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*Premier Comprehensive Protection for Your Top Business Exposures*

### TORUS NATIONAL INSURANCE COMPANY

#### EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY ~ CLAIMS MADE – DEFENSE COSTS AND LOSS WITHIN THE LIMITS OF LIABILITY

In consideration of the payment of the premium and in reliance on all statements made and information furnished by the **Insured** in the **Application** and the underwriting of this Policy, and subject to the terms, conditions and limitations of this Policy, the Torus National Insurance Company ("Insurer") and the **Insured** agree as follows:

#### I. INSURING AGREEMENTS

##### A. EMPLOYMENT PRACTICES LIABILITY COVERAGE – FIRST PARTY & THIRD PARTY

The Insurer will pay on behalf of the **Insured** all **Loss** as a result of any **Claim**:

1. First made against such **Insured** during the Policy Period; and
2. For any **Wrongful Act** that is committed, attempted or allegedly committed or attempted by an **Insured** before or during the Policy Period.

##### B. SUBPOENA EXPENSE COVERAGE

The Insurer will reimburse the **Insured**, at the **Insured's** request, the reasonable and necessary costs incurred by the **Insured** to produce documents in the preparation and giving of testimony, in response to a subpoena served upon the **Insured** and directly related to a **Claim** covered under Insuring Agreement A of this Policy, Employment Practices Liability Coverage – First Party & Third Party.

##### C. TRIAL ATTENDANCE COVERAGE

The Insurer will reimburse the **Insured** the **Trial Attendance Costs** suffered by such **Insured** as a direct result of the **Mandatory Attendance** of such **Insured** at:

1. A trial;
2. A court-imposed hearing; or
3. An arbitration,

directly related to defense of a **Claim** covered under Insuring Clause A of this Policy, Employment Practices Liability Coverage – First Party & Third Party.

#### II. EXTENSIONS

##### A. APPLICATION – COLLATERAL & SEVERABLE

1. This Policy is extended to provide that the **Application** is collateral to, as opposed to a part of, this Policy.



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2. The **Application** will be construed as a separate application for coverage for each **Insured Person** and, as such, the wrongful act, error, omission, concealment or knowledge of one **Insured Person** will not be imputed to any other **Insured Person** with regard to it.

#### B. CONDUCT EXCLUSIONS – SEVERABLE & SUBJECT TO FINAL ADJUDICATION

For the purpose of determining the applicability of Exclusions D and E of this Policy, the Fraud and Illegal Profit Exclusions:

1. The **Wrongful Act** or knowledge of an **Insured Person** will not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of an **Executive Officer** of a **Company** will be imputed to such **Company**; and
2. The exclusions only apply if a guilty plea, verdict, or final judgment adverse to such **Insured**, whether or not such guilty plea, verdict, or final judgment is made in the underlying **Claim** or in a separate proceeding, establishes that:
  - a. The deliberately fraudulent act or omission or willful violation was committed; or
  - b. The **Insured** did gain the illegal profit, remuneration or advantage,whichever applies.

Further, if:

- (i) An **Insured** pleads guilty in a criminal proceeding, the elements of each offense to which such plea relates will, as of the date of such plea, be deemed to have been established by final adjudication; or
- (ii) By written agreement or consent order with any federal or state prosecutorial authority or regulatory agency, an **Insured** admits or otherwise agrees to any fact, charge, or allegation of conduct set forth in Sub-Clauses 1 and 2 above, then any fact, charge or allegation to which such **Insured** has admitted or otherwise agreed to in such written agreement or consent order will, as of the date of the agreement or order, be deemed to have been established by a final adjudication.

#### C. EXTENDED REPORTING PERIOD COVERAGE

##### 1. AUTOMATIC EXTENDED REPORTING PERIOD COVERAGE

If the Insurer cancels or non-renews this Policy, this Policy will provide **Automatic Extended Reporting Period Coverage**.

The **Automatic Extended Reporting Period Coverage** is subject to, and a part of, the Limit of Liability set forth in Item 4 of the Declarations.

The length of time for which the Insurer will provide **Automatic Extended Reporting Period Coverage** is the **Automatic Extended Reporting Period**.

As a condition precedent to the right to **Automatic Extended Reporting Period Coverage**, the total premium for this Policy must have been paid.



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Any **Claim** made during the **Automatic Extended Reporting Period** will be deemed to have been made during the Policy Period.

Further, there is no **Automatic Extended Reporting Period Coverage** in the event the **Insured** purchases **Supplemental Extended Reporting Period Coverage**.

#### 2. SUPPLEMENTAL EXTENDED REPORTING PERIOD COVERAGE

If there is a **Termination Of Coverage**, the **Insured** will have the right, upon payment of the additional premium set forth in Item 8 of the Declarations, to **Supplemental Extended Reporting Period Coverage**. The **Supplemental Extended Reporting Period Coverage** is subject to, and a part of, the Limit of Liability set forth in Item 4 of the Declarations.

The length of time for which the Insurer will provide **Supplemental Extended Reporting Period Coverage** is the Supplemental Extended Reporting Period.

As a condition precedent to the right to purchase **Supplemental Extended Reporting Period Coverage**, the total premium for this Policy must have been paid. The right to purchase **Supplemental Extended Reporting Period Coverage** will end unless the Insurer receives written notice and full payment of the premium for such coverage within thirty (30) days following the effective date of the **Termination Of Coverage**.

Any **Claim** made during the Supplemental Extended Reporting Period will be considered made during the Policy Period.

The entire additional premium for the **Supplemental Extended Reporting Period Coverage** will be deemed earned at its commencement without any obligation by the Insurer to return any portion thereof.

#### D. GENERAL LIBERALIZATION

With regard to any and all enhancements provided by the Insurer under any new edition of this policy form TN-EPLI-CW (04/11), this Policy is expanded, at the time the Insurer is authorized by the respective Department of Insurance to offer such policy form to the public, to provide such enhancements. However, under no circumstances, will the foregoing be interpreted to mean that the Insurer will, or is obligated to, offer any new edition of this Policy.

#### E. GLOBAL LIBERALIZATION

If a **Claim**, or a portion of a **Claim**, is subject to a jurisdiction, other than a jurisdiction of the United States of America, its territories or possessions (a "U.S. Jurisdiction"), and the application of such jurisdictional law would result in a coverage determination under this Policy that is less favorable to the **Insured** than the **Insured** would receive had the issue been subject to a U.S. Jurisdiction, to the greatest extent legally permissible, the Insurer will apply the U.S. Jurisdictional law that would otherwise apply to such coverage determination.

#### F. NON-RESCISSION

With respect to the coverage provided to an **Insured Person**, the Insurer will not have the right to rescind or void this Policy.



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#### G. POTENTIAL RETENTION REDUCTIONS

Section V, Conditions, Clause I, Limits of Liability, Defense Costs, Retention and Single Claim, Sub-Clause 5, Retention, describes how this Policy is subject to a Retention amount. However, notwithstanding the statements contained therein:

##### 1. LEGAL ADVICE

With respect to an **Employment Claim** alleging wrongful discharge, demotion or termination, if prior to the discharge, demotion or termination, the **Insured** obtained and adopted the written advice of the employment attorney recommended or approved by the Insurer, the Retention applicable to such **Claim** will be reduced by the amount that is the equivalent of fifty percent (50%) thereof.

##### 2. NO LIABILITY

In the event that there is a **Determination Of No Liability** with respect to a **Claim**, the Retention applicable to such **Claim** will be retroactively reduced by the amount that is the equivalent of twenty-five percent (25%) thereof.

##### 3. PROMPT CONSENT

If all **Insureds** named in a subject **Claim** consent to a **Claim** settlement offer within twenty (20) days of the Insurer's first request to consent to such offer and such offer is accepted by the claimant, the Retention applicable to such **Claim** will be retroactively reduced by the amount that is the equivalent of ten percent (10%) thereof.

#### H. REPRESENTATIVES

Any spouse, and any and all estates, heirs, legal representatives, assigns, and **Domestic Partners** of an **Insured Person** will be considered an **Insured Person** under this Policy; provided, however, such coverage only applies to that portion of any **Claim** arising solely out of his/her/its status as the **Insured Person's** spouse, estate, heir, legal representative, assign or **Domestic Partner** and, in the case of a spouse or **Domestic Partners**, where such **Claim** seeks **Loss** from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any act, error or omission of a spouse, estate, heir, legal representative, assign, or **Domestic Partner**.

### III. DEFINITIONS

When used in this Policy, the following terms, whether in the singular or plural, are defined as follows:

#### 1. **Application** means:

a. The signed, written application for:

(i) This Policy;

(ii) For any policy issued by any insurer of which this Policy is a direct or indirect renewal or replacement;  
and



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- (iii) Any and all schedules and attachments applicable to such applications;
  - b. All underwriting data submitted in connection with this Policy; and
  - c. All publicly available documents prepared by or on behalf of the **Company**.
2. **Automatic Extended Reporting Period Coverage** means **Extended Reporting Period Coverage** that is subject to the **Automatic Extended Reporting Period**.
3. **Automatic Extended Reporting Period** means sixty (60) days commencing on the effective date of the cancellation or non-renewal.
4. **Benefit** means any prerequisites, fringe benefit, deferred compensation or payment (including insurance premium) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefit** will not include salary or any wage, commission, **Stock Benefit** or any non-deferred cash incentive compensation.
5. **Change In Control** means:
- a. The acquisition by another entity or person, or group of entities, or persons acting in concert, resulting in the ownership or control of more than fifty percent (50%) of:
    - (i) The **Company's** voting stock; or
    - (ii) The **Company's** total consolidated assets as of the date of the **Company's** most recent audited consolidated financial statement prior to such acquisition;
  - b. The merger of the **Company** into another entity such that the **Company** is not the surviving entity;
  - c. The consolidation of the **Company** with another entity; or
  - d. The change of fifty percent (50%) or more of the directors of the **Company**.
6. **Claim** means an **Employment Claim** and a **Third Party Claim**.
7. **Company** means the entity named in Item 1 of the Declarations and all **Subsidiaries**. It also means any entity that is a debtor in possession, under United States bankruptcy law or an equivalent status under the law of any other country, of the **Company**.
8. **Defense Costs** means all reasonable and necessary fees and expenses incurred by the **Insured** in the defense of a **Claim**. It includes the premium for an appeal bond, attachment bond or other similar bonds; provided, however, the Insurer has no obligation to apply for or furnish any such bond.
- Defense Costs** will not include the salary, wage, fee, overhead or benefit expense associated with any director, officer or employee of the **Company** except as provided in Insuring Agreement C of this Policy, Trial Attendance Coverage.
9. **Determination Of No Liability** means that, with respect to all involved **Insureds** and all covered counts of the subject **Claim**:



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- a. The lawsuit was dismissed with prejudice; or
- b. A judgment of no liability was obtained.

However, and notwithstanding the foregoing, such dismissal or judgment does not constitute a **Determination Of No Liability** unless and until the time to appeal such dismissal or judgment has lapsed and no such appeal was made or right to appeal was granted.

10. **Domestic Partner** means any person qualifying as a domestic partner under any federal, state or local law or under any formal program established by the **Company**.

11. **Employee** means:

- a. A natural person in the regular service of the **Company** in the ordinary course of the **Company's** business and whom the **Company** compensates by salary and/or wage and whom the **Company** has the right to govern and direct in the performance of such service, including any such natural person who is a leased, temporary, part-time or seasonal employee of the **Company**;
- b. An **Independent Contractor**; and
- c. A volunteer of the **Company**.

12. **Employment Claim** means:

- a. A written demand for monetary, non-monetary or injunctive relief, including, but not limited to a written demand for reinstatement, reemployment or re-engagement;
- b. A civil or arbitration proceeding that is commenced by the service of a complaint or similar document;
- c. A formal administrative, regulatory or tribunal proceeding that is commenced by the filing or issuance of a notice of charge, formal investigation order or similar document, including, but not limited to, any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the **Company's** employment practices; provided, however, that in the context of an audit conducted by the Office of Federal Contract Compliance Programs ("OFCCP"), **Employment Claim** will be limited to a Notice of Violation or Order to Show Cause or written demand for monetary damages or injunctive relief,

that is brought and maintained by or on behalf of a past, present or prospective **Employee** and is brought against an **Insured**.

**Employment Claim** also means:

- (i) An appeal from any **Employment Claim**; and
- (ii) A written request to toll or waive an applicable statute of limitations or a contractual time-bar relating to any potential **Employment Claim**,

as described in Sub-Clauses a, b or c above.



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**Employment Claim** will not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

13. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
14. **Executive Officer** means the **Company's** chairman, president, chief executive officer, chief financial officer, and in-house general counsel. **Executive Officer** also means the equivalent status of any of the foregoing under the law of any other country.
15. **Extended Reporting Period** means the **Automatic Extended Reporting Period** and the Supplemental Extended Reporting Period.
16. **Extended Reporting Period Coverage** means an extension of the coverage provided under this Policy whereby the Insurer agrees to pay on behalf of the **Insured** all **Loss** as a result of any **Claim**:
  - a. First made against such **Insured** during the applicable **Extended Reporting Period**; and
  - b. For any **Wrongful Act** that is committed or attempted, or allegedly committed or attempted, by such **Insured** on or after the Retroactive Date and prior to:
    - (i) With respect to **Automatic Extended Reporting Period Coverage**, the cancellation or non-renewal of this Policy; and
    - (ii) With respect to **Supplemental Extended Reporting Period Coverage**, the **Termination Of Coverage**.
17. **Independent Contractor** means any natural person working for the **Company** in the capacity of an independent contractor and pursuant to an **Independent Contractor Services Agreement**.
18. **Independent Contractor Services Agreement** means any express contract or agreement between an **Independent Contractor** and the **Company** governing the nature of the **Insured's** engagement of such **Independent Contractor**.
19. **Insured** means the **Company** and any **Insured Person**.
20. **Insured Person** means any:
  - a. **Executive Officer**; and/or
  - b. **Employee**.
21. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have, as a common nexus, any fact, circumstance, situation, event, transaction or cause.
22. **Loss** means the amount that the **Insured** becomes legally obligated to pay as a result of a **Claim**. It includes, but is not limited to, damages, judgments, awards of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Defense Costs**.



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**Loss** also includes punitive, exemplary or multiple damages, if and to the extent, such damages are insurable. Further, the insurability of such punitive, exemplary and multiple damages will be determined under the internal laws of any applicable jurisdiction most favorable to the **Insured**.

a. **Loss** does not include any:

- (i) Amount not indemnified by the **Company** and for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (ii) Amount incurred by the **Company**, including any settlement, to comply with any injunctive or other equitable relief or any agreement to provide such relief;
- (iii) Amount, including any settlement, uninsurable under the law pursuant to which this Policy is construed;
- (iv) Amount incurred by any **Insured** in the defense or investigation of any action, proceeding, demand or matter that is not then a **Claim** even if such matter subsequently gives rise to a **Claim**;
- (v) Cost or expense incurred to perform any obligation assumed by, or on behalf of, or with the consent of any **Insured**;
- (vi) Future salary, wage, commission or **Benefit** of a claimant that was or will be hired, promoted, or reinstated to employment pursuant to a settlement of, or in or other resolution of any **Claim**; and
- (vii) Salary, wage, commission, **Benefit** or other monetary payment that constitutes a severance payment or payment pursuant to a notice period.

b. **Loss**, other than **Loss** in the form of **Defense Costs**, does not include any:

- (i) Amount not indemnified by the **Company** and for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (ii) Tax, fine, penalty (except as provided above with respect to punitive or exemplary damages);
- (iii) **Stock Benefit**;
- (iv) Amount that represents the return of any fee, charge, commission or other compensation paid to an **Insured**;
- (v) Amount that represents any cost associated with any accommodation required pursuant to the American with Disabilities Act, the Civil Rights Act of 1964 and any and all rules and regulations promulgated thereunder, amendments thereto, and any and all similar provisions of any federal, state, local or common law; and
- (vi) Amount that represents any cost of compliance with any order for, grant of or agreement to provide injunctive or non-pecuniary relief.

23. **Mandatory Attendance** means attendance that is:

- a. Mandated by a judicial authority having the authority to do so; or





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b. Requested by the Insurer.

24. **Pollutant** means any substance, located anywhere in the world, exhibiting any hazardous characteristic as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutant** will also mean any other air emission, odor, waste water, oil, oil product, infectious waste, medical waste, asbestos, asbestos product, silica, noise, fungus (including mold, mildew and any mycotoxin, spore, scent or byproduct produced or released by fungi, (other than any fungi intended by the **Insured**)), and any electric or magnetic or electromagnetic field. **Pollutant** also includes, without limitation, any solid, liquid, gaseous, thermal, biological, nuclear irritant, radiological, contaminant, smoke, soot, fume, acid, alkali, chemical and waste material.

25. **Retaliation** means retaliatory treatment against an **Employee** on account of such individual:

- a. Exercising his or her rights under the law, including, but not limited to, rights under any workers' compensation law, the Family Medical Leave Act, or the Americans with Disabilities Act;
- b. Refusing to violate any law;
- c. Having assisted or testified in or cooperated with a proceeding or investigation regarding any alleged violation of law by the **Company**;
- d. Disclosing or threatening to disclose to a superior or to any governmental agency any alleged violation of law;
- e. Filing any claim against the Company under the Federal False Claims Act or any other similar "whistleblower" federal, state, or local statutory law or common law anywhere in the world.

26. **Stock Benefit** means:

- a. Any offering, plan or agreement, between the **Company** and any employee, that grants **Company** stock, stock warrants or stock options to such employee, including but not limited to any **Company** grant of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive grant in form of Company securities; and
- b. Any payment or instrument the amount or value of which is derived from the value of the Company's securities, including, but not limited to, stock appreciation rights or phantom stock plans or arrangements.

**Stock Benefit** does not include any employee stock ownership plan or employee stock purchase plan.

27. **Subsidiary** means:

- a. Any entity in which and so long as more than 50% of the voting stock or voting rights, representing the present right to vote for directors or Managers (in the event of a Limited Liability Company), is owned by the **Company**, either directly or indirectly:
  - (i) On or before the inception date in Item 2 of the Declarations; or
  - (ii) After the inception date stated in Item 2 of the Declarations by reason of being created or acquired by the **Company** after such date, if and to the extent coverage is afforded pursuant to Section V, Conditions, Clause F, Changes in Status of Entity, Sub-Clause 2, New Entity.



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- b. Any foundation, charitable trust or political action committee controlled by:
  - (i) One or more entities described in Sub-Clause a above; or
  - (ii) By the **Company**.

28. **Supplemental Extended Reporting Period Coverage** means **Extended Reporting Period Coverage** that is subject to the **Supplemental Extended Reporting Period**.

29. **Termination Of Coverage** means when and if:

- a. The Insurer or the Named Insured cancels or non-renews this Policy;
- b. There is a **Change In Control**;
- c. Upon renewal, the Insurer refuses to offer to the Named Insured the same breath of coverage that is currently offered under this Policy; or
- d. Upon renewal, the Insurer refuses to offer to the Named Insured a renewal policy containing the same Retention or Limit of Liability to which this Policy is subject.

30. **Third Party** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**.

31. **Third Party Claim** means a:

- a. Written demand for monetary, non-monetary or injunctive relief;
- b. Civil or arbitration proceeding that is commenced by the service of a complaint or similar document;
- c. Formal administrative, regulatory or tribunal proceeding that is commenced by the filing or issuance of a notice of charges, formal investigation order or similar document,

that is brought and maintained by or on behalf of a **Third Party** and brought against an **Insured**.

**Third Party Claim** also means:

- (i) An appeal from any **Third Party Claim**; or
- (ii) A written request to toll or waive an applicable statute of limitations or a contractual time-bar relating to any potential **Third Party Claim**,

as described in Sub-Clauses a, b or c above.

**Third Party Claim** will not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

32. **Trial Attendance Costs** means any lost wage, income, or expense incurred by the **Insured**.



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#### 33. **Wrongful Act** means:

- a. With respect to an **Employment Claim**, any actual or alleged employment-related:
  - (i) Discrimination or harassment based on race, color, gender, disability, religion, creed, age, sex, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world;
  - (ii) Abusive or hostile work environment;
  - (iii) Wrongful discharge or termination (actual or constructive);
  - (iv) Breach of an implied employment contract;
  - (v) Wrongful failure or refusal to hire or promote;
  - (vi) Wrongful demotion or discipline;
  - (vii) Wrongful denial of tenure;
  - (viii) Wrongful failure or refusal to provide equal employment treatment or opportunities;
  - (ix) Violation of the Family Medical Leave Act (or any similar state or local law);
  - (x) Wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies or procedures (other than any wage and hour practice, policy or procedure);
  - (xi) **Retaliation**; and
  - (xii) Violation of the Uniformed Services Employment and Re-employment Rights Act.
- b. With respect to a **Third Party Claim**, any actual or alleged:
  - (i) Discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world; or
  - (ii) Sexual harassment, including any unwelcome sexual advance, request for a sexual favor, or other conduct of a sexual nature against a **Third Party**.

## IV. EXCLUSIONS

This Policy will not apply to any **Claim**:

### A. BODILY INJURY & PROPERTY DAMAGE



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For any actual or alleged bodily injury, sickness, disease, or death of any person, including loss of consortium, support, companionship or services of any kind, or damage to or destruction of any tangible property including loss of its use, except that this exclusion does not apply to any **Claim** for emotional distress or mental anguish;

#### B. ERISA

For any actual or alleged violation of any of the responsibilities, obligations or duties imposed by the **ERISA** or any amendment thereto or any similar provision of any federal, state or local statutory law or common law imposed upon the fiduciary of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Company**;

#### C. FLSA

For any actual or alleged violation of any of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, or the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject of the foregoing acts and any rule, regulation and amendment thereto;

#### D. FRAUD

Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any deliberately fraudulent act or omission or any deliberate violation of any statute or regulation committed by an **Insured**;

#### E. ILLEGAL PROFIT

Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving an **Insured** gaining any profit, remuneration or financial advantage to which such **Insured** was not legally entitled;

#### F. INDEPENDENT CONTRACTOR SERVICES AGREEMENT

For any actual or alleged breach of any **Independent Contractor Services Agreement**;

#### G. LABOR DISPUTE

Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any lockout, strike, picket line, hiring of any replacement worker or other similar action in connection with any labor dispute or labor negotiation;

#### H. LIABILITY ASSUMED UNDER CONTRACT

For an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, however, this exclusion will not apply to liability that would attach to the **Insured** even in the absence of a contract or agreement;

#### I. OUTSIDE CAPACITY



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For service by an **Insured Person** in any position or capacity in any organization other than the **Company** even if any **Insured** directed or requested the **Insured Person** to serve in such other position or capacity;

#### J. POLLUTION

Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

1. The actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
2. Any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

#### K. PRIOR NOTICE

Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

1. Any fact, circumstance, situation, transaction, event or **Wrongful Act** that was the subject of any written notice given prior to inception of this Policy;
2. Any written demand, suit or proceeding pending, or order, decree or judgment entered against any **Insured**, or any written request made to any **Insured** to toll or waive a statute of limitations, or any Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs and made against an **Insured**, on or prior to the Pending & Prior Litigation Date set forth in Item 7 of the Declarations, or any **Wrongful Act**, fact, circumstance, situation, transaction, event underlying or alleged therein; or
3. Any other **Wrongful Act** whenever occurring, that, together with a **Wrongful Act** described in Sub-Clauses 1 or 2 above, would constitute **Interrelated Wrongful Acts**; and

#### L. SUBSIDIARY – PRIOR & SUBSEQUENT

Against a **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring:

1. Prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**; or
2. While such entity was a **Subsidiary** that together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.

### V. CONDITIONS

#### A. ALLOCATION

If in any **Claim** an **Insured** incurs both **Loss** covered by this Policy and loss not covered by this Policy either because the **Claim** against the **Insured** includes both covered and uncovered matters or because the **Claim** is made against both **Insured** who are afforded coverage for such **Claim** and others, including the **Insured**, who are



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not afforded coverage for such **Claim**, the **Insured** and the Insurer will use their best efforts to allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters; provided however that one hundred percent (100%) of any such **Defense Costs** will be allocated to covered **Loss** if and to the extent such **Defense Costs** are incurred by the covered **Insured** and are in part covered and in part not covered by this Policy solely because the **Claim** against the **Insured** includes both covered and uncovered matters.

Nothing in this Section V, Conditions, Clause A, Allocation, will limit, waive or remove the rights of any **Insured** or the Insurer to assert claims for indemnity or contribution against third parties pursuant to any statutory or common law or any provision of this Policy.

In any arbitration, suit or other proceeding among the Insurer and the **Insured** or the **Company**, no presumption will exist concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.

#### B. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this Policy will be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Insurer.

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

The titles and headings to the various sections, subsections, clauses, sub-clauses and endorsements of this Policy, as well as the schedule of endorsements attached to this Policy, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

#### C. AUTHORIZATION

By acceptance of this Policy, the Named Insured agrees to act on behalf of all **Insureds** with respect to giving and receiving notices of **Claim** or termination, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy (except notices to apply for the **Extended Reporting Period**), and the **Insured** agree that the Named Insured will act on their behalf.

#### D. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** will not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

In the event that a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Company** and the **Insured Persons** hereby:

1. Waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such bankruptcy law; and



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2. Agree to not oppose or object to any effort by the Insurer, the **Company** or any **Insured Person** to obtain relief from any such stay or injunction.

#### E. CANCELLATION

1. During the Policy Period and provided there has not been a **Change In Control**, the Named Insured may cancel this Policy by surrender of this Policy to the Insurer or by giving prior written notice to the Insurer stating when such cancellation will take effect.
2. The Insurer may cancel this Policy only for nonpayment of premium. In such event, the Insurer will mail written notice of cancellation for nonpayment of premium to the Named Insured. Such notice will state the effective date of cancellation, which will not be less than fifteen (15) days after mailing such notice.
3. In the event of cancellation by:
  - a. The Named Insured, the Insurer will refund the unearned premium computed at the customary short rate; and
  - b. The Insurer, the Insurer will refund the unearned premium computed pro rata.

The Insurer's payment or tender of any unearned premium will not be a condition precedent to the effectiveness of such cancellation, but such payment will be made as soon as practicable.

#### F. CHANGES IN STATUS OF ENTITY

##### 1. CHANGE IN CONTROL

- a. If there is a **Change In Control** no coverage will be afforded to any **Claim** made against any **Insured** based in whole or in part of any **Wrongful Act** occurring subsequent to the date of such happening.
- b. If and when there has been a **Change In Control**, the premium will be deemed fully earned and the Policy Period will remain unaltered.

##### 2. NEW ENTITY

- a. If before or during the Policy Period the **Company** acquires or creates a new **Subsidiary** or acquires an entity by merger or consolidation, coverage under this Policy will automatically apply to: (i) such new entity; (ii) such new entity's subsidiaries; and (iii) such new entity's and such new entity's subsidiaries' directors, officers, trustees and employees, but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation.
- b. However, if: (i) such newly acquired entity is a financial institution, healthcare entity or is publicly owned; (ii) the total assets of such newly acquired entity exceeds fifty percent (50%) of the total assets of the Named Insured as reflected in their respective most recent audited consolidated financial statements; or (iii) the total number of **Employees** of all **Companies** increases by more than fifty percent (50%) as an immediate result of such acquisition, merger or consolidation, then coverage under this Policy will apply only if the Insurer agrees to afford such coverage pursuant to paragraph c. below.



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- c. The Insurer may agree to extend the coverage described in paragraph b. above to the new entities and persons described in paragraph b. above and its **Insureds** if, within ninety (90) days after the acquisition, the Named Insured provides any additional information, pays any additional premium and agrees to any additional terms and conditions reasonably required by the Insurer for such extension of coverage. In such event, the Insurer will issue an endorsement to this Policy confirming such coverage extension.
- d. There will be no coverage under this Policy for any **Wrongful Act** by any person considered to be a covered **Insured Person(s)** pursuant to paragraph a. above, where such **Wrongful Act** occurred in whole or in part before the effective date of such acquisition, creation or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Act** occurring before such date, would be considered **Interrelated Wrongful Acts**.

#### G. DEFENSE, SETTLEMENT AND COOPERATION

##### 1. DEFENSE AND SETTLEMENT

The Insurer will have the right and duty to defend any **Claim** for which coverage applies or may apply. This duty will apply even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend any **Claim** will cease upon exhaustion of the applicable Limit of Liability. Further, and where permissible by law, the Insurer reserves its right to recoup any and all **Defense Costs** related to the defense of any non-covered **Claim** or the defense of any non-covered aspect of a **Claim**.

The **Insured** agrees not to offer to settle or to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation, admit any liability or stipulate to any judgment with respect to any **Claim** without the Insurer's written consent, which will not be unreasonably withheld. The Insurer will not be liable for or as a result of any offer to settle, settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent.

The Insurer may, with the consent of the **Insured**, make any settlement of any **Claim** covered under this Policy that the Insurer deems expedient. However, if the **Insured** against whom the **Claim** is made withholds consent to any settlement acceptable to the claimant and recommended by the Insurer (a "Proposed Settlement"), the Insurer's liability for all **Loss**, including **Defense Costs**, incurred by such **Insured** on account of such **Claim** will not exceed:

- a. The amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to Proposed Settlement of such **Claim**; and
- b. Eighty percent (80%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a. above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limit of Liability.

Notwithstanding anything to the contrary contained in Section V, Conditions, Clause A, Allocation, the remaining twenty percent (20%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a. above will be borne by the **Insured** uninsured and at its own risk.

##### 2. COOPERATION





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The **Insureds** agree to provide the Insurer with all: information; assistance; and cooperation, that the Insurer reasonably requests and agree that in the event of a **Claim**, the **Insureds** will do nothing that will prejudice the Insurer's position or its potential or actual rights of recovery.

#### H. ECONOMIC OR TRADE SANCTION

If coverage for a **Claim** under this Policy is in violation of any United States of America economic or trade sanction, including but not limited to, any sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control (OFAC), then coverage for that **Claim** will be deemed null and void.

#### I. LIMITS OF LIABILITY, DEFENSE COSTS, RETENTION AND SINGLE CLAIM

##### 1. GENERAL AGGREGATE LIMIT OF LIABILITY

The amount set forth in Item 4 A of the Declarations will be the Insurer's maximum aggregate liability for all **Loss** covered under this Policy, regardless of the number of **Claims**, the number of persons or entities included in the definition of **Insured**, the number of claimants who make **Claims**, or the number of **Insureds** named as defendants in any **Claim**.

##### 2. PER CLAIM LIMIT OF LIABILITY

Subject to the General Aggregate Limit of Liability described above, the amount stated in Item 4 B of the Declarations is the Insurer's liability for all **Loss** for any one **Claim**.

##### 3. SUBLIMITS OF INSURANCE

###### a. Subpoena Expense Coverage & Trial Attendance Coverage Aggregate

Subject to the General Aggregate Limit of Liability described above, the amount set forth in Item 4 C of the Declarations will be the Insurer's maximum aggregate liability for all:

- (i) Reasonable and necessary costs covered under Insuring Agreement B of this Policy, Subpoena Expense Coverage; and
- (ii) **Trial Attendance Costs** covered under Insuring Agreement C of this Policy, Trial Attendance Costs Coverage.

###### c. Per Day Trial Attendance Coverage

Subject to the Subpoena Expense Coverage & Trial Attendance Coverage Aggregate Limit of Liability described above, the amount set forth in Item 4 D of the Declarations will be the Insurer's maximum aggregate liability for all **Trial Attendance Costs** incurred in any one day and covered under Insuring Agreement C of this Policy, Trial Attendance Costs Coverage.

##### 4. DEFENSE COSTS WITHIN LIMIT OF LIABILITY

**Defense Costs** are part of and not in addition to the Limits of Insurance applicable to this Policy, and the payment by the Insurer of **Defense Costs** reduces such Limits of Insurance. If the applicable Limit of Liability



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is exhausted by payment of **Loss**, the Insurer's obligations, including without limitation its duty to defend, will be completely fulfilled and extinguished.

#### 5. RETENTION

With respect to each and every **Claim**, the Insurer's liability to pay **Loss** will apply in excess of the Retention stated in Item 5 of the Declarations. The **Insured** must bear the amount of the Retention. The Insurer will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of the Retention amount on behalf of any **Insured**.

#### 6. SINGLE CLAIM

All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** will be considered one **Claim**, which will be considered first made on the date the earlier of:

- a. The date on which the earliest such **Claim** was first made; or
- b. The first date valid notice was given to the Insurer of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction that underlies any such **Claim**.

#### J. OTHER INSURANCE AND INDEMNIFICATION

1. This Policy will be specifically excess over, and will not contribute with, any Retention and other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess (except insurance specifically excess of this Policy), contingent or otherwise.
2. Notwithstanding the foregoing, with specific regard to any **Employee** that is a leased employee or **Independent Contractor**, this Policy will be specifically excess of any indemnification or insurance otherwise available to such leased employee or **Independent Contractor** from the applicable leasing company or any other source.
3. The **Insured** agrees that it will use its best effort to promptly enforce any and all rights any **Insured Person** has to indemnification by any entity other than the **Company**.
4. This Policy will not be subject to any of the terms of any other insurance.

#### K. REPORTING AND NOTICE REQUIREMENTS

##### 1. CLAIMS' NOTICE

The **Insured** will, as a condition precedent to its rights under this Policy, give the Insurer notice in writing of any **Claim** made during the Policy Period or the **Extended Reporting Period** (to the extent applicable). Such notice will be given as soon as practicable but in no event later than ninety (90) days after the chief executive officer, chief financial officer, in-house general counsel or risk manager of the **Company** becomes aware of such **Claim**.

However, and notwithstanding the foregoing, failure to give written notice of a **Claim** within the time prescribed above will not invalidate the subject **Claim** if the **Insured** it prove that it was not reasonably



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possible for such **Insured** to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter; and

Further, in a situation where the failure to give written notice of a **Claim** within the time prescribed above:

- a. Was not due to it not being reasonably possible for such **Insured** to give such notice within the prescribed time; or
- b. It was due to it not being reasonably possible for such **Insured** to give such notice within the prescribed time but once it was possible to give such notice the Insured failed to give such notice as soon as was reasonably possible thereafter,

the Insurer still will not deny coverage on the basis of late notice unless the Insurer was prejudiced thereby.

#### 2. NOTICE OF CIRCUMSTANCES

If, during the Policy Period or during the **Extended Reporting Period** (to the extent applicable), the **Insured** becomes aware of any circumstance that may reasonably be expected to give rise to a **Claim** against the **Insured** and the **Insured** gives written notice to the Insurer of the subject circumstance and the reason the **Insured** anticipates that such may result in a **Claim**, with full particulars as to dates, persons and entities involved therein, then if any **Claim** related to such circumstance is subsequently made against such **Insured** and reported to the Insurer in accordance with sub-clause 1 above, Claims Notice, such **Claim** will be considered made at the time such notice of circumstance was first given to the Insurer.

#### L. SUBROGATION

In the event of any payment under this Policy, the Insurer will be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, including without limitation, any right of recovery from the **Company** for **Loss** incurred by **Insured Person** that is indemnifiable by the **Company**. The **Insureds** will execute all papers required and will do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**.

In any subrogation **Claim** against the **Company** to enforce an **Insured Person's** right of indemnification, the shareholder and board of director resolutions of the **Company** will be deemed to provide indemnification to the fullest extent permitted by law, and the Insurer's recovery from the **Company** for such **Loss** will not exceed the Retention applicable to the **Company** for such **Loss**.

#### M. VALUATION

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 a judgment is rendered, a 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 will be made in United States dollars at the rate of exchange 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.

#### N. WORLDWIDE COVERAGE



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Coverage under this Policy will extend to **Wrongful Acts** taking place, **Loss** incurred or **Claims** made anywhere in the world, to the extent legally permitted.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary, but the same will not be binding upon the Company unless countersigned by a duly authorized representative of the Insurer.

A handwritten signature in black ink that reads "Naren Anand".

\_\_\_\_\_  
President

A handwritten signature in black ink that reads "Jiri R. A. I.".

\_\_\_\_\_  
Secretary

SAMPLE