

GENERAL TERMS AND CONDITIONS

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

I. DEFENSE OBLIGATIONS

The Insurer has the right and duty to defend any **Claim** against any **Insured** covered under the Liability Coverage Parts of this Policy, even if such **Claim** is false, fraudulent or groundless.

II. GENERAL DEFINITIONS

A. "**Application**" means:

1. the application attached to and forming part of this Policy; and
2. any materials submitted therewith, which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

B. "**Change in Control**" means:

1. the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity, or
2. the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **Parent Company**.

C. "**Claim**" means:

1. any written notice, including any request to toll or waive a statute of limitations or any such notice seeking monetary or non-monetary relief;
2. any civil proceeding in a court of law or equity, or arbitration; or
3. any criminal proceeding which is commenced by the return of an indictment.

D. "**Company**" means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2. of the Declarations or during the **Policy Period**, and shall include the **Parent Company** and any covered **Subsidiary** as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code, subject to GENERAL CONDITIONS F.

E. "**Defense Expenses**" means reasonable legal fees and expenses incurred in the defense of any **Claim** including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, trustees or employees.

F. "**Insured**" shall have the meaning given to that term in each Coverage Part attached hereto.

G. "**Insured Person**" shall have the meaning given to that term in each Coverage Part attached hereto.

H. "**Interrelated Wrongful Acts**" means **Wrongful Acts** which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related or series of related facts, circumstances, situations, transactions or events.

I. “**Loss**” means damages, judgments, settlements or other amounts (including pre- & post-judgment interest, punitive or exemplary damages, or the multiplied portion of any damage award, where insurable by law), and **Compliance Costs**, if applicable, in excess of the Retention that the **Insured** is obligated to pay, including **Defense Expenses**, whether incurred by the Insurer or the **Insured**. **Loss** will not include:

1. matters which are uninsurable under the law pursuant to which this Policy is construed; and
2. fines, penalties or taxes imposed by law; provided that this clause I. 2. will not apply to fines, penalties or taxes that an **Insured Person** is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such **Insured Person’s** service with respect to an entity included within the definition of **Company** that is financially insolvent.

NOTE: With respect to judgments in which punitive damages are awarded, the law of the jurisdiction most favorable to the insurability of punitive damages shall control, provided such jurisdiction:

1. is where such punitive damages were awarded;
2. is where the **Parent Company** or any **Subsidiary** is incorporated or otherwise organized or has a place of business, or
3. is where the Insurer is incorporated or has its principal place of business.

J. “**Parent Company**” means the entity named in ITEM 1. of the Declarations.

K. “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 2. of the Declarations or to any earlier cancellation date.

L. “**Subsidiary**” means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity’s directors.

M. “**Wrongful Act**” shall have the meaning given to that term in each Coverage Part attached hereto.

III. GENERAL CONDITIONS

A. LIMITS OF LIABILITY AND RETENTIONS

1. The amounts set forth in ITEM 3 (a) – (c) of the Declarations as the Maximum Aggregate Limit of Liability for each Liability Coverage Part shall be the Maximum Aggregate Limit of Liability of the Insurer under such Coverage Part for all **Loss**, including **Defense Expenses**, from all **Claims** and all **Compliance Requests** made or deemed made under such Coverage Part during the **Policy Period**. Each such amount shall be part of, and not in addition to, the amount set forth in ITEM 3 (d) of the Declarations, which amount is the Maximum Aggregate Limit of Liability of the Insurer under all Coverage Parts for all **Loss**, including **Defense Expenses**, from all **Claims** and all **Compliance Requests** for which such Coverage Parts of this Policy provides coverage.
2. The amounts set forth in ITEM 4.(a)-(i) of the Declarations as the Maximum Limit of Liability for each Insuring Agreement of the Crime Coverage Part shall be the Maximum Limit of Liability of the Insurer under each such Insuring Agreement for all direct loss sustained during the Policy Period and, if applicable, all reasonable court costs and attorneys’ fees covered under Insuring Agreement D. and H.. The amount set forth in ITEM 4. (j) of the Declarations as the Maximum Limit of Liability for all Expense Coverage under the Crime Coverage Part shall be the Maximum Limit of Liability of the Insurer under Insuring Agreement J. for all Investigative Expenses and Computer Violation Expenses resulting from any direct loss covered under the applicable Insuring Agreements.
3. **Defense Expenses** incurred by the Insurer or by the **Insured** in defense of a **Claim** will be part of and not in addition to the Limits of Liability, and payment of **Defense Expenses** by the Insurer will reduce and may exhaust all applicable Limits of Liability.

4. If coverage is available for a **Claim** under more than one Coverage Part, the maximum applicable Limit of Liability for such **Claim** shall be the largest applicable remaining Limit of Liability under only one of the applicable Coverage Parts.
5. If coverage is available under more than one Insuring Agreement under the Crime Coverage Part, the maximum Limit of Liability for any direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, shall be the largest applicable Limit of Liability under such Insuring Agreements..
6. With respect to a **Claim, Compliance Request** or direct loss under any applicable Coverage Part, the Insurer shall only pay **Loss** or direct loss which is in excess of the amount set forth in ITEM 5. of the Declarations as the Retention applicable to each **Claim**, each **Compliance Request** or each direct loss under the applicable Coverage Part. If different Retentions are applicable to different parts of any **Loss** or direct loss under this Policy, the applicable Retention will be applied separately to each part of such **Loss** or direct loss, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 5. of the Declarations.

B. DEFENSE, ALLOCATION OF LOSS AND SETTLEMENT

1. Solely with respect to any Liability Coverage Part, if both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against an **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both an **Insured** and others not insured under this Policy, the **Insureds** and the Insurer will allocate such amounts as follows:
 - a. one hundred percent (100%) of **Defense Expenses** incurred will be allocated to covered **Loss**; and
 - b. losses other than **Defense Expenses** will be allocated between covered **Loss** and uncovered loss on the basis of the relative legal exposures of the parties to covered and uncovered matters.
2. In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in clause B. 1. above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.
3. No **Insured** may incur any **Defense Expenses** or admit any liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld. The Insurer will have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the Insurer deems appropriate.
4. The Insurer will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** under any Liability Coverage Part after the Maximum Aggregate Limit of Liability for any applicable Coverage Part and/or the Maximum Aggregate Limit of Liability for the Policy as set forth in ITEM 3. of the Declarations is exhausted by the payment of **Loss**, including **Defense Expenses**.

C. NOTICE

1. Solely with respect to any Liability Coverage Part
 - a. As a condition precedent to any right to payment under this Policy with respect to any **Claim** and any **Compliance Request**, the **Insured** shall give written notice to the Insurer of any **Claim** or any **Compliance Request** as soon as practicable after it is first made.
 - b. If, during the **Policy Period**, the **Insured** first becomes aware of a specific **Wrongful Act**, and if, during the **Policy Period**, the **Insured**:
 - (i) provides the Insurer with written notice of the specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages),

the identities of the potential claimants, and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and

- (ii) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**; then any **Claim** subsequently made arising out of such **Wrongful Act** will be treated as if it had been first made during the **Policy Period**.
2. Solely with respect to the Crime Coverage Part, as a condition precedent to any right to payment under the Crime Coverage Part, the **Insureds** must comply with the requirements set forth in Section X. B. of the Crime Coverage Part.
 3. All notices under clause C. 1. and clause C. 2. above must be sent by first class U.S. Mail or the equivalent to the address set forth in ITEM 8. of the Declarations, Attention: Claim Department.

D. INTERRELATED CLAIMS

All **Claims** and all **Compliance Requests** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** or **Compliance Request** and shall be deemed to have been made at the earliest time at which the earliest **Claim** or **Compliance Request** is made or deemed to have been made pursuant to GENERAL CONDITIONS C. 1. a. or, if applicable, GENERAL CONDITIONS C. 1. b.

E. OTHER INSURANCE

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

F. MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)

1. If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity (an "Acquired Entity"), coverage shall be provided for:
 - a. any **Loss** resulting from **Claims** first made against the Acquired Entity, including its **Insureds** (other than any **Pension Benefit Plan** of such Acquired Entity) after the acquisition and during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts** committed or allegedly committed after such acquisition; or,
 - b. any direct loss Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained after such acquisition. There is no coverage for any **Pension Benefit Plan** of the Acquired Entity under this clause F. 1. unless the Insurer specifically agrees to provide such coverage pursuant to SECTION II. DEFINITIONS J. 4. of the Pension and Welfare Benefit Plan Fiduciary Liability Coverage Part.
2. If, however, by reason of the transaction (or series of transactions) described in F. 1. above, the Acquired Entity exceeds thirty five percent (35%) of the total assets of the **Company** (or 35% of the employee count for Employment Practices Liability Coverage Part only), as represented in the **Company's** most recent audited consolidated financial statements, coverage, as set forth in clause F. 1. above, shall be provided only for a period of ninety (90) days after such transaction (or series of transactions) or until the Policy Expiration Date, whichever is earlier, for:
 - a. any **Loss** resulting from **Claims** first made against the Acquired Entity, including its **Insureds** (other than any **Pension Benefit Plan** of such Acquired Entity) after the acquisition and during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts** committed or allegedly committed after such acquisition; or

- b. direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained after such acquisition. Coverage thereafter will be provided only if:
 - (i) the Insurer receives written notice containing full details of the transaction(s); and
 - (ii) the Insurer specifically agrees by written endorsement to provide coverage with respect to such Acquired Entity, and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.
- 3. If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to such entity and to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained, prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- 4. If, during the **Policy Period**, there is a **Change in Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained prior to the time of the **Change in Control**; and
 - a. no coverage will be available under this Policy for any **Claim** for a **Wrongful Act** committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained subsequent to the **Change in Control**; and
 - b. the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change in Control**.

G. CANCELLATION AND RENEWAL OF COVERAGE

- 1. Except for the nonpayment of premium, as set forth in clause G. 2. below, the **Parent Company** has the exclusive right to cancel this Policy prior to the Policy Expiration Date set forth in Item 2. of the Declarations. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the date such notice is received by the Insurer. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- 2. The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will deliver or mail written notice stating when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- 3. The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Policy Expiration Date set forth in ITEM 2. of the Declarations.

H. OPTIONAL EXTENSION PERIOD – LIABILITY COVERAGE PARTS ONLY

- 1. If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of the applicable additional premium set forth in ITEM 6. of the Declarations, to a one or two year extension of the coverage provided by this Policy with respect only to any **Claim** first made during the one or two year period of time after the Policy Expiration Date, but only with respect to **Wrongful Acts** occurring prior to the Policy Expiration Date.
- 2. As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within sixty (60) days after the Policy Expiration Date.

3. If the **Parent Company** elects to purchase the Optional Extension Period as set forth in clause H. 1. and clause H. 2. above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date of the Optional Extension Period.
4. The purchase of the Optional Extension Period will not in any way increase the Limits of Liability set forth in ITEM 3. of the Declarations, and the Limits of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the applicable Limits of Liability for **Claims** made during the **Policy Period**.
5. If purchased, the Optional Extension Period shall only apply to the applicable Liability Coverage Parts.

I. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES OF INSURED PERSONS

The coverage afforded under the Liability Coverage Parts of this Policy shall, subject to all of its terms, conditions and limitations, extend to:

1. the lawful spouse of any **Insured Person**; provided however, that this clause I. will apply only:
 - a. to the extent that the spouse is a party to any **Claim** solely in their capacity as a spouse of such **Insured Person**; and
 - b. for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by such **Insured Person** and spouse, or property transferred from such **Insured Person** to the spouse.
2. the domestic partner of any **Insured Person**, but only to the extent such domestic partner is a party to any **Claim** solely in his or her capacity as a domestic partner of an **Insured Person** and only for the purposes of any **Claim** seeking damages recoverable from community property, from property jointly held by an **Insured Person** and his or her domestic partner, or from property transferred by an **Insured Person** to his or her domestic partner.
3. the estate, heirs, legal representatives or assigns of any **Insured Person** or assigns of any **Insured Person** who is deceased, or against the legal representatives or assigns of any **Insured Person** who is incompetent, insolvent or bankrupt.

J. ASSISTANCE, COOPERATION AND SUBROGATION

1. The **Insureds** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that it will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.
2. In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

K. REPRESENTATION CLAUSE

The **Insured** represents that the statements and particulars contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth.

L. ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY

1. No action may be taken against the Insurer unless, as a condition precedent thereto:
 - a. there has been full compliance with all of the terms and conditions of this Policy; and
 - b. the amount of the obligation of the **Insured** has been finally determined either by judgment against the **Insured** after actual trial, by summary judgment against the **Insured**, or by written agreement of the **Insured**, the claimant and the Insurer.
2. Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured** to determine their liability, nor may the **Insured** implead the Insurer in any **Claim**.
3. Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
4. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the Insurer.

M. AUTHORIZATION AND NOTICES

It is understood and agreed that the **Parent Company** will act on behalf of the **Insureds** with respect to:

1. the payment of the premiums;
2. the receiving of any return premiums that may become due under this Policy;
3. the giving of all notices to the Insurer as provided herein, and
4. the receiving of all notices from the Insurer.

N. APPLICATION OF COVERAGE PARTS

Except for the GENERAL TERMS AND CONDITIONS or unless specifically stated to the contrary, the provisions of each Coverage Part shall apply only to that particular Coverage Part and shall in no way be construed to apply to any other Coverage Part of this Policy. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

O. PRIORITY OF PAYMENT – LIABILITY COVERAGE PARTS ONLY

In the event of **Loss**, other than **Defense Expenses**, from any **Claim** made against both an **Insured Person(s)** and the **Company**, then the following shall apply:

1. If such **Loss** exceeds the remaining available Limit of Liability set forth in ITEM 3. of the Declarations:
 - a. the Insurer will first pay **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely by reason of the **Company's** financial insolvency; then
 - b. to the extent that any amount of the applicable Limit of Liability shall remain available, the Insurer shall pay **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is legally permissible and/or made against the **Company, Plan or Sponsor Organization**, as applicable.

2. In all events (including those described in clause O. 1. above), upon the written request of the **Company, Plan or Sponsor Organization**:
- a. the Insurer will first pay **Loss** from any **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely by reason of the **Company, Plan or Sponsor Organization's** financial insolvency; then
 - b. to the extent that any amount of the applicable Limit of Liability shall remain available, the Insurer shall either pay or withhold payment of **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is legally permissible and/or made against the **Company, Plan or Sponsor Organization**, as applicable, all as requested by the **Company, Plan or Sponsor Organization**.

If the **Company, Plan or Sponsor Organization** requests that the Insurer withhold payment of **Loss**, as provided in clause 2. b. above, the Insurer shall continue to withhold payment unless and until the **Company, Plan or Sponsor Organization** shall request the Insurer either to release such payment to the **Company, Plan or Sponsor Organization** on account of such **Claim**, or apply such payment to covered **Loss** from any future **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely reason of the **Company, Plan or Sponsor Organization's** financial insolvency.

P. WORLDWIDE COVERAGE

Coverage under this policy shall extend anywhere in the world.

Q. BANKRUPTCY – WAIVER OF AUTOMATIC STAY

If a liquidation or reorganization proceeding is commenced by any **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code, as amended, or any similar state, local or foreign law ("Bankruptcy Law"), then with respect to a covered **Claim**, the **Insureds** hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
2. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

R. ENTIRE AGREEMENT

The **Insured** agrees that the Declarations, Policy, including any endorsements, attachments and the **Application** shall constitute the entire agreement between the Insurer or any of its agents and the **Insured** relating to this insurance.