

<Product Name>
POLICY TERMS AND CONDITIONS

In consideration of the payment of the premium, in reliance on all statements made in the **Application**, and subject to all of the provisions of this Policy, Underwriters and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the applicable Clause.

- A. **“Change of Control”** means:
1. the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **Named Insured** representing the present right to vote for the election of directors or **Managers**; or
 2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.
- B. **“Financial Impairment”** means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**.
- C. **“Insured Organization”** means the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- D. **“Interrelated Wrongful Acts”** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- E. **“Managers”** means all persons who were, now are, or shall be managers, managing members, members of the board of managers, managing partners, general partners of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executives of any **Insured Organization**.
- F. **“Named Insured”** means the entity designated in Item 1. of the Declarations.
- G. **“Optional Extension Period”** means the period described in Clause XI. of the Policy Terms and Conditions.
- H. **“Policy Period”** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination, if any.

- I. **“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.
- J. **“Subsidiary”** means:
1. any entity, while more than 50% of the outstanding voting securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** directly or indirectly;
 2. any limited liability corporation while the right to elect or otherwise appoint or designate more than 50% of such limited liability corporation's **Managers** is owned or controlled by the **Named Insured** directly or indirectly; or
 3. any joint venture, which is a corporate entity, while the **Named Insured** has managerial control, or while the right to elect or otherwise appoint more than 50% of such entity's directors, trustees or other equivalent executive is owned or controlled by the **Named Insured** directly or indirectly

if such entity or corporation was so owned or controlled as of or prior to the inception date of this Policy.

II. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the applicable Pending or Prior Litigation Date set forth in Item 9. of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 2. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of a potential **Claim** given prior to the **Policy Period** under any other policy;
 3. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**; or

- B. against any of the **Insured Persons** of any **Subsidiary** or against any **Subsidiary** subsequent to the date such entity ceased to be a **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**; or
 2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.

III. LIMITS OF LIABILITY

A. Aggregate Limit(s) of Liability

The amount(s) shown in Item 4. of the Declarations shall be the Underwriters' maximum aggregate limit(s) of liability under the Policy.

B. Additional Defense Limit of Liability

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Defense Limit of Underwriters applicable only to **Defense Costs** which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. Payment of **Defense Costs** shall erode the Additional Defense Limit first and will not erode any other limit shown in Item 4. until the Additional Defense Limit is exhausted.

C. If any **Claim** against the **Insureds** gives rise to an obligation both under this Policy and any other coverage, line slip or policy of insurance issued by Underwriters or any of its affiliates to any **Outside Entity**, Underwriters' maximum aggregate limit of liability under all such coverage, line slips or policies for all **Loss** from such **Claim** shall not exceed the greater of:

1. the applicable maximum aggregate limit(s) of liability of this Policy; or
2. the maximum aggregate limit of liability under any such other coverage, line slip or policy.

D. The payment of **Defense Costs** by Underwriters reduces and may totally exhaust the applicable Limit(s) of Liability.

E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:

1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause IX.B.

- F. If all aggregate limit(s) of liability are exhausted, Underwriters' obligations under this Policy shall be completely fulfilled and extinguished.

IV. RETENTIONS

- A. Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 5. of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Retention, or any portion thereof, under this Policy. The Retention shall not apply, however, if indemnification by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.
- B. In the event more than one of the Insuring Clauses are applicable to a **Claim**, the Retentions set forth in Item 5. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim**.

V. PRESUMPTIVE INDEMNIFICATION

For all purposes under this Policy, the **Insured Organization** is presumed to indemnify the **Insured Persons** to the fullest extent permitted by law or pursuant to the by-laws or other organizational documents of the **Insured Organization** for any **Loss**, or to advance any **Defense Costs** on their behalf, except to the extent that the **Insured Organization** cannot in fact do so for reasons of **Financial Impairment**.

VI. SETTLEMENT AND DEFENSE

- A. Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; provided, however, that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 4. of the Declarations has been exhausted.
- B. The **Insureds** shall cooperate with Underwriters and, upon Underwriters' request, assist in the investigation, settlement and defense of **Claims** and in enforcing rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without Underwriters' prior written consent, which shall not be unreasonably withheld. Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with

prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then Underwriters' consent shall not be required for such disposition.

- D. Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:
1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
 2. 70% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 30% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.

VII. ALLOCATION

If both **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:

- a. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**;
- b. Settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds**' or non-Insureds' exposure to non-covered loss, and the **Insureds**' exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

VIII. SPOUSAL AND DOMESTIC PARTNER EXTENSION

Coverage under this Policy will apply to an **Insured Person's** lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law in the United States, but solely by reason of such spousal status or such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**.

IX. NOTIFICATION

- A. In the event any **Executive Officer** becomes aware that a **Claim** has been made against any of the **Insureds**, the **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of such **Claim** as soon as practicable provided all **Claims** must be reported no later than the end of the **Policy Period**, in accordance the requirements of the **Optional Extension Period** (if applicable), or sixty (60) days after the

expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last sixty (60) days of the **Policy Period**.

B. If during the **Policy Period**, except for the **Optional Extension Period**, the **Insureds** first become aware of a specific **Wrongful Act** and if the **Insureds** during the **Policy Period**, except for the **Optional Extension Period**, give written notice to Underwriters as soon as practicable of:

1. the specific **Wrongful Act**;
2. the consequences which have resulted or may result therefrom; and
3. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

Underwriters shall have no obligation to cover any amounts, including any legal fees or expenses, incurred prior to the time such circumstances result in a **Claim**.

C. Notice to Underwriters provided for in Clause IX.A. and B. shall be given to the firm shown in Item 8.(a) of the Declarations. All other notices to Underwriters under this Policy shall be given to the firm shown in Item 8.(b) of the Declarations. All notices under any provision of this Policy must be made in writing. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

X. GENERAL CONDITIONS

A. Representations.

By acceptance of this Policy, the **Insureds** agree:

1. that the statements in the **Application** are their representations, and that this Policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall not afford any coverage with respect to those **Insureds** who made or had knowledge of such misrepresentations; and
3. that this Policy shall not afford any coverage for amounts paid by the **Insured Organization** as indemnification of any of the **Insureds** who made or had knowledge of the misrepresentations set forth in Clause X.A.2.;

None of the foregoing provisions in Clause X.A. shall in any other way limit or void Underwriters' rights to rescind this Policy; provided, that the Underwriters shall not rescind this Policy where coverage is being provided to an **Insured Person** where indemnification by the

Insured Organization is not permitted by law or the **Insured Organization** is not able to indemnify solely by reason of its **Financial Impairment**.

B. Run-Off

1. In the event any entity ceases to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms including without limitation Exclusion B. above, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity and to such **Subsidiary**.
2. In the event of a **Change of Control** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the **Change of Control**.

C. Cancellation/Nonrenewal

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy only for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to 2. hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
4. Underwriters may nonrenew this Policy by mailing to the **Named Insured** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**. The mailing of such notice shall be sufficient notice. Delivery of such written notice by Underwriters shall be equivalent to mailing.

D. Other Insurance

This Policy shall apply in excess of any other existing valid policy including any self Insured retention or deductible portion thereof, whether such other insurance is stated to be primary,

contributory, excess, contingent or otherwise, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other policy is written only as specific excess insurance over the Limits of Liability of this Policy.

XI. OPTIONAL EXTENSION PERIOD

- A. If this Policy is cancelled by the **Named Insured** or if Underwriters nonrenew this Policy, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.a. of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item 7.b. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the Limit(s) of Liability of Underwriters.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XI.

XII. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Policy.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

XIII. ACTION AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to

determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

XIV. ENTIRE AGREEMENT

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Policy.

XV. TERRITORY

This Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

XVI. VALUATION AND CURRENCY

All premiums, limits, Retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. 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 judgment becomes final or payment of the settlement or other element of **Loss** is due.

XVII. BANKRUPTCY

Bankruptcy or insolvency of the **Insureds** shall not relieve Underwriters of their obligations nor deprive Underwriters of their rights or defenses under this Policy.

XVIII. AUTHORIZATION

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Named Insured** shall act on their behalf.

XIX. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.