



# AXIS Staffing Insurance Solutions<sup>SM</sup>

A LIABILITY POLICY FOR TEMPORARY HELP AND PERMANENT PLACEMENT ORGANIZATIONS

## GENERAL TERMS AND CONDITIONS

### I. DEFINITIONS

The following definitions are applicable to the coverage afforded under all **Coverage Parts** of this Policy

A. **"Application"** or **"Renewal Application"** means all of the following:

1. the **Insured's** signed application for this Policy;
2. the **Insured's** signed insurance policy renewal application, if this is a renewal of a policy issued by the **Insurer**; and
3. all attachments to the **Application** or **Renewal Application** and any other information furnished to the **Insurer** for the purpose of applying for the insurance hereunder. All such attachments and information will be kept on file by the **Insurer** and deemed attached to the policy as if physically attached to it.

B. **"Claim(s)"** means any of the following:

1. the receipt by any **Insured** of a written demand against any **Insured** for monetary or non-monetary relief;
2. a civil, arbitration, administrative, investigative or regulatory proceeding against any **Insured** commenced by:
  - (a) the service of a complaint or similar pleading;
  - (b) the filing of a notice of charges, investigative order or like document; or
  - (c) written notice from a regulatory or other governmental authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced; or
3. a written request to toll or waive a statute of limitations relating to a potential **Claim** described in paragraph 1. or 2. above.

C. **"Claims Made Coverage Part"** means any **Coverage Part** that is designated therein as a **Claims Made Coverage Part** to this Policy.

D. **"Coverage Part(s)"** means those coverage parts purchased by the **Insureds** from the **Insurer** and attached to this Policy.

E. **"Defense Costs"** means reasonable and necessary legal fees and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred by or on behalf of the **Insureds** in defending, settling, or appealing **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds.

F. **"Discrimination"** means the violation of any federal, state, or local statute, regulation, ordinance or common law concerning discrimination in employment anywhere in the world.

- G. **“Employee”** means any one or more natural persons who are past, present or future:
1. employees or duly appointed officers of the **Named Insured**;
  2. individuals whose labor or service is directed by the **Named Insured**, whether such labor or service is on a part-time, temporary, seasonal, or full-time basis;
  3. volunteers whose labor or service is directed solely by the **Named Insured**;
  4. applicants for prospective employment by the **Named Insured**; or
  5. individuals contracted to perform work for the **Named Insured** or who are independent contractors for the **Named Insured**, but only while such individuals perform work or services solely for or on behalf of the **Named Insured**.
- H. **“First Inception Date”** is the Inception Date of the earliest Policy the **Insurer** issued to the **First Named Insured** of which this Policy is a renewal or replacement, provided that there has been uninterrupted coverage by the **Insurer** for the **First Named Insured** from that earliest policy to this Policy.
- I. **“First Named Insured”** is the **Named Insured** listed first on the Declarations Page of the General Terms and Conditions of this Policy.
- J. **“Harassment”** means:
1. work-related sexual harassment that interferes with an **Employee's** performance or creates an intimidating hostile or offensive working environment;
  2. sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment or that is used as a basis for employment decisions; or
  3. illegal work-related harassment.
- K. **“Insured(s)”** shall, with respect to each **Coverage Part**, have the meaning ascribed to that term under each respective **Coverage Part** and with respect to these General Terms and Conditions, shall have the meaning ascribed to such term under all purchased **Coverage Parts**, collectively.
- L. **“Insured Individual”** shall, with respect to each **Coverage Part**, have the meaning ascribed to that term under each respective **Coverage Part** and with respect to these General Terms and Conditions, shall have the meaning ascribed to such term under all purchased **Coverage Parts**, collectively.
- M. **“Insurer”** means the insurance company stated on the Declarations Page of this Policy.
- N. **“Interrelated Wrongful Acts”** means any and all **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.
- O. **“Liquidated Damages”** means a sum of money stipulated in a written contract by the parties to such contract as the amount of damages to be recovered for a breach thereof.
- P. **“Loss”** means the amount(s) which the **Insureds** become legally obligated to pay on account of a **Claim**, including compensatory damages, punitive and exemplary damages (where insurable by law), judgments, any award of pre-judgment or post-judgment interest, settlement amounts, costs and fees awarded pursuant to judgments, and **Defense Costs**.

**Loss** does not include:

1. any amounts for which the **Insureds** are legally or financially absolved from payment;
2. taxes or the loss of tax benefits, or fines or penalties imposed by law (other than punitive or exemplary damages);
3. **Liquidated Damages** or the return of fees or other compensation paid to the **Insured**, unless such **Liquidated Damages** or return of fees or other compensation represents, in the reasonable and sole judgment of the **Insurer**, a fair assessment of actual **Loss** resulting from a covered **Claim** under the Policy;
4. the cost of compliance with an injunction or any other non-monetary relief; or
5. matters uninsurable under the law applicable to this Policy.

However, in determining the insurability of punitive or exemplary damages, or the multiplied portion of any multiplied damage award, it is agreed that the law of the jurisdiction most favorable to the insurability of those damages will control for purposes of resolving any dispute between the **Insurer** and the **Insureds**, provided that such jurisdiction is:

- (a) where the punitive, exemplary or multiplied damages were awarded or imposed;
- (b) where the **Wrongful Act** underlying the **Claim** took place;
- (c) where either the **Insurer** or any **Insured** is incorporated, has its principal place of business or resides; or
- (d) where this Policy was issued or became effective.

Provided further that with respect to punitive or exemplary damages, or the multiplied portion of any multiplied damage award, the **Insurer's** maximum limit of liability for all **Claims** and all **Wrongful Acts** under all **Coverage Parts** of this Policy shall be \$25,000 per **Policy Period**, which amount shall be part of and not in addition to the **Insurer's** otherwise applicable limits of liability for such **Claim**.

- Q. "**Named Insured**" means the person or entity listed in Item 1. of the Declarations Page and any **Subsidiaries** thereof.
- R. "**Occurrence Coverage Part**" shall mean each **Coverage Part** designated therein as an **Occurrence Coverage Part** to this Policy.
- S. "**Policy Period**" means the period of time stated in Item 2. on the Declarations Page, or any shorter period resulting from policy cancellation.
- T. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
1. smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, silica, mold or asbestos;
  2. hazardous, toxic or radioactive matter or nuclear radiation;
  3. waste, which includes material to be recycled, reconditioned or reclaimed; or
  4. any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.

- U. **"Professional Employer Organization"** means any entity that provides outsourcing of payroll, workers' compensation, human resources or employee benefits administration to its clients' workers, thus becoming the employer of record for such workers.
- V. **Retaliation** means the illegal retaliatory treatment of **Employees**, including any retaliatory treatment against an **Employee** for such **Employee** engaging in any of the following activities:
1. exercising his or her rights under the law;
  2. refusing to violate any law or opposing an unlawful practice;
  3. threatening to disclose or actually disclosing violations of the law to any governmental authority or the management of the **Named Insured**; or
  4. testifying, cooperating, or assisting with respect to an investigation or proceeding by a governmental authority against the **Named Insured**.
- W. **"Retention"** means the applicable amount stated in Item 4. on the Declarations Page of each respective **Coverage Part**.
- X. **"Subsidiary(ies)"** means any entity in which, and so long as, a **Named Insured**, either directly or indirectly:
1. owns more than fifty (50) percent of the issued and outstanding voting equity securities; or
  2. controls voting rights representing the present right to vote for election or to appoint more than fifty (50) percent of the directors or trustees.
- Y. **"Wrongful Act"** shall, with respect to each **Coverage Part**, have the meaning ascribed to that term under each respective **Coverage Part** and with respect to these General Terms and Conditions, shall have the meaning ascribed to that term under all purchased **Coverage Parts**, collectively.

## II. EXCLUSIONS

The following exclusions are applicable to all coverage under this Policy for all **Coverage Parts**.

The **Insurer** shall not be liable for **Loss**, including **Defense Costs**, arising from any **Claim** made against any **Insured**:

1. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) any fact, circumstance, transaction, event, or **Wrongful Act** or **Claim** that, before the Inception Date set forth in Item 2. of the Declarations, was the subject of any notice of claim or loss, or notice of potential claim or potential loss, given under any other policy of insurance;
  - (b) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** described in (a) above, constitute **Interrelated Wrongful Acts**; or
  - (c) any fact, circumstance, transaction, event, or **Wrongful Act** of which, as of the Inception Date set forth in Item 2. of the Declarations, any **Insured** had knowledge and that was reasonably likely to give rise to a **Claim** that would fall within the scope of the insurance afforded by this Policy;
2. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;

3. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) any nuclear reaction, radiation or contamination;
  - (b) the actual, alleged or threatened existence, discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** anywhere or anytime or the creation of any injurious condition involving **Pollutants**; or
  - (c) any direction, request, demand or order that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the existence, non-existence or effects of, **Pollutants**, or any voluntary decision to do so;whether or not the pollution described in (a), (b), or (c) was sudden, accidental, gradual, intended, expected or preventable or whether or not any **Insured** caused or contributed to the pollution;
4. brought or maintained by or on behalf of:
  - (a) any entity that is owned or controlled by, or is under common ownership or control with, any **Insured**;
  - (b) any natural person or entity that owns or controls any entity included within the definition of **Insured**; or
  - (c) any entity of which any **Insured** is a director, officer, partner or principal shareholder;
5. for actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, 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 and any rules, regulations and amendments thereto;
6. to any **Claim** based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any similar federal, state or local law or their amendments;
  - (b) the syndication, formation, promotion, offer, sale, roll-up or management of any limited or general partnership or any interest in any limited or general partnership; or
  - (c) any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets;
7. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any actual or alleged kickback, rebate, price fixing, restraint of trade, monopolization, antitrust violation, unfair trade practices, or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendment to or any rule or regulation promulgated under or in connection with any such statute; or any similar provision of any federal, state, or local law or common law anywhere in the world;
8. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving any actual or alleged **Wrongful Act** involving the rendering or failing to render medical services by any **Insured**, whether licensed or unlicensed, including but not limited to, health care, medical care or treatment provided to any individual, including without limitation any of the following:

medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, homeopathic, naturopathic, nursing or other professional health care, the furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies, equipment or appliances in connection with such care, the furnishing of food or beverages in connection with such care, the providing of counseling or other social services in connection with such care, the handling of or performance of post-mortem examinations on human bodies and veterinary services;

9. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving any property protection or security services, including but not limited to, services as a security guard, private police force, paramilitary force, security consultant, security personnel trainer, person authorized to use physical force to safeguard persons or property or any other service performed by a security firm, private investigator or security alarm firm;
10. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) the rendering or failure to render any written legal, actuarial, accounting or audit opinion; or
  - (b) the approval or failure to approve the form or content of any document requiring the signature, stamp or seal of a licensed professional;
11. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving the selection, recruitment or placement of temporary drivers or operators of any vehicle;
12. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving the performance of services as an:
  - (a) architect, engineer, or surveyor; or
  - (b) investment counselor, investment broker or dealer, financial planner or investment advisor;
13. that is a **Subsidiary** or an **Insured Individual** of such **Subsidiary** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary**;
14. based upon or arising out of, directly or indirectly resulting from, in consequence of or in any way involving an **Insured** providing services as a **Professional Employer Organization**; or
15. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  - (a) the gaining of any profit, remuneration, or advantage to which the **Insured** was not legally entitled; or
  - (b) any criminal or fraudulent act, error or omission by an **Insured**.

This exclusion 15. does not apply to any **Insured Individual** who did not commit, acquiesce in or participate in the actions that gave rise to the **Claim**.

### III. LIMIT OF LIABILITY, RETENTIONS, DEFENSE AND SETTLEMENT, PRIORITY OF PAYMENTS

#### A. Limit of Liability

The **Insurer's** maximum aggregate liability for **Loss** arising from all **Claims** under each **Coverage Part** shall be the applicable Maximum Aggregate Limit of Liability for such **Coverage Part** as set forth in Item 3. of the Declarations for such **Coverage Part**. The **Insurer's** maximum liability for **Loss** arising from any one **Claim** under each **Coverage Part** shall be the applicable Limit of Liability Per Claim for such **Coverage Part** as set forth in Item 3. of the Declarations for such **Coverage Part**

which amount shall be part of and not in addition to the **Insurer's** Maximum Aggregate Limit of Liability for all **Claims** under such **Coverage Part**.

In the event that coverage is afforded under multiple **Coverage Parts** for any one **Claim**, the maximum Limit of Liability Per **Claim** for all **Loss** from such **Claim** shall not be greater than the larger of the two applicable Limits of Liability Per **Claim** set forth in Item 3. of the Declarations of each **Coverage Part**. Under no circumstances will a separate Limit of Liability Per **Claim** under more than one **Coverage Part** of this Policy, or of any prior policy issued by the **Insurer** of which this Policy is a renewal, apply to any one **Claim**, even if coverage is afforded for any one **Claim** under more than one **Coverage Part**, or under more than one policy issued by the **Insurer**..

With respect to **Claims Made Coverage Parts**, the Limit of Liability for an Extended Reporting Period, if exercised, shall be part of and not in addition to the Limit of Liability for the **Claims Made Coverage Part** for which the Extended Reporting Period is being exercised. The purchase of the Extended Reporting Period shall not increase or reinstate the applicable Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and Extended Reporting Period, combined for such **Coverage Part**.

**Defense Costs** are part of, and not in addition to, the Limits of Liability and the payment by the **Insurer** of **Defense Costs** reduces and may totally exhaust such Limits of Liability.

If the maximum aggregate Limit of Liability set forth in the Declarations for a **Coverage Part** is exhausted by payment of **Loss**, the Insurer's obligations under such **Coverage Part** shall be completely fulfilled and extinguished.

All **Claims** arising from the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**. For purposes of the coverage afforded under **Claims Made Coverage Parts**, such **Claim** shall be deemed to be first made on the earlier date that: (i) any of the **Claims** is first made against an **Insured** under this Policy or any prior policy, or (ii) valid notice was given by the **Insureds** under this Policy or any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event, transaction or cause which underlies such **Claim**. With respect to the coverage afforded under **Claims Made Coverage Parts**, coverage shall apply only with respect to **Claims** deemed to have been first made during the **Policy Period** and reported in writing to the **Insurer** in accordance with the terms herein.

With respect to **Occurrence Coverage Parts** of this Policy, if this Policy extends for more than one annual period, or if this Policy is renewed by the **Insurer** then the following applies:

1. The most we will pay for **Wrongful Acts** or **Interrelated Wrongful Acts** that are continuous or progressive, and that first occur or commence during the **Policy Period**, is the limit of insurance stated in the declarations of this Policy.
2. The applicable annual limit of insurance stated in the declarations of this Policy described above, is the only limit that applies to all **Wrongful Acts** or **Interrelated Wrongful Acts** that first occur and are continuous or progressive regardless of whether such **Wrongful Acts** continue into or occur during any subsequent annual periods of this Policy or any renewal policies issued by the **Insurer**.

All **Wrongful Acts** arising from an event or series of related events shall be deemed to occur at the time of the first such **Wrongful Acts**, even though the events giving rise to such **Wrongful Acts** may be continuous or repeated and even though the nature, type or extent of such **Wrongful Acts** may be continuous, progressive, cumulative, changing or evolving, and regardless whether such **Wrongful Acts** are known by or apparent to any person or **Insured**.

B. Retentions

The applicable **Retention** for each purchased **Coverage Part** shall be as set forth in Item 4. of the applicable Declarations for such **Coverage Part**.

The **Insurer** shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable **Retention**, and such **Retention** shall be borne by the **Insureds** uninsured and at their own risk. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable **Retention**, or any portion thereof, under this Policy. If different parts of **Loss** arising from a single **Claim** are subject to different **Retentions** under this Policy, the applicable **Retention** will be applied separately to each part of such **Loss**, but the sum of such **Retentions** shall not exceed the largest applicable **Retention**.

One or more **Claims** based on or arising out of the same **Wrongful Act** or series of related **Wrongful Acts** of one or more **Insureds** will be considered a single **Claim**. Only one **Retention**, if any, will apply to such **Claim**.

C. Defense and Settlement

1. Unless otherwise provided by endorsement to this Policy, the **Insurer** shall have the right and duty to defend any **Claim** under this Policy, even if the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
2. The **Insurer** may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient. If any **Insured** withholds consent to any settlement acceptable to the claimant and the **Insurer** (a "Proposed Settlement"), then the **Insurer's** liability for all **Loss** shall not exceed the amount of the Proposed Settlement, including **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement.
3. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation with respect to a **Claim**, without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated to pay. The **Insureds** shall not knowingly take any action which increases the **Insurer's** exposure for **Loss** under this Policy. Notwithstanding any of the foregoing, if all **Insureds** are able to fully and finally dispose with prejudice of all **Claims** that are subject to one **Retention** amount for an amount not exceeding the applicable **Retention**, including **Defense Costs**, then the **Insurer's** consent shall not be required for such disposition.
4. The **Insureds** shall provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and shall do nothing that may prejudice the **Insurer's** potential or actual rights of recovery with respect to **Loss** paid on account of a **Claim**.
5. If, at the **Insurer's** option, the **Insurer** has paid any amounts for **Loss** or **Defense Costs** in excess of the applicable Limit of Insurance or if the **Insurer** has paid part or all of any **Retention**, the **Insured** shall be liable to reimburse such amounts to the **Insurer** upon demand. The **Insurer** will have the right to seek recovery from any **Insured** of any **Defense Costs** or **Loss** incurred as a result of any portion of a **Claim** that is not covered by this Policy.

#### IV. COVERAGE EXTENSIONS

A. Spousal Coverage

If a **Claim** made against an **Insured Individual** includes a claim against the **Insured Individual's** lawful spouse solely by reason of:

1. such spouse's status as a spouse of the **Insured Individual**; or

2. such spouse's ownership interest in property from which the claimant seeks recovery for the **Wrongful Acts** of the **Insured Individual**;

all loss which such spouse becomes legally obligated to pay on account of such claim shall be treated for purposes of this Policy as **Loss** which the **Insured Individual** is legally obligated to pay on account of the **Claim** made against the **Insured Individual**. Such loss shall be covered under a **Coverage Part** only if and to the extent that such loss would be covered under such **Coverage Part** if incurred by the **Insured Individual**.

This coverage extension afforded by this subsection does not apply to any **Claim** alleging any wrongful act or omission by an **Insured Individual's** spouse. The term "spouse" as used in this paragraph shall include any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America.

B. Estates and Legal Representatives

Coverage under this Policy shall extend to a **Claim** made against the estates, heirs, legal representatives or assigns of an **Insured Individual** who is incompetent, insolvent or bankrupt, for purposes of the **Wrongful Acts** of such **Insured Individual**.

The coverage extension afforded by this subsection does not apply to any **Claim** alleging any wrongful acts or omissions by the **Insured Individual's** estates, heirs, legal representatives or assigns.

C. Extended Reporting Period With Respect to **Claims Made Coverage Parts** Only

If the **Insurer** chooses not to renew or the **First Named Insured** cancels or chooses not to renew a **Claims Made Coverage Part** of this Policy, the **First Named Insured** shall have the right, upon payment of the additional premium required by the **Insurer** in Item 4. of the Declarations of the General Terms and Conditions, to a one-year Extended Reporting Period following the termination of the **Policy Period**, but only with respect to the coverage afforded in the **Claims Made Coverage Part** that has been non-renewed or cancelled, and only with respect to **Wrongful Acts** committed prior to the effective date of such cancellation or nonrenewal.

The right to purchase the Extended Reporting Period shall not be available in the event of nonrenewal or cancellation of this Policy resulting from the failure to pay any premium due.

This right to elect any Extended Reporting Period shall lapse unless written notice of such election (specifying the applicable **Claims Made Coverage Part**), together with payment of the additional premium due, is given by the **First Named Insured** and is received by the **Insurer** within sixty (60) days following the effective date of cancellation or nonrenewal. Coverage under the Extended Reporting Period shall apply only to a **Claim** under a **Claims Made Coverage Part** that is first made against an **Insured** during the Extended Reporting Period, and any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The Limit of Liability applicable to the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability under the applicable **Claims Made Coverage Part** for the immediately preceding **Policy Period**.

## V. AWARENESS PROVISION

- A. Solely with respect to **Claims Made Coverage Parts**, if during the **Policy Period** any **Insured** becomes aware of circumstances that could give rise to a **Claim** under a **Claims Made Coverage Part**, and the **Insured** gives written notice of such circumstances to the **Insurer** during the **Policy Period**, then any **Claim** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** in which the circumstances were first reported to the **Insurer**. No coverage shall be provided for fees and expenses, including defense costs, incurred prior to the time such circumstances result in a **Claim**.

- B. The **Insureds** shall, as a condition precedent to exercising their rights hereunder:
1. include with any notice of circumstances a description of such circumstances, the nature of the potential **Wrongful Act**, the nature and extent of the potential damages, the names of the potential claimants, and the manner in which the **Insured** first became aware of such circumstances; and
  2. give the **Insurer** such additional information and cooperation as it may reasonably require.

## VI. NOTICES

All notices under any provision of this Policy must be made in writing and delivered by prepaid express courier, certified mail or fax. Notices to the **Insureds** shall be given to the **First Named Insured**. Notices to the **Insurer** shall be given to the appropriate party at the address set forth in Item 5. of the Declarations of the General Terms and Conditions of this Policy. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notices are sent, whichever is earlier.

## VII. GENERAL CONDITIONS

### A. Acquisition of **Named Insured**

With respect to any **Named Insured** that is an entity, if, during the **Policy Period** any of the following events occur:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the acquisition by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty (50) percent of the directors of the **Named Insured**;

then:

- (a) solely with respect to **Occurrence Coverage Parts**, coverage shall continue under this Policy, but only with respect to **Wrongful Acts** occurring prior to such merger, consolidation or acquisition;
- (b) solely with respect to **Claims Made Coverage Parts**, coverage shall continue under this Policy until termination of the **Policy Period**, but only with respect to **Wrongful Acts** committed prior to such merger, consolidation or acquisition; and
- (c) with respect to all **Coverage Parts**, no coverage will be available for any **Wrongful Act(s)** occurring after the effective date of such merger, consolidation or acquisition.

The **First Named Insured** 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 require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Acts** occurring after such event. The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Named Insured**, or the **Named Insured** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall not be considered an acquisition within the meaning of this subsection.

### B. Representations and Severability With Respect To **Application**

By acceptance of this Policy, the **Named Insured** agrees:

1. the statements furnished to the **Insurer** in the **Application** and any **Renewal Application** for this insurance are accurate and complete;
2. those statements furnished to the **Insurer** are representations the **Named Insured** made to the **Insurer** on behalf of all **Insureds**;
3. those representations are a material inducement to the **Insurer** to issue this Policy;
4. the **Insurer** has issued this Policy in reliance upon those representations; and
5. this Policy embodies all agreements existing between the **Insured** and the **Insurer** or any of its agents relating to this insurance.

With regard to the information provided on any insurance **Application** or **Renewal Application**, only facts pertaining to and knowledge possessed by any of the **First Named Insured's** chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, risk manager, in-house counsel or any person whose signature appears on the **Application** or **Renewal Application** shall be imputed to the **Insured**.

C. Special Rights and Duties of the **First Named Insured**

The **First Named Insured** is responsible for the payment of all premiums and **Retentions**. The **Insureds** agree that the **First Named Insured** has exclusive authority to act on behalf of all of the **Insureds** with respect to matters relating to this Policy, including:

1. Giving and receiving notice of cancellation and nonrenewal;
2. Receiving refunds;
3. Agreeing to any changes to this Policy; and
4. Purchasing an Extended Reporting Period.

D. Cancellation

The **First Named Insured** may cancel this Policy during the **Policy Period** by giving the **Insurer** advance written notice of cancellation stating when thereafter such cancellation will be effective.

The **Insurer** may only cancel this Policy in the event of nonpayment of premium by giving the **First Named Insured** written notice of cancellation at least twenty (20) days before the effective time of cancellation.

Notice of cancellation shall state the effective time of cancellation. The **Policy Period** shall end at that time.

If this Policy is cancelled, the **Insurer** shall send the **First Named Insured** any premium refund as soon as practicable. If the **First Named Insured** cancels, the refund shall be on the customary short rate basis. The return or tender of a return premium is not a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.

E. Nonrenewal

The **Insurer** may elect not to renew this Policy by mailing or delivering written notice of nonrenewal to the **First Named Insured's** last mailing address known to the **Insurer**. The **Insurer** will mail or deliver the notice at least sixty (60) days before the expiration of this Policy.

If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

F. Other Insurance

If any **Loss** arising from any **Claim** is insured by any other policy(ies), prior or current, then this Policy shall apply only in excess of the amount of any deductibles, retentions, and limits of liability under such other policy(ies) whether such policy(ies) is stated to be primary, contributory, excess, contingent or otherwise, unless such policy(ies) is written to be specifically excess of this Policy by reference in such other policy(ies) to this Policy's Policy Number indicated in the Declarations.

G. Territory

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

H. Valuation and Currency

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

I. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall 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 **Insureds**.

J. No Action Against **Insurer**

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy. No person or organization shall have any 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 representatives.

K. Bankruptcy

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

L. Alteration and Assignment of Interest

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy signed by an authorized representative of the **Insurer**. The **Insureds** agree that this Policy constitutes the entire agreement between the **Insureds** and the **Insurer**, or any of their agents or brokers. Notice to or knowledge possessed by the **Insurer**, the **Insureds** or any agent, broker or other person acting on behalf of the **Insureds** or **Insurer** shall not effect a waiver of nor estop the **Insurer** from asserting any rights under this Policy.

M. Headings

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

IN WITNESS WHEREOF, the **Insurer** has caused the policy to be signed by the **Insurer's** President and Secretary; but, this Policy is not binding unless countersigned on the Declarations Page by the **Insurer's** authorized representative.