





- ACE American Insurance Company
- Illinois Union Insurance Company
- Westchester Fire Insurance Company
- Westchester Surplus Lines Insurance Company

# ACE Advantage<sup>®</sup> Management Protection Employment Practices Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Policy**, the **Named Insured**, the **Insureds**, and the **Insurer** agree as follows:

## I. INSURING AGREEMENT

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is reported to the **Insurer** as set forth in Section VIII below.

## II. DEFINITIONS

When used in this **Policy**:

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a direct or indirect renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
- B. **Claim** means:
  - 1. a written demand against the **Insured** for monetary damages or non-monetary or injunctive relief;
  - 2. a civil, criminal, or arbitration proceeding for monetary damages or non-monetary or injunctive relief commenced by: (1) service of a complaint or similar pleading; and (2) with respect to a criminal proceeding, a return of an indictment, information, or similar document;
  - 3. an administrative or regulatory proceeding commenced by:
    - (i) the issuance of a notice of charge, formal investigative order or similar document, including without limitation any such proceeding by or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or
    - (ii) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or
  - 4. a written request of the **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in paragraphs 1 through 3 above;  
including any appeal therefrom. However, **Claim** shall not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement.
- C. **Company** means the **Named Insured** and any **Subsidiary**, including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
- D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by any **Insured** in defending **Claims**, including the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the directors, officers, trustees or **Employees** of the **Company**.

- E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, but only while acting in his or her capacity as such, and any natural person who is leased to the **Company**, but only if the **Company** provides indemnification to such leased person in the same manner as is provided to the **Company's** employees.
- F. **Insured** means any **Insured Person** and the **Company**.
- G. **Insured Person** means any natural person who was, now is or shall become:
1. a past, present or future duly elected or appointed director, trustee (excluding a bankruptcy trustee), officer, governor, **Employee**, or general partner of the **Company**, and, with respect to a **Company** that is a limited liability company, any member of the board of managers or management committee, and any equivalent executives of a **Company** organized pursuant to the laws of any jurisdiction other than the United States of America, its territories and possessions;
  2. an independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, which sets forth the nature of the retention of such independent contractor by the **Company**, but only if: (i) the **Company** provides indemnification to such natural person in the same manner as that provided to the **Employees**; (ii) if such natural person is specified by written endorsement to this **Policy**; and (iii) if the **Company** pays such additional premium for such natural person as the **Insurer** may require.
- H. **Insurer** means the insurance company providing this insurance.
- I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- J. **Loss** means damages (including front-pay and back-pay), judgments, pre-judgment interest, post-judgment interest, settlements, and **Defense Costs**, which an **Insured** becomes legally obligated to pay on account of a covered **Claim**. Such damages include punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, and the multiple portion of any multiplied damage award, if and to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages.

However, **Loss** does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to the **Insureds**;
2. taxes, fines or penalties;
3. matters uninsurable under the laws pursuant to which this **Policy** is construed;
4. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation and **Stock Benefits**;
5. **Stock Benefits**; or
6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

**Loss** shall include **Defense Costs** for items specifically excluded from **Loss** pursuant to paragraphs 1 through 6 above, inclusive, subject to the other terms, conditions and exclusions of this **Policy**.

- K. **Named Insured** means the organization first named in Item 1 of the Declarations.
- L. **Outside Entity** means any not-for-profit organization, and any other entity listed by endorsement to this **Policy**.
- M. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.
- N. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XIII, Termination of the **Policy**.
- O. **Retaliation** means retaliatory treatment on account of:
1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
  2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
  3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or
  5. any strike of any **Employee** of the **Company**.
- P. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.
- Q. **Subsidiary** means:
1. any for-profit organization with respect to which the **Named Insured**, on or before the inception date of the **Policy**, either directly or indirectly through one or more of its **Subsidiaries**, owns or controls by reason of stock ownership, a written agreement, by-laws, charter or similar document, the present right to select more than 50% of the directors, trustees, governors, general partners, or members of the management committee or board of managers of the organization; and
  2. any not-for-profit organization which is sponsored exclusively by the **Named Insured**.
- R. **Wrongful Act** means:
1. If the **Wrongful Act** relates to an **Employee** or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Act** means any:
    - a. wrongful dismissal or discharge or termination, whether actual or constructive;
    - b. employment-related misrepresentation;
    - c. any violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
    - d. sexual or unlawful workplace harassment;
    - e. wrongful deprivation of a career opportunity or wrongful demotion;

- f. failure to employ or promote;
- g. wrongful discipline;
- h. **Retaliation**;
- i. negligent evaluation;
- j. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
- k. failure to grant tenure;
- l. with respect to paragraphs 1a through 1k above, inclusive, negligent hiring, retention, training or supervision; infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

if actually or allegedly committed or attempted by (i) the **Company**; (ii) an **Insured Person** in his or her capacity as such; or (ii) an **Insured Person** who is a duly elected or appointed director, trustee (excluding a bankruptcy trustee), officer, governor or similar executive of a **Company**, or a member of the management board of a **Company** that is a limited liability company, or who is or was acting as a director of an **Outside Entity** at the specific written request or direction of such **Company** in his or her capacity as such.

- 2. If the **Wrongful Act** relates to a customer, client or other group or natural person other than an **Employee** or applicant for employment with the **Company**, **Wrongful Act** means only any violation of discrimination laws anywhere in the world, including but not limited to, violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional, by the **Insured Persons** in their capacity as such or by the **Company**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

### III. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim**:

- A. for bodily injury (other than mental anguish, emotional distress or humiliation), sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof, whether or not such property is physically injured.
- B. alleging, based upon, arising out of, or attributable to an actual or alleged violation of the responsibilities, obligations or duties imposed by any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits or similar law. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.
- C. for an actual or alleged violation of: (i) the Employee Retirement Income Security Act of 1974 (except section 510 thereof); (ii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management 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 any similar federal, state or local laws, and any rules and regulations promulgated thereunder and amendments thereto anywhere in the world. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.
- D. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.
- E. alleging, based upon, arising out of, or attributable to any prior or pending litigation, administrative or regulatory proceeding, or any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was pending against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding

date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

- F. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement.
- G. brought by or on behalf of any **Insured**; provided, however, this exclusion shall not apply to a **Claim** brought by an **Employee** other than an **Employee** who is or was a director, member of the board of managers or management committee member or general partner of the **Named Insured**.
- H. alleging, based upon, arising out of, or attributable to improper payroll deductions or any **Claims** for unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, 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. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.
- I. for a **Wrongful Act** actually or allegedly committed or attempted by an **Insured Person** in his or her capacity as a director, officer, governor, trustee, manager, member of the board of managers or equivalent executive of a limited liability company, or employee of, or independent contractor for, or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company** even if such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

#### IV. ESTATES, LEGAL REPRESENTATIVES, SPOUSES

The estates, heirs, legal representatives, assigns, spouses of **Insured Persons**, and any natural person qualifying as a domestic partner of **Insured Persons** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

#### V. EXTENDED REPORTING PERIOD

- A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional extended reporting period premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year (the "**Extended Reporting Period**") following the effective date of such termination or non-renewal, but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or non-renewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the **Extended Reporting Period** premium to the **Insurer** within 30 days following the effective date of termination or non-renewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a non-renewal for purposes of triggering the rights to the **Extended Reporting Period**.
- B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

- C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

#### VI. LIMITS OF LIABILITY

- A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.
- B. The amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during each **Policy Period**.
- C. **Defense Costs** shall be part of and not in addition to the applicable Limit of Liability shown in Item 3 of the Declarations and **Defense Costs** shall reduce such Limit of Liability. If the Limit of Liability is exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.

#### VII. RETENTIONS

- A. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3B of the Declarations. Such Retention shall be borne uninsured by the **Company** and at its own risk.
- B. The Retention for Non-Indemnifiable **Loss** shown in Item 3B(i) of the Declarations shall apply to **Loss** incurred by an **Insured Person** if and to the extent that the **Company**: (i) is not permitted or required by common or statutory law to indemnify the **Insured Person** for such **Loss** or to advance **Defense Costs** on their behalf; or (ii) is unable to indemnify the **Insured Person** for such **Loss** by reason of the **Company** becoming a debtor-in-possession or the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**. The resolutions of the board of directors or equivalent body of the **Company** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by law, and the **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The Retention for Indemnifiable **Loss** shown in Item 3B(ii) of the Declarations shall apply to all other **Loss**.
- C. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- D. If **Loss** on account of a single **Claim** is subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

#### VIII. NOTICE

- A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the general counsel, risk manager, or the director of human resources, or equivalent positions, first learn of the **Claim**, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, the **Extended Reporting Period**.
- B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** first give written notice to the **Insurer** during the **Policy Period** or the **Extended Reporting Period** of the identity of the potential claimants; a

description of the anticipated **Wrongful Act** allegations; the identity of the **Insureds** allegedly involved; the circumstances by which the **Insureds** first became aware of the facts or circumstances; the consequences which have resulted or may result; and the nature of the potential monetary damages and non-monetary relief, then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or potential **Claim** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

#### IX. DEFENSE AND SETTLEMENT

- A. The **Insurer** shall have the right and duty to defend any **Claim** covered by 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 Limit of Liability.
- B. The **Insurer** shall advance **Defense Costs** covered under this **Policy** in excess of the applicable Retention prior to final disposition of the **Claim**, subject to repayment to the **Insurer** by the **Insureds**, severally according to their respective interests, if and to the extent that such **Defense Costs** are later determined not to be covered under this **Policy**.
- C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or assume or admit to any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
- D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** in the defense and negotiation of any settlement of any **Claim**.
- E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
- F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is acceptable to the claimant, but the **Insureds** do not consent to such settlement within 30 days of the date the **Insureds** are first made aware of the potential settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (i) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date the potential settlement was proposed in writing by the **Insurer** to the **Insureds**; and (ii) 70% of all subsequent covered **Loss** in excess of such amount, the remaining 30% of which shall be borne by the **Insureds** uninsured and at their own risk.

#### X. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover such **Loss**, subject to its terms and conditions, on a primary basis. However, if any **Loss** covered under this **Policy** arises out of an **Insured Person's** service as a director, officer, trustee or governor in an **Outside Entity**, this **Policy** shall cover the **Loss** only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance provided to, and indemnification

provided by, such **Outside Entity**, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

## XI. MATERIAL CHANGES IN CONDITIONS

### A. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Company** acquires voting securities in another organization or creates another organization which as a result of such acquisition or creation becomes a **Subsidiary**, or acquires any organization by merger into or consolidation with the **Company**, then, subject to the terms and conditions of this **Policy** including the paragraph immediately below, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims for Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition, creation or change in qualification.

If either the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization, exceed 10% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, or the total number of **Employees** of such acquired or created organization exceed 10% of the total number of **Employees** of the **Named Insured** and the **Subsidiaries**, coverage shall be provided for such acquired or created organization for a period of 30 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 30 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

### B. Acquisition of the Named Insured

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another person or entity or group of persons or entities acting in concert, or the merger or consolidation of the **Named Insured** into or with another entity or group of entities such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**, or at least 50% of the general partners of the **Named Insured** if the **Named Insured** is a partnership; or
3. a general partner of the **Named Insured**, if the **Named Insured** is a partnership, withdraws, resigns or is terminated;

Then: (i) coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims for Wrongful Acts** taking place before such event; coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims for Wrongful Acts** taking place after such event. This **Policy** may not be cancelled after such effective date and the entire premium shall be deemed fully earned and non-refundable as of such effective date. The **Named Insured** shall have the right to an **Extended Reporting Period** pursuant to Section V of this **Policy**.

### C. Termination of a Subsidiary

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

## XII. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.
- B. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, this **Policy** shall be void ab initio as to: (i) any **Company** if the chief executive officer or chief financial officer knew the facts that were not truthfully disclosed or that were omitted in the **Application**; and (ii) any **Insured Person** who knew the facts that were not truthfully disclosed or that were omitted, whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission. The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the knowledge of the chief executive officer and chief financial officer shall be imputed to the **Company**.

## XIII. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
  2. 15 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 15 day period;
  3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
  4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.
- B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

## XIV. TERRITORY AND VALUATION

- A. All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States of America dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

## XV. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**, including without limitation any right of recovery by **Insured Persons** against the **Company** for indemnification. 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 or otherwise pursue subrogation rights in the name of the **Insureds**.

XVI. ACTION AGAINST THE INSURER

No action shall lie against the **Insurer** under this **Policy**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XVII. BANKRUPTCY

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

XVIII. AUTHORIZATION CLAUSE

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

XIX. ALTERATION, ASSIGNMENT AND HEADINGS

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** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XX. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process described in this section.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) non-binding arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of either mediation or arbitration, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the conclusion of the arbitration, or in the event of mediation, at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.