obligations of the Insurer under this Policy, give a written notice to the Insurer as soon as practicable.
2. If during the Policy Period or the Extended Reporting Period, if applicable, the Named Company Insureds first become aware of a specific Wrongful Act which may reasonably give rise to a future Claim and during such period give written notice to the Insurer of:
  - a. the names of any potential claimants and a description of the Wrongful Act which forms the basis of their potential Claim,



- b. the identity of the specific Named Company Insureds allegedly responsible for such specific Wrongful Act,
- c. the consequences which have resulted or may result from such specific Wrongful Act,
- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific Wrongful Act, and
- e. the circumstances by which Named Company Insureds first became aware of such specific Wrongful Act,

then any Claim otherwise covered pursuant to a Coverage Part which is subsequently made and which arises out of such Wrongful Act shall be deemed to have been first made and reported to the Insurer by the Named Company Insureds at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a Claim.

- 3. Any notice to the Insurer pursuant to subsections 1 or 2 above shall designate the Coverage Parts under which the notice is being given and shall be treated as notice under only the Coverage Parts so designated.
- 4. Except as provided in 2 above, a Claim shall be deemed made:
  - a. in the case of a civil, criminal, administrative, regulatory or investigative proceeding or arbitration, on the earliest of the date of service upon or other receipt by any Named Company Insured of a complaint, indictment, notice of charge or similar document against the Named Company Insured in such proceeding or arbitration;
  - b. in the case of an investigation, on the earliest of the date of service upon or other receipt by the Insured Person of a written notice or subpoena from the investigating authority identifying such Insured Person as an individual against whom a formal proceeding may be commenced;
  - c. in the case of a written demand for monetary damages or non-monetary relief, on the Named Company Insureds' receipt of such written demand.
- 5. More than one Claim involving the same Wrongful Act or Interrelated Wrongful Acts shall be considered as one Claim which shall be deemed made on the earlier of:
  - a. the date on which the earliest such Claim was first made, or
  - b. the first date valid notice was given by the Named Company Insureds to the Insurer under this Policy of any Wrongful Act or under any prior policy of any Wrongful Act or any fact, circumstance, situation, event or transaction which underlies any such Claim.
- 6. The Named Company Insureds shall give written notice to the Insurer under this Policy as specified in Item 4 of the Declarations, which shall be effective upon receipt. Any notice given by or on behalf of any claimant to any authorized representative of the Insurer in New York, with particulars sufficient to identify the Named Company, shall be deemed notice to the Insurer.
- 7. The Named Company Insureds shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request.



8. The failure to give any notice required by this Policy within the time prescribed herein shall not invalidate coverage hereunder for any Claim made if it can be shown that it was not reasonably possible to give such notice within the prescribed time and if notice was given as soon as was reasonably possible.

#### VIII. CANCELLATION

1. This Policy may be canceled by the Named Company by surrendering it to the Insurer or any of the Insurer's authorized agents. The Named Company may also cancel this Policy by written notice to the Insurer stating at what future date cancellation is to be effective.
2. If this Policy has been in effect for 60 days or less, this Policy may be canceled by the Insurer by mailing or delivering to the Named Company written notice stating the reason for cancellation at the mailing address shown on the Declarations, and to its authorized agent or broker at least:
  - a. 20 days before the effective date of cancellation if this Policy is canceled for any reason not included in paragraph b. below.
  - b. 15 days before the effective date of cancellation if this Policy is canceled for any of the following reasons:
    - (1) nonpayment of premium;
    - (2) conviction of a crime;
    - (3) discovery of fraud or material misrepresentation in the obtaining of this Policy or in the presentation of a Claim;
    - (4) after issuance of this Policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current Policy Period;
    - (5) material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of this Policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time this Policy was issued or last renewed;
    - (6) required pursuant to a determination by the New York State Superintendent of Insurance that continuation of our present premium volume would jeopardize the Insurer's solvency or be hazardous to the Insurer's interest, policyholders, creditors or the public;
    - (7) a determination by such Superintendent that the continuation of this Policy would violate, or would place the Insurer in violation of, any provision of the New York Insurance Code; or
    - (8) revocation or suspension of Named Company's professional license.
3. If this Policy has been in effect for more than 60 days, or if this Policy is a renewal or continuation of a policy issued by the Insurer, this Policy may be cancelled by the Insurer only for any reasons listed in paragraph 2.b. above provided a written notice stating the reason for cancellation is mailed or delivered to the Named Company at the address shown in the



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Declarations, and its authorized agent or broker at least 15 days before the effective date of cancellation.

4. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on this date. If notice is mailed, proof of mailing will be sufficient proof of notice.
5. If the Named Company cancels, earned premium will be computed in accordance with the customary short rate table and procedure. If the Insurer cancels, earned premium shall be computed pro rata. However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, the Insurer will be entitled to retain a minimum earned premium of 10% of the total policy premium or \$60, whichever is greater. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
6. If one of the reasons for cancellation set forth in paragraph 2.b. exists, the Insurer may cancel this entire Policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this Policy.

#### **IX. NON-RENEWAL/CONDITIONAL RENEWAL**

1. If the Insurer elects not to renew this Policy, the Insurer shall send notice as provided in paragraph 3. below along with the reason for non-renewal.
2. If the Insurer conditions renewal of this Policy upon:
  - a. change of limits;
  - b. change in type of coverage;
  - c. reduction of coverage
  - d. increased retention;
  - e. addition of exclusion
  - f. increased premiums in excess of 10%, exclusive of any premium increased due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;the Insurer shall send notice as provided in paragraph 3.b. below.
3. Notice of non-renewal and conditional renewal will be provided as follows:
  - a. If the Insurer decides not to renew this Policy or to conditionally renew this Policy as provided in paragraphs 1. and 2. Above, the Insurer shall mail or deliver written notice to the Named Company at least 60 but not more than 120 days before:
    - (1) the expiration date; or
    - (2) the anniversary date if this is a continuous policy.
  - b. Notice will be mailed or delivered to the Named Company at the address shown in the Declarations and its authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.



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- c. The Insurer will not send the Named Company notice of non-renewal or conditional renewal if the Named Company or its authorized agent or broker or another insurer of the Named Company mails or delivers notice that this Policy has been replaced or is no longer desired.

**X. NOTICES TO THE NAMED COMPANY**

Any notices required under Section VIII, CANCELLATION, and Section IX, NON-RENEWAL/RENEWAL ON DIFFERENT TERMS, shall be provided to Named Company at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

**XI. OTHER INSURANCE**

If any Loss resulting from any Claim is insured under any other policies, this Policy shall apply only to the extent the Loss exceeds the amount paid under such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this Policy.

**XII. APPLICATION**

1. The Named Company Insureds represent and acknowledge that the statements contained in the Application (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and: (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.
2. In the event the Application contains any misrepresentation or omission:
  - a. made with the intent to deceive, or
  - b. which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under the Policy;

this Policy shall be voided as to (i) Named Company, and Subsidiary and any Plan if an Executive Officer is responsible for or knew of such misrepresentation or omission and, (ii) any Insured Persons who are responsible for or who knew of such misrepresentation or omission. Such responsibility or knowledge shall not be imputed to any other Insured Persons.

**XIII. COORDINATION AMONG COVERAGE PARTS**

Should two or more Coverage Parts apply to the same Claim, the Insurer will not pay more than the actual Loss incurred by the Named Company Insureds.

**XIV. COVERAGE FOR NEW SUBSIDIARIES AND PLANS**

1. If, after the effective date of this Policy, (i) Named Company or any Subsidiary creates or acquires an entity or plan, or (ii) Named Company, any Subsidiary or any Plan merges with another entity or plan such that Named Company, any Subsidiary or any Plan is the surviving entity or plan, then such entity or plan, and any subsidiaries, plans, directors, officers, trustees or



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employees of such entity or plan who otherwise would thereby become a Named Company Insured, shall be covered under this Policy, subject to its terms and conditions, only if:

- a. the fair value of all cash, securities, assumed indebtedness and other consideration paid by Named Company, any Subsidiary or any Plan in such transaction does not exceed 25% of the total consolidated assets of Named Company as of the date of Named Company's most recent audited consolidated financial statement prior to such transaction; or
  - b. other than as described in paragraph a immediately above, the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium and/or amendment of the provisions of the Policy, agrees to provide coverage for such subsidiaries, plans, directors, officers or employees.
2. There shall be no coverage under any Coverage Part for any Wrongful Act by such created, acquired or merged entity or Plan, or by any persons or entities considered to be Named Company Insureds pursuant to Section XIV.1 above, where such Wrongful Act occurred in whole or in part before the effective date of such acquisition or merger or for any Wrongful Act occurring on or after such date which, together with any Wrongful Acts occurring before such date, would be considered Interrelated Wrongful Acts.

#### **XV. CHANGE OF STATUS OF INSUREDS**

##### **1. Takeover of Named Company**

In the event of a Takeover of Named Company, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to Wrongful Acts occurring before the effective date of the Takeover, unless (i) the Insurer is notified in writing of the Takeover prior to the Takeover effective date and agrees in writing to provide coverage for Wrongful Acts occurring on or after such effective date, and (ii) Named Company accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

##### **2. Cessation of Subsidiary**

If any organization ceases to be a Subsidiary there shall be no coverage under this Policy for any Wrongful Act by such organization or any Insured Person or Plan of such organization occurring after the date such organization ceased to be a Subsidiary.

##### **3. Transfer of a Plan**

If the sponsorship of a Plan is transferred so that Named Company or any Subsidiary is no longer the sole employer sponsor of such Plan, there shall be no coverage under this Policy for any Wrongful Act by or with respect to such Plan occurring after the date of such transfer.

#### **XVI. SUBROGATION AND RECOVERY**

1. To the extent it pays any Loss, the Insurer shall be subrogated to all the Named Company Insureds' rights of recovery therefor, including without limitation an Insured Person's right to indemnification or advancement from Named Company or any Subsidiary. The Named Company Insureds shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.



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2. If a Single Loss is in part insured and in part uninsured under this Policy or is in an amount in excess of the applicable limit of liability, the Named Company Insureds and the Insurer shall attempt to agree upon an equitable allocation of any recoveries made, whether before or after payment of the Loss by the Insurer, from any person or source responsible for causing the Loss. Reasonable expenses incurred in making a recovery shall always have priority of payment from all such recoveries. If, after exerting their best efforts, the Named Company Insureds and the Insurer are unable to agree upon such an allocation after taking into account due consideration for the respective parties' willingness to pay the expenses of making any recovery, the Insurer, if requested by the Named Company Insureds, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the Named Company Insureds, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators.
3. In no event shall the Named Company Insureds be entitled to recoup from recoveries any amount to satisfy any retention until after all amounts which the Insurer is required to pay or pays under any applicable Coverage Part are reimbursed to the Insurer.

**XVII. CHANGES**

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

**XVIII. COMPANY AUTHORIZATION**

The Named Company Insureds agree that Named Company will act on behalf of the Named Company Insureds with respect to giving of all notice to the Insurer (except notices provided in Section VII.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the acceptance of endorsements.

**XIX. NO ACTION AGAINST INSURER**

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the Named Company Insureds' obligation to pay shall have been finally determined either by final and nonappealable judgment against the Named Company Insureds or by written agreement of the Named Company Insureds, the claimant and the Insurer.
2. No person or organization shall have any right under this Policy to join the Insurer as a party to any Claim against the Named Company Insureds to determine the Named Company Insureds' liability, nor shall the Insurer be impleaded by the Named Company Insureds or their legal representatives in any such Claim.

**XX. ASSIGNMENT OF INTEREST**

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

**XXI. BANKRUPTCY/INSOLVENCY**

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The insolvency or bankruptcy of the first of Named Company Insureds named on the Declarations, or the insolvency of their estate, shall not release the Insurer from the payment of damages for injury sustained or loss occasioned during the life of and with the coverage of this Policy.

**XXII. TERRITORY**

Coverage shall apply worldwide.

**XXIII. ENTIRE AGREEMENT**

The Named Company Insureds agree that this Policy, consisting of the Application, the Coverage Parts, and all endorsements listed in the Declarations, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.

*Bernard L. Hengstenberg*  
Chairman

*John M. Walker*  
Secretary



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