

Throughout this Policy, the words “you” and “your” refer to the **Named Insured** shown in the Declarations. The words “we”, “us” and “our” refer to the Company providing this insurance. Other words and phrases that appear in bold print have special meaning. Refer to the Definitions sections in this Policy.

This Policy, including the Declarations, General Terms and Conditions, elected **Coverage Part(s)**, written endorsements, and the **Application** shall constitute the entire agreement between us and you regarding the insurance provided hereunder.

In consideration of the payment of the premium and in reliance upon the statements made and information furnished to us in the **Application**, and subject to all of the terms and conditions of this Policy (including all endorsements attached hereto), we and you agree as follows:

## I. Terms and Conditions

Except for these General Terms and Conditions or unless stated to the contrary in any **Coverage Part** of this Policy, the terms, conditions and limitations of each **Coverage Part** shall apply only to that **Coverage Part**. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions and limitations of any **Coverage Part**, the terms, conditions and limitations of such **Coverage Part** shall control for purposes of that **Coverage Part**. Any defined term referenced in these General Terms and Conditions and also defined in a **Coverage Part**, shall, for purposes of coverage under that **Coverage Part**, have the meaning ascribed to it in that **Coverage Part**.

## II. Definitions

- A. “**Application**” means all written materials and information, including signed applications and any information attached thereto, incorporated therein, submitted, or made available by or on behalf of you to us in connection with underwriting of this Policy or any other policy issued by us, which this Policy is a renewal or replacement. The **Application** is deemed attached to and incorporated into this Policy.
- B. “**Claim**” shall have the meaning ascribed to it in the applicable **Coverage Part**.
- C. “**Coverage Part**” means each **Coverage Part** designated in the Declarations as a part of this Policy.
- D. “**Defense Costs**” shall have the meaning ascribed to it in the applicable **Coverage Part**.
- E. “**Debtor in Possession**” means a “debtor in possession” as defined in Chapter 11 of the United States Bankruptcy Code or any similar law.
- F. “**Domestic Partner**” means any natural person qualifying as a domestic partner or party to a civil union under the provisions of any applicable federal, state or local law or under the provisions of any formal program you establish.
- G. “**Employee**” means any natural person whose labor or service was, is or shall be engaged and directed by the **Insured Organization**, including full-time, part-time, seasonal, leased and temporary employees.

**Employee** also means any:

1. Volunteers or interns of the **Insured Organization** in their capacity as such; and
  2. Individual who is an **Independent Contractor** while performing services on your behalf or at your direction.
- H. **"ERISA"** means the Employee Retirement Income Security Act of 1974 (as amended) and any rules or regulations promulgated thereunder or any similar law.
- I. **"Executive"** means any natural person who was, is or shall be a duly elected or appointed:
1. Director, officer, or member of the board of the managers or management committee of the **Insured Organization**;
  2. In-house general counsel of the **Insured Organization**;
  3. Advisory, supervisory, or scientific advisory board member of the **Insured Organization**;
  4. Stockholders' representative of the **Insured Organization**;
  5. Natural Person General Partner of the **Insured Organization**; and
  6. Any foreign or functional equivalent of any of the foregoing.
- J. **"Independent Contractor"** means any natural person working for the **Insured Organization** in the capacity of an independent contractor while performing services on behalf of you or at your direction.
- K. **"Insured"** shall have the meaning ascribed to it in the applicable **Coverage Part**.
- L. **"Insured Organization"** means, collectively:
1. **Named Insured**; and
  2. Any **Subsidiary**
- including any such organization as a **Debtor in Possession**.
- M. **"Interrelated Wrongful Acts"** means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- N. **"Loss"** shall have the meaning ascribed to it in the applicable **Coverage Part**.
- O. **"Named Insured"** means the legal entity named as the Named Insured in the Declarations.
- P. **"Plan"** means:
1. Any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each is defined in the Employee Retirement Income Security Act of 1974, as amended, or any similar law, which was, is now, or hereafter becomes sponsored solely by the **Insured**, or sponsored jointly by the **Insured** and a labor organization, solely for the benefit of the **Insured's Employees**;

2. Any other employee benefit plan or program not subject to **ERISA** sponsored solely by the **Insured** for the benefit of the **Insured's Employees**, including any fringe benefit, or excess benefit plan;
3. Any employee benefit plan or program otherwise described in Paragraphs 1. or 2. above while such plan or program is being actively developed, formed or proposed by the **Insured** prior to the formal creation of such plan or program;
4. Any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for the **Insured's Employees**;
5. Any Voluntary Employees Beneficiary Association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, for which the purpose is to provide life, sickness, accident or other benefits for voluntary members who are **Employees** (including their dependents or designated beneficiaries).

**Plan** shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by **ERISA**, unless such plan is specifically included as a Plan by endorsement to this Policy.

- P. "**Policy Period**" means the period specified in the Declarations, subject to any cancellation prior to the scheduled expiration date.
- Q. "**Regulatory Body**" means any federal, state, local, or foreign law regulatory body or other investigative, administrative, enforcement, or governmental authority, or the enforcement unit of any securities or commodities exchange or similar self regulatory organization.
- R. "**Related Claim**" means all **Claims** arising out of a single **Wrongful Act**.
- S. "**Subsidiary**" means any entity that you:
1. Own more than fifty percent (50%) of the issued and outstanding voting equity securities of such entity; or
  2. Control voting rights representing the present right to elect or appoint more than fifty percent (50%) of the directors or trustees of such entity.
- T. "**Team Member**" shall have the meaning ascribed to it in the applicable **Coverage Part**.
- U. "**Wrongful Act**" shall have the meaning ascribed to it in the applicable **Coverage Part**.

### III. Limits of Liability

#### A. Policy Limit of Liability

The Policy Limit of Liability stated in the Declarations is the most we will pay under this Policy for all applicable **Coverage Parts**

1. Any **Loss** paid under one **Coverage Part** shall reduce the Policy Limit of Liability for all other **Coverage Parts**.

2. If multiple **Coverage Parts** apply to the same **Claim**, the limit of liability that applies to such **Claim** will not exceed the highest limit of liability available under any one **Coverage Part** that applies.

B. Coverage Part Aggregate Limit of Liability

Subject to the Policy Limit of Liability, any **Coverage Part** Aggregate Limit of Liability stated in the Declarations is the most we will pay under each respective **Coverage Part**.

C. Coverage Limits of Liability

Subject to the Policy Limit of Liability and any **Coverage Part** Aggregate Limit of Liability, each Coverage Limit stated in the Declarations is the most we will pay under each respective Insuring Agreement.

D. Sublimits of Liability

Each sublimit of liability, if any, stated in the Declarations the most we will pay for all **Loss** or other covered amounts that are subject to such sublimit. Any sublimit of liability set forth in any **Coverage Part** shall be part of and not in addition to, the respective **Coverage Part** Limit of Liability.

E. Defense Costs

**Defense Costs** are part of and not in addition to the limits of liability applicable to each **Coverage Part**, and the payment by us of **Defense Costs** reduces such limits of liability.

F. Limit of Liability Exhaustion and Payment

If the applicable limit of liability under this Policy is exhausted by payment of **Loss**, our obligations, including without limitation any duty to defend, shall be completely fulfilled and extinguished. We are entitled to pay **Loss** as it becomes due and payable by you, without consideration of other future payment obligations.

## IV. Coverage Territory

This Policy shall apply on a worldwide basis.

All premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Any **Loss** that you incur in any jurisdiction other than the United States or any of its territories or possessions shall be deemed, at your written direction, a **Loss** payable to you at the address shown on the Declarations. Any such payment by us to you pursuant to this paragraph shall fully discharge our liability under this Policy for such **Loss**. Any **Loss** incurred by a **Team Member** in a jurisdiction other than the United States or any of its territories or possessions and which is not indemnified or paid by you shall, to the extent permissible under applicable law, be paid to such **Team Member** in a jurisdiction mutually acceptable to such **Team Member** and us.

However, this Policy does not apply in any country, province or territory where it would be in violation of the laws of the United States including, but not limited to U.S. economic or trade sanction laws or export control laws administered by the U.S. Treasury, State, and Commerce Departments (e.g. the economic and trade sanctions administered by the U.S. Treasury Office of Foreign Assets Control).

## V. Retentions

- A. Our liability under each **Coverage Part** with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in the Declarations.

The Retention shall be uninsured under this Policy. The Limits of Liability will not be reduced by payment of any Retention.

- B. If a single **Claim** is covered in whole or in part under more than one **Coverage Part**, the applicable Retention under each such **Coverage Part** shall be applied with respect to coverage for such **Claim** under such **Coverage Part**, provided the sum of all applicable Retentions under all such **Coverage Parts** shall not exceed the largest of such applicable Retentions.

## VI. Claims

- A. Single Claims

All **Claims** under the **Coverage Parts** which arise out of the same **Wrongful Act** or Interrelated **Wrongful Act** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against the **Insured**, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim**.

- B. Related Claims

If **Related Claims** are subsequently made against you and are reported to us, all such **Related Claims**, whenever made, will be considered a single **Claim** and such **Claim** will be deemed to have been made on the date the first of those **Claims** was made against the **Insured**. All **Related Claims** shall be subject to the same Retentions and Limits of Liability applicable to the earlier **Related Claim**.

## VII. Extended Reporting Period

- A. Automatic Extended Reporting Period

If any **Coverage Part** is cancelled by you or is not renewed by us or you, then solely with respect to such **Coverage Part** that was cancelled or not renewed, an additional ninety (90) days during which **Claims** may be reported under this Policy (an "Automatic Extended Reporting Period") shall be made available, but only for **Wrongful Acts** that first occurred prior to the effective date of cancellation or nonrenewal. This Automatic Extended Reporting Period is not available if you purchase an Optional

Extended Reporting Period, or if you obtain another insurance policy that applies to such **Claim** within such ninety (90)-day period.

B. Optional Extended Reporting Period

1. If any **Coverage Part** is cancelled by you or is not renewed by us or you, then solely with respect to such **Coverage Part** that was cancelled or not renewed, you will have the right to purchase an Optional Extended Reporting Period to immediately follow the effective date of cancellation or nonrenewal.
2. The Optional Extended Reporting Periods and their respective additional premiums are stated in the Declarations. We must receive written notice of the Optional Extended Reporting Period elected together with payment of the applicable additional premium, within 60 days after the effective date of cancellation or nonrenewal. If we do not receive payment within such period, we will not be required to provide any Optional Extended Reporting Period.
3. If purchased, the additional premium for the Optional Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
4. There is no separate limit of liability for the Extended Reporting Period. Neither the Automatic nor Optional Extended Reporting Period reinstates or increases the Limits of Liability.
5. A **Claim** reported in writing to us during any applicable Extended Reporting Period will be deemed to have been made on the last day of this **Policy Period**.

## VIII. Defense of Claims

A. Duty to Defend

1. We shall have the right and duty to defend any **Claim** against the **Insured** which is covered under this Policy even if any of the allegations in such **Claim** are groundless, false or fraudulent.
2. We shall not be obligated to defend any **Claim** after the Policy Limit of Liability or any applicable **Coverage Part** Limit of Liability has been exhausted.

B. Settlement

1. The **Insured** agrees to neither admit nor assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur **Defense Costs** without our prior written consent, which shall not be unreasonably withheld. We shall not be liable for or as a result of any offer to settle, settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which we have not given our prior consent.

However, if the **Insured** is able to settle all **Claims** (including **Defense Costs**) in an amount, not exceeding the Retention, our consent is not required for the settlement of such **Claims**.

2. We shall have the right and shall be given the opportunity to make any investigation of a **Claim** we deem necessary and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the **Insured's** consent, such consent not to be unreasonably withheld.

## IX. Claim and Potential Claim Notices

- A. As a condition precedent to coverage, the **Insured** shall give us written notice of any **Claim** made against the **Insured** as soon as practicable after the Chief Executive Officer or functionally equivalent first learns of such **Claim**, but in no event later than (i) ninety (90) days after the expiration of the **Policy Period**.
- B. If the **Insured** fails to provide notice of a **Claim** as soon as practicable as required by this Policy, we will not constitute it as a coverage defense with respect to such **Claim** unless we establish we are materially prejudiced by such failure.
- C. You shall include with any such notice of circumstance a description of the circumstances, the nature of any potential **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insured** first became aware of the circumstances.
- D. If, during the **Policy Period** or Extended Reporting Period, if applicable, you first become aware of a **Wrongful Act** or circumstances that could give rise to a **Claim**, and if written notice of such **Wrongful Act** or circumstances is given to us during the **Policy Period** or Extended Reporting Period, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made at the time that we receive such notice.
- E. Notices to you shall be sent to you at the address specified in the Declarations.

## X. Cooperation

With respect to all **Coverage Parts**, the **Insureds** agree to provide us with all information, assistance and cooperation which we reasonably request and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice our position or our potential or actual rights of recovery. The failure of any **Insured** to comply with this Section shall not be imputed to or create a coverage defense under this Policy with respect to any other **Insured**.

## XI. Allocation

- A. If in any **Claim** the **Insured** incurs both **Loss** covered by this Policy and loss not covered by this Policy because the **Claim** includes both covered and uncovered matters or because the **Claim** is made against both covered and uncovered parties, such amount shall be allocated as follows:
  1. 100% of **Defense Costs** shall be allocated to covered **Loss**; and

2. **Loss** other than **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters and covered and uncovered parties.

## XII. Subrogation

We shall be subrogated to all of the **Insured's** rights of recovery regarding any payment of **Loss** under this Policy. The **Insured** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable us to effectively bring suit in the **Insured's** name. The **Insured** will do nothing to prejudice our position or any rights of recovery.

We shall not subrogate against any **Team Member**.

## XIII. Changes in Exposure

### A. Change in Control

If, during the **Policy Period**:

1. One of the following occurs:
  - a. any person or entity or group of persons and/or entities acting in concert acquires securities which result in ownership by such person(s) and/or entity(ies) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or equivalent positions of the **Insured Organization**; or
  - b. the **Insured Organization** merges into or consolidates with another organization such that the **Insured Organization** is not the surviving organization, or
  - c. The **Insured Organization** completes an initial public offering of securities registered with the Securities and Exchange Commission or completes a reverse merger with a publicly traded company; or
  - d. The **Insured Organization** emerges from bankruptcy as of the effective date stated in the plan of reorganization; and

2. You provide us written notice of such Change in Control transaction as soon as practicable, but not later than 60 days after the effective date of such transaction,

then coverage shall continue until the termination of this Policy, provided that such coverage shall apply only with respect to **Claims** for **Wrongful Acts** occurring prior to the effective date of such Change in Control transaction.

No coverage shall be available for any **Wrongful Act** or **Loss** occurring after such Change in Control transaction.

Upon such Change in Control transaction, the entire premium for this Policy shall be deemed fully earned.



You shall give us written notice of such Change in Control transaction as soon as practicable, but not later than 60 days after the effective date of such transaction.

In the event of such transaction during the **Policy Period**, you shall have the right, upon payment of the additional premium set for in the Declarations, to an extension of coverage granted by the **Coverage Part** for the Run Off Coverage Period set forth in the Declarations, which shall commence as of the effective date of such transaction.

#### B. Acquisition or Creation of a Subsidiary

If, before or during the **Policy Period**, the **Insured Organization**:

1. creates or acquires a **Subsidiary** or a new **Plan**; or
2. merges with another organization such that the **Insured Organization** is the surviving entity,

Then such newly created, acquired or merged organization or **Plan** shall be covered under this Policy solely for **Wrongful Acts** or covered **Loss** taking place after such acquisition, merger or creation.

This section does not apply to, and no coverage shall be available under this Policy for any: (i) **Wrongful Act** or **Loss** of any new **Insureds** occurring before such transaction; or (ii) any **Interrelated Wrongful Acts** thereto.

#### C. Loss of Subsidiary Status

If, before or during the **Policy Period**, any organization ceases to be a **Subsidiary**, then coverage shall be available under this Policy for such **Subsidiary** and its **Insureds**, but only for **Claims** for covered **Wrongful Acts** occurring before such transaction. No coverage shall be available to such **Subsidiary** for any **Wrongful Act** or covered **Loss** occurring after such transaction.

If before or during the **Policy Period** a **Plan** is terminated, coverage for such **Plan** under the Fiduciary Liability **Coverage Part**, if purchased, shall continue until termination of such **Coverage Part** with respect to **Wrongful Acts** taking place prior to the termination of such **Plan**.

## XIV. Application

You represent and acknowledge that the statements and information contained in the **Application** are true, accurate, and complete, and are the basis of this Policy and are to be considered incorporated into and constituting a part of this Policy.

This Policy is issued in reliance upon the truth and accuracy of the **Application**.

If the **Application** contains misrepresentations or omissions that materially affect the acceptance of the risk or the hazard assumed by us, this Policy shall not afford coverage for any **Insured** who knew on the inception date of this Policy the facts that were not truthfully disclosed in the **Application**, whether or not the **Insured** knew the **Application** contained such misrepresentation or omission.

For the purpose of determining coverage, knowledge possessed by:

1. Any **Team Member** shall not be imputed to any other **Team Member**; and

2. the **Insured Organization's** Chief Executive Officer, functionally equivalent, or anyone signing the **Application** shall be imputed to the **Insured Organization**.

## XV. Suits Against the Insurer

No person or organization shall have any right under this Policy to join us as a party to any **Claim** against you nor shall we be impleaded by the **Insured** in any **Claim**.

## XVI. Assignment

No change in, modification of, or assignment of interest under this Policy shall be valid unless endorsed in writing by us. This Policy and any and all rights hereunder are not assignable without our prior written consent, which consent shall be in our sole and absolute direction.

## XVII. Named Insured's Authority

You shall act on behalf of all other **Insureds** regarding all matters under this Policy.

## XVIII. Cancellation

- A. We may cancel this Policy only for non-payment of premium. In such case, we will mail or deliver written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. Cancellation shall not become effective if you pay such premium in full during such twenty (20) day period. Any notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
- B. You may cancel this Policy by sending written notice of cancellation to us. Such notice shall be effective upon receipt by us unless a later cancellation date is specified therein.
- C. If this Policy is canceled, we will return to you any unearned premium, calculated pro rata, but the return of premium to you is not a condition precedent to cancellation.

## XIX. Bankruptcy

The bankruptcy or insolvency of the **Insured Organization** or any of any **Team Member's** estate will not relieve us of our obligation under this insurance. In the event of bankruptcy or insolvency of the **Insured Organization**, you shall waive and release any automatic stay or injunction in such proceeding that may apply to this Policy or its proceeds, and agree not to oppose or object to any efforts by us or any **Insured** to obtain relief from any such stay or injunction.

## XX. References to Laws

Any statute, act, or code mentioned in this Policy shall be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.

Any statute, act, or code mentioned in this Policy that is followed by the phrase “or any similar law” shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.

## XXI. Determination of Jurisdiction for Punitive Damage Awards

The insurability of such punitive, exemplary or multiple damages, civil penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the Insured, including without limitation the jurisdiction in which we, the Insured, this Policy or such Claim is located. With respect to:

- A. Judgments in which punitive, exemplary or multiplied damages are awarded;
- B. Fines, penalties or taxes incurred by **Team Members** under Section 2(g) 2(B) of the Foreign Corrupt Practices Act, as amended and Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)); or
- C. Any amounts which may be considered uninsurable under the law pursuant to which this Policy is construed, coverage provided by this Policy shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insured**, including without limitation the jurisdiction in which the Company, the **Insured**, this Policy or such **Claim** is located or has a substantial relationship.

## XXII. Additional Conditions

- A. Changes

This Policy shall not be changed in any manner except by a written endorsement issued by us.

- B. Titles and Headings

The titles of the headings of, and endorsements to, this Policy are for reference only. Such titles shall not be part of the terms and conditions of coverage.

- C. Premium

You will pay the premium stated in the Declarations. As may be agreed upon by you and us or as otherwise provided in this Policy, the premium may be adjusted at any time during the **Policy Period** or any extensions of the **Policy Period** based upon changes in the provisions of this Policy.

- D. Choice of Law

Any disputes involving this Policy shall be resolved by applying the law of the state or jurisdiction indicated in the Declarations as the principal address of the **Named Insured**.