

ARCH ESSENTIAL EPLSM
EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

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In consideration of the payment of the premium, the Insurer specified in the Declarations (the “**Insurer**”) and the **Insureds** agree as follows:

1. INSURING AGREEMENTS

Other than as specified in Section 3. EEOC Charge & Written Demand Continuity Protection, coverage under this Policy is limited to **Claims** first made during the **Policy Period** or Extended Reporting Period, if applicable:

A. Employment Practices Liability

The **Insurer** shall pay **Loss** on behalf of an **Insured** resulting from a **Claim** first made against such **Insured** during the **Policy Period** or Extended Reporting Period, if applicable, for an **Employment Practices Wrongful Act**.

B. Third Party Liability

If Third Party Liability Coverage is elected in Item 3 of the Declarations, the **Insurer** shall pay **Loss** on behalf of an **Insured** resulting from a **Claim** first made against such **Insured** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Third Party Wrongful Act**.

2. CLAIM DEFINITION & RELATED CLAIMS

A. “Claim” means any:

1. written demand for monetary damages or non-monetary relief commenced by the receipt by any **Insured** of such demand;
2. civil proceeding, including, without limitation, a lawsuit, arbitration or alternative dispute resolution proceeding, commenced by the receipt by, or service upon, any **Insured** of a complaint, demand for arbitration, request for mediation, or similar document;
3. administrative or regulatory proceeding, including, without limitation, any proceeding before the Equal Employment Opportunity Commission, any state or local fair employment practices agency, or the Office of Federal Contract Compliance Programs, commenced by the receipt by, or service upon, any **Insured** of an **EEOC Charge**, notice of charges, order to show cause or similar document;
4. administrative or regulatory investigation of any **Insured** commenced by the receipt by, or service upon, any **Insured** of a formal investigative order; or
5. written request to an **Insured** to toll or waive a period or statute of limitations regarding a potential **Claim** as described above commenced by the receipt by any **Insured** of such request.

Notwithstanding the above, **Claim** excludes any: (i) criminal proceeding or investigation; (ii) labor or grievance proceeding initiated pursuant to a collective-bargaining agreement; or (iii) audit by the Office of Federal Contract Compliance Programs.

- B.** All **Claims** for the same **Wrongful Act** or any **Interrelated Wrongful Acts** (each a “Related Claim”) shall be deemed to be a single **Claim** first made on the earliest date that:
1. any of such **Claims** was commenced, even if such date is before the **Policy Period**;
 2. proper notice of such **Wrongful Act** or any **Interrelated Wrongful Act** was given to the **Insurer** pursuant to Section 12.B; or
 3. notice of any fact, circumstance, or situation including such **Wrongful Act** or any **Interrelated Wrongful Act** was given under any prior employment practices liability, management liability, or similar liability insurance policy.

3. EEOC CHARGE & WRITTEN DEMAND CONTINUITY PROTECTION

- A.** Notwithstanding Section 2. Claim Definition & Related Claims, B.1 above, if a **Prior EPL Policy** is listed in Item 8 of the Declarations and a **Claim** for an **Employment Practices Wrongful Act** that is an **EEOC Charge** or **Written Demand** was commenced during the policy period of such **Prior EPL Policy** and notice of such **EEOC Charge** or **Written Demand** was not given under such **Prior EPL Policy**, then:

1. such **EEOC Charge** or **Written Demand**; and
2. any Related Claim to such **EEOC Charge** or **Written Demand** that is commenced during the **Policy Period** and is a: (i) civil lawsuit, arbitration or alternative dispute resolution proceeding; (ii) administrative or regulatory proceeding; or (iii) administrative or regulatory investigation (each a “Subsequent Related Claim”),

shall be deemed a **Claim** first made during the **Policy Period**.

- B.** Coverage for any **EEOC Charge**, **Written Demand**, or Subsequent Related Claim described in A above shall only be available if:

1. no **Claim Manager** was aware of such **EEOC Charge** or **Written Demand** prior to the expiration of the time to give notice of such **Claim** under the **Prior EPL Policy**;
2. no Related Claim to such **EEOC Charge** or **Written Demand** that is a: (i) civil lawsuit, arbitration or alternative dispute resolution proceeding; (ii) administrative or regulatory proceeding; or (iii) administrative or regulatory investigation, was commenced prior to the **Policy Period**;
3. such **EEOC Charge** or **Written Demand** would have been covered under the **Prior EPL Policy** had notice of such **Claim** been given under the **Prior EPL Policy**; and
4. written notice is given to the **Insurer** of such **Claim** no later than 60 days after the earlier of: (i) the date that any **Claim Manager** became aware of such **Claim**; or (ii) the end of the **Policy Period**.

- C.** Coverage for any **EEOC Charge**, **Written Demand**, or Subsequent Related Claim described in A above shall only apply to **Loss** incurred after the earliest date that: (i) any **Claim Manager** became aware of such **EEOC Charge** or **Written Demand**; or (ii) the date the Subsequent Related Claim was commenced. The maximum coverage available under this Policy for any such **EEOC Charge**, **Written Demand**, or Subsequent Related Claim shall be the lesser of the coverage available under the **Prior EPL Policy** or this Policy taking into account all of the terms, conditions and exclusions of each policy, including, without

limitation, the applicable retention and available limit of liability under each policy as reduced by payments of **Loss**.

4. DEFINITIONS

The following terms shall have the meanings specified below:

- A. “Application”** means the application for this Policy, including any information submitted in connection with or incorporated therein. **“Application”** also means any application, including any information submitted in connection with or incorporated therein, for any insurance policy in an uninterrupted series of policies issued by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, of which this Policy is a direct or indirect renewal or replacement.
- B. “Claim Manager”** means any:
1. chief executive officer;
 2. chief financial officer;
 3. member of the in-house risk management or law departments; or
 4. director of the human resources department,
- of the **Named Organization**, including any functionally equivalent positions.
- C. “Class Action Claim”** means a **Claim** that is a civil proceeding:
1. pursuant to Rule 23 of the Federal Rules of Civil Procedure or any similar law; or
 2. by a governmental agency alleging discrimination involving one or more classes or groups of **Employees**, applicants for employment with any **Insured Organization**, **Independent Contractors**, or **Third Parties**.
- D. “Defense Costs”** means reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**. **Defense Costs** shall include the premium for any appeal, attachment or similar bond, provided that the **Insurer** shall have no obligation to issue such bond. **Defense Costs** shall not include any compensation, benefit expenses, or overhead of any **Insureds**.
- E. “Domestic Partner”** means any natural person who is, was, or becomes a domestic partner under any federal, state or local law or under the provisions of any formal program established by an **Insured Organization**.
- F. “EEOC Charge”** means any written charge filed by an **Employee**, applicant for employment with any **Insured Organization**, or **Independent Contractor** with the Equal Employment Opportunity Commission or any state or local fair employment practices agency. **EEOC Charge** excludes any lawsuit, proceeding, or investigation initiated by the Equal Employment Opportunity Commission or any state or local fair employment practices agency.
- G. “Employee”** means any natural person who is, was, or becomes employed by an **Insured Organization**, including full time, part-time, seasonal, leased, loaned, and temporary employees as well as volunteers, in their capacity as such. **Employee** excludes any **Independent Contractor**.

H. “Employment Practices Wrongful Act” means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment, including constructive dismissal, discharge, or termination;
2. employment discrimination based on age, gender, race, color, national origin, religion, creed, sexual orientation or preference, marital status, gender identity or expression, pregnancy, disability, health status, HIV status, military or veteran status, genetic makeup, political affiliation, or any other protected status specified under federal, state or local law;
3. sexual or other workplace harassment, including, without limitation, hostile work environment, bullying, or quid-pro-quo;
4. wrongful deprivation of a career opportunity, demotion, failure to employ or promote, discipline of employees, or failure to grant tenure;
5. breach of any oral, written, or implied employment contract or agreement including, without limitation, any obligation arising out of any employee manual, handbook, or policy statement;
6. **Retaliation**;
7. violation of the Family and Medical Leave Act; or
8. provided that the following conduct relates to matters described in paragraphs 1 through 7 above:
 - a. invasion of privacy;
 - b. infliction of emotional distress or mental anguish;
 - c. employment related defamation, including, without limitation, a negative or defamatory employment reference;
 - d. employment related misrepresentation;
 - e. failure to provide or enforce adequate or consistent corporate employment policies and procedures; or
 - f. negligent hiring, retention, supervision, evaluation or training of **Employees**,

committed or attempted: (i) against any **Employee**, applicant for employment with any **Insured Organization**, or **Independent Contractor**; and (ii) by any **Insured Person** in their capacity as such or any **Insured Organization**.

Without limitation, the conduct described in 1 through 8 above shall include matters carried out by any means in any location, including the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected: (i) on or off the premises of any **Insured Organization**; or (ii) through any computer or device owned or leased by any **Insured Organization**, **Insured Person**, or others.

I. “Independent Contractor” means a natural person who is, was, or becomes engaged as an independent contractor of an **Insured Organization**, in their capacity as such, pursuant

to an express contract or agreement with the **Insured Organization** governing the nature of such person's engagement.

J. "Insolvency" means the status of any **Insured Organization** due to:

1. the appointment of any conservator, liquidator, receiver, trustee, or similar official to control, supervise, or liquidate such **Insured Organization**; or
2. such **Insured Organization** becoming a "debtor-in-possession" as defined in Chapter 11 of the United States Bankruptcy Code or any similar law.

K. "Insured Organization" means:

1. the **Named Organization**; or
2. any **Subsidiary**,

including any such organization as a "debtor-in-possession" as such term is defined in Chapter 11 of the United States Bankruptcy Code or any similar law.

L. "Insured Person" means any:

1. natural person who is, was, or becomes a duly elected or appointed director, officer, trustee or member of the board of managers or management committee of an **Insured Organization**, in their capacity as such, including any natural person who holds a position equivalent to the foregoing described offices in an **Insured Organization** organized outside the United States of America;
2. **Employee**; or
3. **Independent Contractor** if, within 30 days of a **Claim** being made against such person, an **Insured Organization** agrees in writing to indemnify such person for such **Claim**.

A person acts in an insured capacity only during the time that such person occupies the positions described in 1 through 3 above. After termination of employment or service with an **Insured Organization**, an **Insured Person** remains an **Insured Person** for any **Wrongful Act** occurring prior to termination of employment or service.

M. "Insureds" means any:

1. **Insured Organization**; or
2. **Insured Person**.

N. "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.

O. "Loss" means **Defense Costs**, damages (including front and back pay), settlements, judgments (including awards of claimant attorneys fees), and pre- and post-judgment interest.

The following items are specifically included in, or excluded from, **Loss**:

1. **Loss** includes any:
 - a. punitive, exemplary or multiple damages; or
 - b. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act.

Notwithstanding 2.e below, the insurability of the above types of **Loss** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such **Loss**.

2. **Loss**, other than **Defense Costs**, excludes any:
 - a. fines or penalties imposed by law;
 - b. taxes;
 - c. amount for which the **Insureds** are not liable or for which the claimants are without legal recourse to the **Insureds**;
 - d. non-monetary relief;
 - e. matters that are uninsurable pursuant to applicable law;
 - f. future compensation of a claimant who was, is or shall be hired, promoted or reinstated to employment;
 - g. employment-related benefits (including, without limitation, retirement benefits, perquisites, vacation or sick days, medical or insurance benefits, stock benefits, stock options, stock appreciation rights, deferred compensation or any other type or compensation other than salary, wages or bonus compensation);
 - h. costs of any accommodation required by the Americans with Disabilities Act or any similar law;
 - i. employment termination severance payments other than any payments negotiated with and consented to by the **Insurer** as part of a settlement; or
 - j. compensation earned by, or due to, a claimant in the course of employment but not paid, other than back pay or front pay.

P. “**Named Organization**” means the organization named in Item 1 of the Declarations.

Q. “**Policy Period**” means the period specified in Item 2 of the Declarations, subject to any cancellation prior to the scheduled expiration date.

R. “**Prior EPL Policy**” means the policy immediately preceding this Policy as specified in Item 8 of the Declarations.

S. “**Retaliation**” means any negative treatment of an **Employee** in response to an **Employee**:

1. exercising his or her rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;

2. refusing to violate any law;
3. assisting, testifying in, or cooperating with, a proceeding or investigation regarding alleged violations of law;
4. disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
5. filing any claim under the False Claims Act, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any similar law that protects a “whistleblower”.

T. “Subsidiary” means any:

1. corporation while the **Named Organization** owns, either directly or indirectly, more than 50% of the voting, appointment or designation power for the selection of a majority of its board of directors;
2. limited liability company while the **Named Organization** owns, either directly or indirectly, more than 50% of the voting, appointment or designation power for the selection of a majority of its management board;
3. limited partnership while:
 - a. the **Named Organization** owns, either directly or indirectly, more than 50% of its limited partnership interests; and
 - b. the **Named Organization** or any corporation or limited liability company described in 1 or 2 above is the sole general partner of such limited partnership; or
4. not-for-profit entity, including, without limitation, any foundation or charitable trust, while the **Named Organization** exclusively sponsors such entity or organization.

U. “Third Party” means any natural person who is, was, or becomes a customer, vendor, service provider or other business invitee of any **Insured Organization. **Third Party** shall not any include any **Insured Person**.**

V. “Third Party Wrongful Act” means any actual or alleged:

1. discrimination or sexual harassment directed against a **Third Party**; or
2. violation of civil rights relating to such discrimination or harassment,

by any **Insured Person** in their capacity as such or by any **Insured Organization**.

Without limitation, the conduct described in 1 and 2 above shall include matters carried out by any means in any location, including, without limitation, the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected (i) on or off the premises of any **Insured Organization**; or (ii) through any computer or device owned or leased by any **Insured Organization**, **Insured Person**, or others.

W. “Written Demand” means any **Claim that is a written demand or request as described in Section 2. Claim Definition & Related Claims, A.1 or 5.**

- X. **“Wrongful Act”** means any **Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

5. **COVERAGE TERRITORY**

This Policy shall apply on a worldwide basis.

6. **SPOUSAL, DOMESTIC PARTNER, ESTATE AND LEGAL REPRESENTATIVE COVERAGE**

Subject to the provisions of this Policy, coverage shall apply to a **Claim** made against the lawful spouse or **Domestic Partner** of an **Insured Person**, or if an **Insured Person** dies, becomes incapacitated, or files for bankruptcy, such **Insured Person’s** estate, heirs, assigns, or legal representatives, provided that:

- A. such **Claim** arises solely out of:
1. such person’s status as a spouse, **Domestic Partner**, trustee, beneficiary, heir, assignee or legal representative of such **Insured Person**; or
 2. such person’s ownership of property sought as recovery for a **Wrongful Act**;
- B. the **Insured Person** is named in such **Claim** along with such persons or entities; and
- C. no coverage shall apply to any **Claim** for a **Wrongful Act** of such persons or entities.

Coverage for such **Claim** shall be on the same terms and conditions (including, without limitation, the Retention) as apply to the **Claim** made against the **Insured Person**.

7. **EXTENDED REPORTING PERIOD**

- A. If the **Insurer** or **Named Organization** shall refuse to renew this Policy for any reason other than non-payment of premium, or if the **Named Organization** shall cancel this Policy, the **Insureds** shall have the right, upon payment of the additional premium stated in Item 6 of the Declarations, to a continuation of the coverage afforded by this Policy for the additional period stated in Item 6 of the Declarations (the “Extended Reporting Period”). If elected, the Extended Reporting Period shall commence upon the effective date of such nonrenewal or cancellation. Such continuation of coverage shall apply only to a **Claim**, otherwise covered by this Policy, first made against the **Insureds** during the Extended Reporting Period for a **Wrongful Act** occurring prior to the end of the **Policy Period**.
- B. The rights contained in this section shall terminate unless a written notice of election together with the additional premium due is received by the **Insurer** within 30 days after the effective date of nonrenewal or cancellation.
- C. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D. There is no separate limit of liability for the Extended Reporting Period.

8. **EXCLUSIONS**

A. **General Exclusions**

The **Insurer** shall not pay **Loss**:

1. in connection with any **Claim** arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any employment practices liability, management liability, or similar liability insurance policy;
2. in connection with any **Claim** arising from, based upon, or attributable to any: (i) written demand, suit or proceeding made or initiated against any **Insured** on or prior to the applicable Prior Litigation Date in Item 7 of the Declarations; or (ii) any **Wrongful Act** described in any such demand, suit or proceeding or any **Interrelated Wrongful Acts** thereto;
3. for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof, provided that this exclusion shall not apply to any **Loss** resulting from emotional distress or mental anguish;
4. for any violation of: (i) any workers' compensation, unemployment, social security, disability or pension benefits laws; (ii) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof); (iii) the National Labor Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, or (vii) any similar laws to those mentioned in (i) through (vi) above, provided that this exclusion shall not apply to **Loss** resulting from **Retaliation**;
5. in connection with any **Claim** arising from, based upon, or attributable to any: (i) violation of the Fair Labor Standards Act (except the Equal Pay Act) or any similar law; (ii) overtime compensation; (iii) on-call time compensation, including, without limitation, compensation for waiting time and dressing time; (iv) minimum wage compensation; (v) classification of employees for the purpose of determining eligibility for overtime, on-call time, and minimum wage compensation; (vi) meal and rest periods; or (vii) maintenance of accurate records, provided that this exclusion shall not apply to **Loss** resulting from **Retaliation**;
6. in connection with any **Claim** arising from, based upon, or attributable to any liability under any contract or agreement, provided that this exclusion shall not apply to: (i) the extent that liability would have been incurred in the absence of such contract or agreement; or (ii) **Defense Costs**; or
7. in connection with any **Claim** arising from, based upon, or attributable to any breach of contract or agreement specifying the terms of an **Insured Organization's** engagement of an **Independent Contractor**.

B. Third Party Liability Exclusion

Regarding Insuring Agreement B, the **Insurer** shall not pay **Loss** in connection with any **Claim** arising from, based upon, or attributable to any price discrimination or violation of any anti-trust law or other law designed to protect competition or prevent unfair trade practices.

9. LIMIT OF LIABILITY

- A.** The Limit of Liability specified in Item 4.A of the Declarations is the maximum aggregate amount that the **Insurer** shall pay for all **Loss** under this Policy. If the Limit of Liability is exhausted, the premium for this Policy shall be fully earned.

- B. The Limit of Liability specified in Item 4.B of the Declarations is the maximum aggregate amount that the **Insurer** shall pay for all **Loss** under Insuring Agreement B. The Limit of Liability specified in Item 4.B of the Declarations is part of, and not in addition to, the Limit of Liability specified in Item 4.A of the Declarations.
- C. **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the **Insurer** shall reduce each applicable Limit of Liability.

10. RETENTION

- A. The **Insurer** shall pay **Loss** arising from each **Claim** covered under this Policy only to the extent that such **Loss** exceeds the applicable Retention specified in Item 5 of the Declarations.
- B. The Retention shall be borne by the **Insureds** uninsured at the **Insureds'** own risk.
- C. If a **Claim** is subject to multiple Retentions, the total Retention for such **Claim** shall be the largest applicable Retention.
- D. No Retention shall apply to any **Loss** incurred by an **Insured Person** that all **Insured Organizations** cannot indemnify because of **Insolvency**.

11. DEFENSE OF CLAIMS

- A. It shall be the duty of the **Insureds** to defend any **Claim**, provided that the **Insurer** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim** and make any investigation it deems appropriate.
- B. At the written request of the **Insureds**, the **Insurer** shall advance on a current basis **Defense Costs** excess of the applicable Retention, provided that the **Insureds** shall repay such **Defense Costs** if it is subsequently determined that such **Defense Costs** are not covered under this Policy.
- C. The **Insureds** shall not admit nor assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any admission, assumption, offer, settlement, stipulation, or **Defense Costs** to which it has not consented. Notwithstanding the foregoing, the **Insureds** may make any settlement offer and enter into any settlement agreement for any **Claim** without the prior written consent of the **Insurer** if the total **Loss** resulting from such **Claim** is less than 50% of the applicable Retention specified in Item 5 of the Declarations.
- D. The **Insurer** may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If any **Insureds** refuse to consent to the settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, then the **Insurer** shall not pay **Loss** for such **Claim** in excess of the sum of:
 - 1. the amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
 - 2. 80% of **Loss** incurred for such **Claim** in excess of the amount specified in 1. above.
- E. The **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request.

12. CLAIM AND POTENTIAL CLAIM NOTICES

- A. As a condition precedent to coverage, the **Insureds** shall give the **Insurer** written notice of any **Claim** as soon as practicable after any **Claim Manager** becomes aware of such **Claim**, but no later than: (i) 60 days after the end of the **Policy Period**; or (ii) the end of the Extended Reporting Period, if applicable. Notwithstanding the foregoing, if the **Insurer** provides written notice that this Policy is being canceled for nonpayment of premium, then written notice of any **Claim** shall be given to the **Insurer** prior to the effective date of termination.
- B. If any **Insured** becomes aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against an **Insured** and if written notice of such **Wrongful Act** is given to the **Insurer** during the **Policy Period** specifying the (i) reasons for anticipating such a claim, (ii) nature and date of such **Wrongful Act**, (iii) identity of the **Insureds** involved, (iv) injuries or damages sustained, (v) names of potential claimants, and (vi) manner in which the **Insureds** first became aware of the **Wrongful Act**, any **Claim** subsequently arising from such **Wrongful Act** shall be deemed a **Claim** first made during the **Policy Period**.

13. ALLOCATION

- A. If the **Insureds** incur **Loss** that is only partially covered by this Policy because a **Claim** includes both covered and uncovered matters or is made against both covered and uncovered parties, then the **Insurer** and the **Insureds** shall use their best efforts to allocate such **Loss** based upon: (i) the relative legal and financial exposures of any covered and uncovered parties or covered and uncovered matters; and (ii) if a settlement occurs, the relative benefit of the parties from settlement of such covered and uncovered portions of such **Claim**.
- B. If the **Insurer** and the **Insureds** cannot agree on the amount of **Defense Costs** to be advanced under this Policy, then the **Insurer** shall advance on a current basis the **Defense Costs** it believes to be covered under this Policy, if any, until a different amount shall be agreed upon or determined pursuant to this Policy and applicable law.

14. SUBROGATION

- A. The **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the **Insurer's** position or any rights of recovery.
- B. The **Insurer** shall not subrogate against any **Insured**.

15. OTHER INSURANCE

- A. Coverage under this Policy shall be primary to all other insurance other than insurance issued:
 - 1. on an insurer duty to defend basis; or
 - 2. to any company furnishing any leased employees to an **Insured Organization**.
- B. Regarding the insurance described in 1 and 2 above, coverage under this Policy shall apply only in excess of such other insurance regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise, unless such other insurance is written

specifically excess of this Policy by reference in such other insurance to this Policy's Policy Number.

16. CHANGES IN CONTROL

A. Takeover of Named Organization

If, during the **Policy Period**:

1. any person or entity or group of persons and/or entities acting in concert acquires securities or voting rights resulting 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 **Named Organization**; or
2. the **Named Organization** merges into or consolidates with another organization such that the **Named Organization** is not the surviving organization,

then coverage shall continue under this Policy, but only for **Wrongful Acts** occurring before such transaction. No coverage shall be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, the entire premium for this Policy shall be deemed fully earned. The **Insureds** shall give the **Insurer** written notice of such transaction as soon as practicable, but not later than 90 days after the effective date of such transaction.

B. Acquisition or Creation of a Subsidiary

If, during the Policy Period, any Insured Organization:

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

then such newly created, acquired or merged organization and its **Insureds** shall be covered for any **Wrongful Act** occurring after such acquisition, merger or creation. No coverage shall be available for any **Wrongful Act** of any new **Insureds** occurring before such transaction or for any **Interrelated Wrongful Acts** thereto.

If the number of employees of any newly acquired or merged organization exceeds 25% of the number of employees of all **Insured Organizations** combined prior to such acquisition or merger, then the **Named Organization** shall give the **Insurer** written notice of the acquisition or merger as soon as practicable but not later than 90 days after the effective date of such transaction. Subject to the expiration of the **Policy Period**, any continuation of coverage for such newly acquired or merged entity and its **Insureds** beyond 90 days after the transaction shall be subject to any additional terms and conditions, including additional premium, required by the **Insurer**. The **Insureds** shall furnish all information regarding such transaction as the **Insurer** shall request.

C. Loss of Subsidiary Status

If, during or prior to the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage for such entity and its **Insured Persons** shall continue until termination of this Policy but only for any **Wrongful Act** occurring prior to the date such entity ceased to be a **Subsidiary**.

17. APPLICATION & SEVERABILITY

- A. The **Insureds** represent that the information contained in the **Application** is true, accurate and complete. This Policy is issued in reliance upon the truth of the material representations contained in the **Application**. If the **Application** contains misrepresentations or omissions made with intent to deceive or that materially affect the acceptance of the risk or the hazard assumed by the **Insurer**, this Policy shall not afford coverage for any **Insureds** who knew on the inception date of this Policy the facts that were not accurately disclosed in the **Application**, regardless whether such **Insureds** knew the **Application** contained such misrepresentation or omission. The foregoing shall be the **Insurer's** sole remedy with respect to misrepresentations or omissions in the **Application**.
- B. For purposes of determining coverage for each **Insured**:
 - 1. knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
 - 2. only knowledge possessed by an **Insured Organization's** chief executive officer, chief financial officer, general counsel or anyone signing the **Application** shall be imputed to an **Insured Organization**.
- C. Except as described above, no knowledge possessed by any **Insured** shall be imputed to any other **Insured**.
- D. The **Application** shall be deemed attached to, and is incorporated into, this Policy.
- E. Notwithstanding any other provision of this Policy, the **Insurer** shall not rescind this Policy.

18. SUITS AGAINST THE INSURER

- A. No suit or other proceeding shall be commenced by the **Insureds** against the **Insurer** unless there shall have been full compliance with all the terms and conditions of this Policy.
- B. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any such **Claim**.

19. ENTIRE AGREEMENT

This Policy, including the Declarations, written endorsements, and the **Application** shall constitute the entire agreement between the **Insurer** and the **Insureds** regarding the insurance provided hereunder.

20. POLICY CHANGES

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

21. ASSIGNMENT

Assignment of any interest under this Policy shall not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.

22. NAMED ORGANIZATION'S AUTHORITY

The **Named Organization** shall act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, election of the Extended Reporting Period,

transmission and receipt of notices, reporting of **Claims**, acceptance of endorsements, payment of premiums, and receipt of return premiums.

23. CANCELLATION

- A. The **Insurer** may cancel this Policy for non-payment of premium by sending not less than 10 days notice to the **Named Organization**. This Policy may not otherwise be cancelled by the **Insurer**.
- B. Except as otherwise provided, the **Named Organization** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice shall be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- C. If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the **Insurer's** customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall refund any unearned premium as soon as practicable.

24. BANKRUPTCY

Bankruptcy or insolvency of any **Insureds** shall not relieve the **Insurer** of any of its obligations under this Policy.

25. NOTICES

- A. Notices to the **Insureds** shall be sent to the **Named Organization** at the address specified in Item 1 of the Declarations.
- B. Notices to the **Insurer** shall be sent to the applicable e-mail, facsimile, or other address specified in Item 9 of the Declarations, include the policy number of this Policy, and become effective upon receipt.

26. TITLES

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

27. REFERENCES TO LAWS

- A. 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.
- B. 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.