

GENERAL TERMS AND CONDITIONS

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY. THESE GENERAL TERMS AND CONDITIONS APPLY TO ALL APPLICABLE COVERAGE PARTS. IF THERE IS A CONFLICT BETWEEN THESE GENERAL TERMS AND CONDITIONS AND THE TERMS AND CONDITIONS OF ANY APPLICABLE COVERAGE PART, THE TERMS AND CONDITIONS OF THE APPLICABLE COVERAGE PART SHALL APPLY. 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.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company 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 and the Insureds agree as follows:

I. 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) **“Claim”** means:
- (1) any written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**;
 - (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.
- (C) **“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 any **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, trustees or employees.
- (D) **“Insured”** shall have the meaning given to that term in each Coverage Part attached hereto.
- (E) **“Insured Person”** shall have the meaning given to that term in each Coverage Part attached hereto.
- (F) **“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.
- (G) **“Loss”** means damages, judgments, settlements or other amounts (including punitive or exemplary damages where insurable by law) in excess of the Retention that the **Insured** is obligated to pay, and **Defense Expenses**, whether incurred by the Insurer or the **Insured**, in excess of the Retention. **Loss** will not include:
- (1) the multiplied portion of any damage award;

- (2) matters which are uninsurable under the law pursuant to which this Policy is construed; and
- (3) fines, penalties or taxes imposed by law.

NOTE: With respect to judgments in which punitive damages are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the **Insured**, punitive damages are insurable under applicable law the Insurer will not dispute the written opinion of counsel for the **Insured**.

- (H) "**Named Insured**" means the entity named in ITEM 1 of the Declarations.
- (I) "**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.
- (J) "**Subsidiary**" means any entity during any time in which the **Named Insured** owns, directly or through one or more **Subsidiary(ies)**, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors.
- (K) "**Wrongful Act**" shall have the meaning given to that term in each Coverage Part attached hereto.

II. GENERAL CONDITIONS

(A) LIMIT OF LIABILITY, RETENTIONS AND INDEMNIFICATION

- (1) The amounts set forth in ITEM 3(a) – 3(f) of the Declarations as the Maximum Aggregate Limit of Liability for each 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** 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(g) of the Declarations as the Maximum Aggregate Limit of Liability under the Policy for all **Loss** from all **Claims** for which this Policy provides coverage.
- (2) **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 Insurer's Limits of Liability, and payment of **Defense Expenses** by the Insurer will reduce and may exhaust the Limits of Liability.
- (3) 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.
- (4) With respect to a **Claim** under any Coverage Part attached hereto, the Insurer shall only pay **Loss** which is in excess of the amount set forth in ITEM 4 of the Declarations as the Retention applicable to each **Claim** under the applicable Coverage Part. If different Retentions are applicable to different parts of any **Loss** under this Policy, the applicable Retention will be applied separately to each part of such **Loss**, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.
- (5) The certificate of incorporation, charter, articles of association or other organizational documents of any **Insured** that is organized as a Corporation, Limited Liability Company, Limited Partnership, Investment Company or Trust, including bylaws and resolutions, will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

(B) DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

- (1) It shall be the duty of the **Insureds** to defend any **Claim** under this Policy.

- (2) 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.
- (3) Notwithstanding GENERAL CONDITIONS (B)(2) above, the **Insured** may settle any **Claim** without the Insurer's prior written consent if the total **Loss**, including **Defense Expenses**, resulting from such **Claim** does not exceed fifty percent (50%) of the amount of the applicable Retention set forth in ITEM 4 of the Declarations; provided, however, the **Insured** must promptly advise the Insurer of any such settlement and provide any information in connection therewith that the Insurer may request. If the **Insured** reasonably expects that the total **Loss**, including **Defense Expenses**, resulting from any **Claim** will exceed fifty percent (50%) of the applicable retention, the Insurer shall have the right to participate in any settlement negotiations, and the **Insured** agrees to obtain the consent of the Insurer prior to making any settlement offer or responding to any settlement demand.
- (4) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against the **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of **Loss**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by, the **Insured** and others.
- (5) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in GENERAL CONDITIONS (B)(4), 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.

(C) **NOTICE**

- (1) As a condition precedent to any right to payment under this Policy, the **Insured** shall give written notice to the Insurer of any **Claim** as soon as practicable after it is first made.
- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a specific **Wrongful Act**, and if, during the **Policy Period**, the **Insured**:
 - (a) 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
 - (b) 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**.

- (3) All notices under GENERAL CONDITIONS (C)(1) and (2) must be sent by certified mail or the equivalent to the address set forth in ITEM 7 of the Declarations; Attention: Claim Department.

(D) **INTERRELATED CLAIMS**

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to GENERAL CONDITIONS (C)(1) or, if applicable, GENERAL CONDITIONS (C)(2).

(E) **OTHER INSURANCE**

All **Loss** payable under this Policy will be specifically excess of, and will not contribute with, any other 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) **CANCELLATION AND RENEWAL OF COVERAGE**

- (1) Except for the nonpayment of premium, as set forth in (F)(2) below, the **Named Insured** has the exclusive right to cancel this Policy. 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 Policy Expiration Date set forth in ITEM 2 of the Declarations. 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 provide not less than ten (10) days written notice stating when the Policy will be cancelled. Notice of cancellation will be sent to the **Named Insured** 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 **Named Insured** written notice stating such at least sixty (60) days before the Policy Expiration Date set forth in ITEM 2 of the Declarations.

(G) **OPTIONAL EXTENSION PERIOD**

- (1) If either the **Named Insured** or the Insurer does not renew this Policy, the **Named Insured** shall have the right, upon payment of an additional premium set forth in ITEM 5 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 **Named Insured** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Named Insured** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Named Insured** elects to purchase the Optional Extension Period as set forth in (G)(1) and (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 all applicable Limits of Liability for **Claims** made during the **Policy Period**.

(H) **SPOUSES, ESTATES AND LEGAL REPRESENTATIVES OF INSURED PERSONS**

The coverage afforded under this Policy shall, subject to all of its terms, conditions and exclusions, extend to:

- (1) the lawful spouse of any **Insured Person**; provided however, that this GENERAL CONDITION (H)(1) will apply only:
 - (a) to the extent that the spouse is a party to any **Claim** solely in his or her 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 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.

(I) **ASSISTANCE, COOPERATION AND SUBROGATION**

- (1) The **Insured** agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agrees 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 **Insured**. The **Insured** 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.

(J) **EXHAUSTION**

If the Insurer's Limit of Liability for the Policy, as set forth in ITEM 3(g) of the Declarations, is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy. If the Insurer's Limit of Liability for any Coverage Part, as set forth in ITEM 3(a) – (f) of the Declarations, is exhausted by the payment of **Loss**, all obligations of the Insurer under that Coverage Part will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under that Coverage Part.

(K) **WARRANTY**

The **Insured** represents that the statements and particulars contained in the **Application** are true, accurate and complete, and agrees 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 or to whom such knowledge is imputed.

(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, 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 its 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 **Named Insured** 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) **ENTIRE AGREEMENT**

The **Insured** agrees that the Declarations, Policy, including the 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.