

THE HARTFORD

PRIVATE CHOICE

In consideration of, and subject to, the payment of the premium, and in reliance upon the particulars, statements, attachments and exhibits contained in and submitted with the Proposal and which shall be the basis of this Policy and shall be deemed to be incorporated herein, and subject to all the terms and conditions of this Policy, the Insurer and the Insureds agree as follows:

I. INSURING AGREEMENTS

This Policy affords the following coverages:

(A) INSURED PERSONS' LIABILITY

Except for **Loss** which the Insurer pays pursuant to Insuring Agreement (B) of this Policy, the Insurer will pay on behalf of the **Insured Persons Loss** which the **Insured Persons** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insured Persons** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

(B) PRIVATE COMPANY REIMBURSEMENT

The Insurer will pay on behalf of the **Company Loss** for which the **Company** has, to the extent permitted or required by law, indemnified the **Insured Persons**, and which the **Insured Persons** have become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insured Persons** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

(C) PRIVATE COMPANY LIABILITY

The Insurer will pay on behalf of the **Company Loss** which the **Company** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Company** for a **Wrongful Act** which takes place during or prior to the **Policy Period**;

provided, however, as a condition precedent to any such coverage, the **Insureds** shall report any such **Claim** to the Insurer as soon as practicable but in no event later than sixty (60) days after the termination of the **Policy Period** or **Discovery Period**, if applicable.

II. EXTENSIONS

(A) DISCOVERY PERIOD

If the Insurer or the **Parent Company** fails or refuses to renew this Policy or if the **Parent Company** cancels this Policy, any **Insured** shall have the right, upon payment of the Discovery Period Premium set forth in Item E of the Declarations, to an extension of the coverage granted by this Policy for the period set forth in Item E of the Declarations following the effective date of such cancellation or non-renewal but only with respect to any **Wrongful Act** taking place before the date of such cancellation or non-renewal. A written request for this extension, together with payment of the Discovery Period Premium, must be made within thirty (30) days after the effective date of cancellation or non-renewal of the Policy. Such Discovery Period Premium shall be deemed to be fully earned as of such date. This extension shall not apply if this Policy is terminated by the Insurer for failure to pay any premium when due.

(B) DEATH, INCAPACITY OR BANKRUPTCY

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, legal representatives, heirs or the assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** against such **Insured Person**.

(C) SPOUSAL EXTENSION

If a **Claim** against an **Insured Person** includes a claim against the lawful spouse of such **Insured Person** solely by reason of (a) such spousal status, or (b) such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**, any loss for which such spouse becomes legally obligated to pay on account of such **Claim** shall be deemed **Loss**.

All terms and conditions of this Policy, including the Retention, applicable to **Loss** sustained by such **Insured Person** in the **Claim** shall also apply to such spousal loss.

The extension of coverage afforded by this Section II.(C) shall not apply to the extent the **Claim** alleges any wrongful act or omission by such spouse.

(D) OUTSIDE POSITION LIABILITY EXTENSION

Subject to all of its terms and conditions, this Policy covers any **Insured Person** defined in Section IV.(J)(1) serving in an **Outside Position**, but such coverage shall be specifically limited to loss or an indemnity or insurance available from or provided by the entity in which such **Insured Person** serves in such **Outside Position**.

Payment by the Insurer or any member company of The Hartford under another policy as a result of a **Claim** against such **Insured Person** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

"Outside Position" means the position of director, officer, trustee, or other equivalent executive position held by an **Insured Person** defined in Section IV.(J)(1) in:

- (i) any **Non-Profit Entity**, provided Non-Profit Outside Position coverage is granted pursuant to Item G of the Declarations, or
- (ii) any other entity, provided such coverage is specifically granted by endorsement to this Policy,

if service in such position is with the knowledge and consent or at the request of the **Company**.

"Non-Profit Entity" means any non-profit corporation, community chest, fund or foundation that (i) is not included in the definition of **Company**, and (ii) is exempt from federal income tax as an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended.

III. DEFENSE, SETTLEMENTS AND COOPERATION

(A) The Insurer does not assume any duty to defend any **Claim**. However, the **Company** may at its sole option tender to the Insurer the defense of a **Claim** for which coverage is provided under this Policy. Regardless of whether the Insurer assumes the defense of such **Claim**, the Insurer shall have the right to associate itself in the defense and settlement of any **Claim** that appears reasonably likely to involve this Policy. The Insurer may make any investigation it deems appropriate.

(B) No **Claims Expenses** shall be incurred or settlements made, contractual obligations assumed or liability admitted with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Claims Expenses**, settlement, assumed obligation or admission to which it has not consented.

- (C) Subject to Section VII. of this Policy, the Insurer shall advance on behalf of the **Insureds Claims Expenses** which the **Insureds** have incurred in connection with **Claims** made against them, prior to the final disposition of such **Claims**, provided always that to the extent it is established that any such **Claims Expenses** are not covered under this Policy, the **Insureds**, as appropriate, agree to repay to the Insurer such non-covered **Claims Expenses**
- (D) The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer all information and cooperation as the Insurer may reasonably require and shall do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.

IV. DEFINITIONS

(A) "**Claim**" means:

- (1) a written demand or notice for monetary or non-monetary relief commenced by the **Insureds'** receipt of such demand;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading; or
- (3) an arbitration or formal administrative or regulatory proceeding, including but not limited to a proceeding before the Equal Employment Opportunity Commission, or similar state agency, commenced by the filing of a demand for arbitration, notice of charges, formal investigative order or similar document;

against **Insured Persons** of (with respect to Insuring Agreement (C)), the **Company** for a **Wrongful Act**, including any appeal therefrom.

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Claim shall include an **Employment Practices Claim** and a **Securities Claim**.

(B) "**Claims Expenses**" means that portion of **Loss** consisting of reasonable and necessary fees (including attorneys' fees and experts' fees) and expenses incurred in the defense or appeal of a **Claim**, pre and post judgment interest and the premiums for any appeal, attachment or similar bond, but the Insurer shall have no obligation to apply for or furnish such bond. **Claims Expenses** shall not include the wages, salaries, benefits or expenses of any **Insured**.

(C) "**Company**" means any company named in Item A of the Declarations and any **Subsidiary**.

(D) "**Discovery Period**" means the period set forth in Item E of the Declarations.

(E) "**Employee**" means:

- (1) any past, present or future employee of the **Company**, whether such employee is in a supervisory, co-worker, subordinate or other position, including any part-time, seasonal and temporary employee in his/her capacity as such;
- (2) solely with respect to an **Employment Practices Claim**, any natural person who is a leased or loaned employee to the **Company**; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Company** provides indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Company** in his/her capacity as such;
- (3) solely with respect to an **Employment Practices Claim**, any natural person who is an independent contractor contracted to perform services for the **Company**; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Company** provides indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Company** in his/her capacity as such and provided further that such natural person is scheduled by written endorsement to this Policy.

- (F) **"Employment Practices Claim"** means a **Claim** brought by or on behalf of an **Employee** or an applicant for employment with the **Company** which, in whole or in part, is based upon or arises from any actual or alleged:
- (1) wrongful dismissal, discharge or termination (whether actual, constructive or retaliatory) of employment, wrongful failure or refusal to hire or promote, wrongful discipline or demotion, failure to grant tenure, or negligent employment evaluation;
 - (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
 - (3) unlawful employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, or other protected class or characteristic established under applicable federal, state or local law;
 - (4) invasion of privacy, employment-related defamation (including libel and slander), employment-related wrongful infliction of emotional distress, or any employment-related misrepresentation made to an **Employee** or an applicant for employment;
 - (5) failure of the **Company** to create, provide for or enforce adequate or consistent employment-related policies or procedures;
 - (6) retaliatory treatment against an **Employee** of the **Company** on account of such **Employee's** exercise or attempted exercise of his or her employment-related rights under law;
 - (7) violation of a natural person's employment-related civil rights relating to any of the above; or
 - (8) violation of the Family and Medical Leave Act.
- (G) **"Executive Officer"** means the president, chief executive officer, chief operating officer, chief financial officer, in-house general counsel, managing director, any executive vice president and any equivalent executive officer of the **Company**.
- (H) **"Financial Insolvency"** means the status of the **Company** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession.
- (I) **"Insured(s)"** means one or more **Insured Persons** and, solely with respect to Insuring Agreements (B) and (C), the **Company**.
- (J) **"Insured Persons"** means:
- (1) one or more natural persons who were, now are or shall hereafter be duly elected or appointed directors or officers of the **Company**, or, with respect to a **Subsidiary** incorporated outside the United States, their functional equivalent; and
 - (2) **Employees**.
- (K) **"Interrelated Wrongful Acts"** means **Wrongful Acts** that 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.
- (L) **"Loss"** means sums which the **Insured Persons** or, with respect to Insuring Agreement (C), the **Company**, are legally liable to pay solely as a result of any **Claim** insured by this Policy, including **Claims Expenses**, compensatory damages, including front pay and back pay, settlement amounts, and legal fees and costs awarded pursuant to judgments. If granted pursuant to Item H of the Declarations, **Loss** shall also include punitive and exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages under the Age Discrimination in Employment Act, unless such damages are uninsurable pursuant to applicable law.

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With respect to the insurability of punitive, exemplary, multiple or liquidated damages, if such coverage is granted, the Insurer will not contend for any reason, unless appropriate to do so as a matter of law, regulation or public policy, that such damages are uninsurable; and the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction which permits coverage of such damages.

Loss shall not include civil or criminal fines, penalties or taxes; any amount allocated to uncovered loss pursuant to Section VII. of this Policy; stock options, perquisites, deferred compensation, or any other benefits or compensation other than salaries, wages or bonuses; damages, costs or expenses incurred by an **Insured** in making physical changes, modifications, alterations or improvements as part of an accommodation of any disabled person pursuant to the Americans with Disabilities Act of 1990 or any similar federal, state or local law; or other matters uninsurable pursuant to any applicable law.

(M) **"Parent Company"** means the **Company** first named in Item A of the Declarations.

(N) **"Policy Period"** means the period from the inception date set forth in Item B of the Declarations to the earlier of the expiration date set forth in Item B of the Declarations or the effective date of cancellation of this Policy pursuant to Section IX.(B).

(O) **"Securities Claim"** means any **Claim** brought by a securities holder of the **Company** which:

(1) alleges a violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any similar state statute or similar common law, or any rules or regulations promulgated thereunder; or

(2) arises from the purchase or sale of, or offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale or offer involves a transaction with the **Company** or occurs in the open market.

(P) **"Subsidiary"** means any corporation in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for election of directors or equivalent position is owned, in any combination, by one or more **Companies**.

(Q) **"Wrongful Act"** means:

(1) any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty, committed or attempted by the **Insured Persons**, in their capacity as such, or in an **Outside Position**, or with respect to Insuring Agreement (C), by the **Company**, or

(2) any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Position**.

V. EXCLUSIONS

(A) EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Insured Persons** or, with respect to Insuring Agreement (C), the **Company**:

(1) for bodily injury, sickness, disease, emotional distress, mental anguish, outrage, humiliation, death, false arrest or imprisonment, abuse of process, malicious prosecution, defamation (including libel and slander), violation or invasion of any right of privacy or private occupancy, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use thereof;

provided that this exclusion shall not apply with respect to emotional distress, mental anguish, outrage, humiliation, employment-related defamation (libel and slander) or violation or invasion of any right of privacy or private occupancy alleged as part of an **Employment Practices Claim**;

- (2) for any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such or, with respect to Insuring Agreement (C), by any **Subsidiary** if such **Wrongful Act** actually or allegedly occurred when such corporation was not a **Subsidiary**;
- (3) for, based upon, arising from, or in any way related to any claim, **Wrongful Act**, or circumstance if notice thereof is given under any other insurance policy, the term of which inception prior to the Inception Date of this Policy;
- (4) brought or maintained by or on behalf of an **Insured** in any capacity or by any security holder of the **Company**, except:
 - (a) a **Claim** that is a security holder class or derivative action that is instigated and continued totally independent of, and totally without the solicitation, assistance or active participation of any **Insured**;
 - (b) an **Employment Practices Claim** brought by **Employees**; or
 - (c) a **Claim** for contribution or indemnity, if the **Claim** directly results from another **Claim** that is otherwise covered under this Policy;
- (5) for, based upon, arising from, or in any way related to:
 - (a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
 - (b) any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste;

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including without limitation any **Securities Claim** or any other **Claim** by or on behalf of the **Company** or its shareholders in their capacity as such. However, this exclusion shall not apply to any **Employment Practices Claim**.

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed;

- (6) for, based upon, arising from, or in any way related to such **Insured Persons** serving as a director, officer, trustee, regent, governor or employee of any entity other than the **Company** even if such service is at the direction or request of the **Company**, provided this exclusion does not apply with respect to a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Position** if such **Claim** is brought and maintained without the solicitation, assistance or participation of the entity in which such **Insured Person** serves in the **Outside Position** or any director, officer, trustee, regent, governor or employee of such entity;
- (7) based upon, arising from, or in any way related to any **Insured Person's** actual or alleged entitlement to insurance or other benefits under any workers' compensation, unemployment compensation, disability, retirement, or social security laws, rules or regulations;
- (8) for violation of the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Fair Labor Standards Act (except the Equal Pay Act), the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act of 1974, or rule or regulation promulgated thereunder, or similar federal, state, local, or common laws, rules or regulations;

however, exclusions (7) and (8) above shall not apply to any **Employment Practices Claim** for any actual or alleged retaliatory treatment of an **Employee** by the **Company** by reason of such **Employee's** exercise of rights pursuant to any such laws, rules or regulations;

- (9) for, based upon, arising from, or in any way related to any demand, suit, or other proceeding against any **Insured** which was pending on or existed prior to the applicable Prior Litigation Date specified in Item F of the Declarations, or the same or substantially the same facts, circumstances or allegations which are the subject of or the basis for such demand, suit, or other proceeding;
- (10) for, based upon, arising from, or in any way related to any deliberately dishonest, malicious or fraudulent act or omission or any willful violation of law by such **Insured** if a judgment or other final adjudication adverse to the **Insured** establishes such an act, omission or willful violation; or their gaining in fact any personal profit, remuneration or advantage to which they were not legally entitled; or
- (11) for, based upon, arising from, or in any way related to any public offering of securities by the **Company** or the purchase or sale of such securities subsequent to such public offering; provided that this exclusion shall not apply to the private placement of the **Company's** securities directly sold to a limited number of investors and exempted from the registration requirements of the Securities Act of 1933.

(B) EXCLUSIONS APPLICABLE TO CLAIMS UNDER INSURING AGREEMENT (C)

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Company**:

- (1) based upon, arising from, or in any way related to any request for injunctive relief, declaratory relief, disgorgement, job reinstatement, or any other equitable remedy; provided that this exclusion shall not apply to **Claims Expenses**;
- (2) based upon, arising from, or in any way related to any actual or alleged infringement or violation of copyright, patent, trademark, trade secret or other intellectual property rights;
- (3) based upon, arising from, or in any way related to any actual or alleged violation of any law, rule or regulation relating to anti-trust, restraint of trade, unfair business practice or interference with another's business, contractual or economic relationships or interests;
- (4) based upon, arising from, or in any way related to a labor dispute or negotiation or any proceeding in connection with a collective bargaining agreement;
- (5) based upon, arising from, or in any way related to the actual or alleged rendering of or failure to render any professional service to a customer or client of the **Company**; provided that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**; or
- (6) based upon, arising from, related to or in any way involving, directly or indirectly, any actual or alleged obligation of the **Company** under any express contract or agreement (other than an employee handbook); provided, however, that solely with respect to an **Employment Practices Claim**, this exclusion shall not apply to **Claims Expenses**.

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in this Section V.

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VI. LIMITS OF LIABILITY AND RETENTION

- (A) The Insurer's aggregate Limit of Liability for all **Loss** otherwise covered under this Policy shall be the amount shown under Item C of the Declarations whether such **Loss** is covered under one or more Insuring Agreements. The Limit of Liability in the **Discovery Period** shall be a part of, and not in addition to, the Limit of Liability shown under Item C of the Declarations.
- (B) Except as provided in paragraph (C) below, the Insurer's liability in respect of **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item D of the Declarations.
- (C) If in a **Claim** all defendant **Insureds** obtain by reason of a motion to dismiss, motion for summary judgment or trial a final non-appealable judgment of no liability in their favor, there shall be no Retention applicable to any **Claims Expenses** resulting from such **Claim**.
- (D) All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more of the **Insureds** shall be considered a single **Claim**. Such **Claims** shall be deemed to be first made on the date the first such **Claim** is made or deemed to be made pursuant to Section VIII.(A) of this Policy, regardless of whether such date is before or during the **Policy Period**.
- (E) If **Loss** arising from a single **Claim** is covered in whole or in part under more than one Insuring Agreement, the applicable Retention shall be applied separately to that part of the **Loss** covered by each Insuring Agreement and the sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**; provided, however, the largest Retention amount set forth in Item D of the Declarations shall be the maximum Retention applicable to such **Claim**.
- (F) If the **Company** is permitted or required by law to ultimately indemnify the **Insured Persons**, or to advance **Claims Expenses** on their behalf, and does not in fact do so other than for reasons of **Financial Insolvency**, then the Insurer's liability under Insuring Agreement (A) shall be subject to the Insuring Agreement (B) Retention amount set forth in Item D of the Declarations. For purposes of this paragraph, the shareholder and board of directors resolutions of the **Company** shall be deemed to provide indemnification for such **Loss** to the fullest extent permitted or required by law.
- (G) The Limit of Liability available to pay judgments or settlements shall be reduced by **Claims Expenses**

VII. ALLOCATION

If both **Loss** covered under this Policy and loss not covered under this Policy are incurred, either because a **Claim** against an **Insured** includes both covered and uncovered matters or is asserted against an **Insured** in both an insured and uninsured capacity, the **Insureds** and the Insurer shall fairly and reasonably allocate such amount between covered **Loss** and uncovered loss.

VIII. NOTICE

- (A) If during the **Policy Period** the **Insureds** become aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against any **Insured Person** or, with respect to Insuring Agreement (C), the **Company**, and if such **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with particulars as to the reasons for anticipating such a **Claim**, the nature and dates of the alleged **Wrongful Act**, the alleged damages sustained, the names of potential claimants, any **Insured Person** involved in the alleged **Wrongful Act** and the manner in which the **Insureds** first became aware of the specific **Wrongful Act**, then any **Claim** subsequently arising from such duly reported **Wrongful Act** shall be deemed under this Policy to be a **Claim** made during the **Policy Period** in which the **Wrongful Act** is first duly reported to the Insurer.
- (B) Notice of any **Claim** or specific **Wrongful Act** shall be given in writing to **The Hartford, Hartford Plaza, Hartford CT, 06115 Attention: Financial and Professional Liability Claims**. All other notices under this Policy shall be given to the same addressee but to the attention of Financial Products Underwriters.

- (C) All notices under this Policy shall refer to the Policy Number, shall be in writing, shall be given by mail, prepaid express courier or facsimile (at **212-277-0930**) properly addressed and shall be effective upon receipt.

IX. GENERAL CONDITIONS

(A) TERRITORY

This Policy extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

(B) CANCELLATION OF POLICY

The Insurer may cancel this Policy for non-payment of premium by sending not less than ten (10) days notice to the **Parent Company** at its last known address. The Insurer may not otherwise cancel this Policy. The **Parent Company** may cancel this Policy by sending contemporaneous notice to the Insurer, provided the **Parent Company** may not cancel this Policy after the effective date of the acquisition of the **Parent Company** as described in Section IX.(H)(2) of this Policy. In the event the **Parent Company** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

(C) SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery thereof, and 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 necessary to enable the Insurer effectively to bring suit in the name of the Insurer.

(D) COMPANY AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Parent Company** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or cancellation, the payment of premiums and the receiving of any return premium, the negotiation, agreement to and acceptance of any endorsements to this Policy, and the exercising of the **Discovery Period** option.

(E) OTHER INSURANCE

If any **Loss** arising from any **Claim** is insured by another valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to this Policy's Policy Number.

(F) ALTERATION, ASSIGNMENT AND TITLES LIMITATION

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

The titles and headings to the various paragraphs and sections in this Policy, including endorsements attached, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such paragraphs and sections to which they relate.

(G) ACTION AGAINST INSURER

No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the Insurer.

No person or organization shall have the right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representative. Bankruptcy or insolvency of an **Insured** or of an **Insured's** estate shall not relieve the Insurer of any of its obligations hereunder.

(H) CHANGES IN EXPOSURE

(1) Acquisition or Creation of Corporation; Assets Acquisition; Assumption of Liabilities

If before or during the **Policy Period** the **Company**:

(a) acquires securities or voting rights in another corporation or creates another corporation, which as a result of such acquisition or creation becomes a **Subsidiary**, or

(b) acquires any corporation by merger into or consolidation with the **Company**,

such corporation and its **Insured Persons** shall be **Insureds** under this Policy but only with respect to **Wrongful Acts** taking place after such acquisition or creation.

However, if during the **Policy Period** the fair value of (i) all cash, securities, assumed liabilities and other consideration paid by the **Company** for any such acquisition, or (ii) all assets acquired or liabilities assumed by the **Company** in any single transaction or series of related transactions, exceeds 20% of the total consolidated assets or liabilities, respectively, of all **Companies** as reflected in the **Parent Company's** last audited consolidated financial statements prior to such acquisition, the **Parent Company** as a condition precedent to coverage with respect to such new **Insureds** or to coverage for **Wrongful Acts** relating to such acquired assets or assumed liabilities and occurring subsequent to such acquisition or assumption, shall give written notice of such acquisition or assumption to the Insurer as soon as practicable but in no event more than ninety (90) days after the effective date of such acquisition or assumption, together with such information as the Insurer may require, and shall pay any additional premium so required by the Insurer. If the **Parent Company** fails to comply with such condition precedent, coverage otherwise afforded by this Section IX.(H)(1) shall terminate as of ninety (90) days after the effective date of such acquisition or assumption.

Coverage shall be provided to such newly created or acquired **Subsidiary** with respect to an **Employment Practices Claim** only if such **Subsidiary** utilizes the same employment policies and procedures as are utilized by the **Parent Company**.

(2) Acquisition of Parent Company

If during the **Policy Period** (i) the **Parent Company** merges into or consolidates with another entity such that the **Parent Company** is not the surviving entity, or (ii) another entity, or person or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the **Parent Company**, then coverage under this Policy shall continue until the later of:

(a) termination of the **Policy Period**, or

(b) any subsequent date to which the Insurer may agree by endorsement,

but only with respect to **Claims for Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (b), above, shall be conditioned upon any premium paid or to be paid under this Policy being deemed fully earned upon inception of such coverage extension. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

The **Parent Company** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may reasonably require.

(3) Cessation of Subsidiaries

If before or during the **Policy Period** a corporation ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this Policy but only with respect to **Claims for Wrongful Acts** taking place prior to the date such corporation ceased to be a **Subsidiary**.

(I) REPRESENTATIONS AND SEVERABILITY

The **Insureds** represent that the particulars and statements contained in the Proposal are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

The **Insureds** agree that in the event that the particulars and statements contained in the Proposal are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

- SPECIMEN**
- (1) any **Insured Persons** who knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,
 - (2) the **Company**, under Insuring Agreement (B), to the extent it indemnifies any **Insured Person** referenced in (1), above, and
 - (3) the **Company**, under Insuring Agreement (C), if a director or any **Executive Officer** knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,

whether or not such **Insured Person** or **Executive Officer** knew of such untruthful disclosure in the Proposal.

ENDORSEMENT NO:

This endorsement, effective 12:01 am,
of policy number

forms part

issued to:

by:

FIDUCIARY LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Solely regarding the coverage afforded by this Endorsement, it is agreed that:

- 1. **ITEM D** of the **DECLARATIONS** is amended to add:

RETENTION: \$ _____ in the aggregate each **Fiduciary Claim**, including **Claims Expenses**.

- 2. Section **I. INSURING AGREEMENTS** is amended to add the following coverage:

The Insurer will pay on behalf of the **Insureds Loss** which the **Insureds** shall become legally obligated to pay as a result of a **Fiduciary Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against any **Insureds** for a **Fiduciary Wrongful Act** which takes place during or prior to the **Policy Period**.

The above coverage shall be subject to the same sixty (60) day reporting requirement as the other coverages of this Policy.

- 3. Section **IV. DEFINITIONS (A) "Claim"** is deleted and replaced by:

"Claim" means a:

- (1) written demand for monetary or injunctive relief commenced by any Insured's receipt of such demand,
- (2) civil proceeding commenced by the service of a complaint or similar pleading,
- (3) formal administrative or regulatory proceeding commenced by the filing or service of a notice of charges, formal investigative order or similar document,
- (4) criminal proceeding commenced by the return of an indictment, or
- (5) fact finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation, or similar governmental agency anywhere in the world;

against any **Insureds** for a **Wrongful Act**, including any appeal therefrom.

"Claim" shall also include a **Fiduciary Claim**.

- 4. Section **IV. DEFINITIONS (I) "Insured(s)"** is deleted and replaced by:

"Insured(s)" means one or more **Insured Persons**, the **Company**, and any **Covered Plan**.

5. Section IV. DEFINITIONS (J) "Insured Persons" is deleted and replaced by:

"Insured Persons" means:

- (1) one or more natural persons who were, now are or shall hereafter be duly elected or appointed directors or officers of the **Company**, or, with respect to a **Subsidiary** incorporated outside the United States, their functional equivalent;
- (2) **Employees**
- (3) one or more natural persons who were, now are or shall hereafter be a trustee of any **Covered Plan**; and
- (4) any other natural persons included by specific written endorsement to this Policy who were, now are or shall be a fiduciary of a **Covered Plan** solely in their capacity as a fiduciary of a **Covered Plan**.

6. Section IV. DEFINITIONS (L) "Loss" is amended by deleting the phrase "Insured Persons or, with respect to Insuring Agreement (C), the **Company**" from the first line and replacing it with "Insureds".

Section IV. DEFINITIONS (L) "Loss" is further amended to add the following at the end thereof:

Notwithstanding the above, **Loss** shall include the five (5) percent or less and the twenty (20) percent or less penalties imposed upon any **Insured** under Section 502(i) and Section 502(l) of ERISA, as amended, with respect to covered settlements or judgments.

7. Section IV. DEFINITIONS (Q) "Wrongful Act" is amended to add the following at the end thereof:

"Wrongful Act" includes a **Fiduciary Wrongful Act**.



8. Section IV. DEFINITIONS is amended to add the following definitions:

"Covered Plan" means any:

- (1) government-mandated insurance program for unemployment, social security or disability benefits for **Employees** except for workers' compensation;
- (2) employee benefit plan as defined in **ERISA** or any similar common or statutory law of the United States or other jurisdiction anywhere in the world, which is sponsored solely by the **Company** or jointly by the **Company** and a labor organization solely for the benefit of **Employees** and which (i) existed on the Inception Date of this Policy or of any policy of which this Policy is a renewal, (ii) is created during the **Policy Period** by the company named in item 1 of the Declarations or any **Subsidiary** which was a **Subsidiary** as of the Inception Date of this Policy, or (iii) is otherwise created or acquired during the **Policy Period** after the Inception Date of this Policy, subject to Section IX. (H) of this Policy; and
- (3) non-qualified plan sponsored by the **Company** not subject to regulation under Title I of ERISA or which does not meet the qualification requirements under Section 401 (a) of the Internal Revenue Code of 1986, as amended, but only for **Fiduciary Claims** involving a **Fiduciary Wrongful Act** as described in (2) of the definition of **Fiduciary Wrongful Act**;

provided however, **Covered Plan** shall not include any multi-employer plan, as defined in **ERISA** or an **Employee Stock Ownership Plan** unless an **Employee Stock Ownership Plan** is specifically listed as a **Covered Plan** in an endorsement to this Policy.

"Employee Stock Ownership Plan" means any plan created or acquired to invest primarily in securities of the **Company** or a plan that invests more than 10% of plan assets in securities of the **Company**.

"ERISA" means the Employee Retirement Income Security Act of 1974 as amended .

"Fiduciary Claim" means a **Claim** for a **Fiduciary Wrongful Act** in connection with a **Covered Plan**.

"Fiduciary Wrongful Act" means:

ENDORSEMENT NO:

- (1) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Covered Plan** by **ERISA** or any similar law of any state or other jurisdiction anywhere in the world;
- (2) any actual or alleged negligent act, error or omission in handling records, counseling employees, effecting enrollment of employees, and termination or cancellation of benefits in connection with a **Covered Plan**; or
- (3) any other matter claimed against any **Insureds** solely by reason of their serving as fiduciaries of a **Covered Plan**.

9. Section **V. EXCLUSIONS (A) EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS** is amended by deleting the preamble and replacing it with:

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Insureds**

10. Section **V. EXCLUSIONS (A) EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS (7)** is deleted.

11. Section **V. EXCLUSIONS (A) EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS (8)** is amended to delete "the Employee Retirement Income Security Act of 1974".

12. Section **V. EXCLUSIONS (A) EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS** is amended to add the following exclusions:

for, based upon, arising from or in any way related to liability assumed under contract except liability assumed under the trust or other instrument establishing a **Covered Plan**;

SPECIMEN

for, based upon, arising from or in any way related to a **Wrongful Act** involving a **Covered Plan** occurring prior to or after termination of sponsorship of such **Covered Plan** by the **Company**;

for, based upon, arising from or in any way related to the failure to collect an employer's contributions owed to a **Covered Plan** or failure to fund a **Covered Plan** unless the failure is because of the negligence of any **Insureds**, provided this exclusion shall apply only to **Loss** other than **Claims Expenses**;

for, based upon, arising from or in any way related to benefits due under the terms of a **Covered Plan**, except to the extent such benefits are payable by an **Insured Person** as a personal obligation and liability for such benefits is based upon a covered **Fiduciary Wrongful Act**, provided this exclusion shall apply only to **Loss** other than **Claims Expenses**.

13. Section **IX. GENERAL CONDITIONS (H) CHANGES IN EXPOSURE (1) Acquisition or Creation of Corporation; Assets Acquisition; Assumption of Liabilities** is amended to add the following at the end thereof:

If coverage is granted under this Section IX.(H)(1) for any **Subsidiary** or corporation acquired or created during the **Policy Period**, then:

- (a) any government-mandated insurance program for unemployment, social security or disability benefits for employees of such **Subsidiary** or corporation except for workers' compensation; or
- (b) employee benefit plan as defined in **ERISA** or any similar common or statutory law of the United States or other jurisdiction anywhere in the world which is sponsored solely by such **Subsidiary** or corporation or jointly by such **Subsidiary** or corporation and a labor organization solely for the benefit of the employees of such **Subsidiary** or corporation,

shall be deemed a **Covered Plan** for as long as such **Subsidiary** or corporation is granted coverage. Coverage under this provision shall only extend to a **Fiduciary Wrongful Act** taking place after such acquisition or creation.

ENDORSEMENT NO:

14. Section **IX. GENERAL CONDITIONS (I) REPRESENTATIONS AND SEVERABILITY** is amended by deleting the second paragraph and replacing same with:

The **Insureds** agree that in the event that the particulars and statements contained in the Proposal are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

- (1) any **Insured Persons** who knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,
- (2) the **Company** to the extent it indemnifies any **Insured Person** referenced in (1) above, and
- (3) the **Company** if any director or **Executive Officer** knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,

whether or not such **Insured Person** or **Executive Officer** knew of such untruthful disclosure in the Proposal.

15. The extension of coverage afforded by this Endorsement shall in no way serve to increase the Insurer's maximum aggregate Limit of Liability as shown under Item C of the Declarations.

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All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO:

This endorsement, effective 12:01 am,
of policy number

forms part

issued to:

by:

SEPARATE RETENTIONS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is agreed that:

1. **Declarations Item D RETENTION** is deleted and replaced by:

ITEM D

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RETENTION	INSURING AGREEMENT B	\$	in the aggregate each Claim , other than an Employment Practices Claim or a Securities Claim , including Claims Expenses , with respect to Private Company reimbursement.
	INSURING AGREEMENT C	\$	in the aggregate each Claim , other than an Employment Practices Claim or a Securities Claim , including Claims Expenses .
	EMPLOYMENT PRACTICES CLAIM	\$	in the aggregate each Employment Practices Claim , including Claims Expenses .
	SECURITIES CLAIM	\$	in the aggregate each Securities Claim , including Claims Expenses .

2. Section **VI. LIMITS OF LIABILITY AND RETENTION (E)** is deleted and replaced by:

If **Loss** arising from a single **Claim** is subject to more than one Retention, the Retention applicable to such **Claim** shall be the largest applicable Retention amount set forth in Item D of the Declarations.

All other terms and conditions of this Policy remain unchanged.