

# EMPLOYMENT PRACTICES LIABILITY DECLARATIONS

**PLAZA INSURANCE COMPANY (“Insurer”)**

700 WEST 47<sup>th</sup> STREET, SUITE 350  
KANSAS CITY, MO 64112

**THIS POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE DISCOVERY PERIOD, IF PURCHASED, AND REPORTED TO THE INSURER PURSUANT TO SECTION VIII. THE LIMITS OF LIABILITY AND ANY RETENTION SHALL BE REDUCED BY DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.**

Policy Number: \_\_\_\_\_

Item 1. Parent Company:  
Address:

Item 2. Policy Period: From \_\_\_\_\_ to \_\_\_\_\_ 12:01 A.M. Local Time at the Address in Item 1.

Item 3. Limit of Liability (inclusive of **Defense Costs**) for all **Claims**

A. Aggregate Limit of Liability for all **Loss** under all coverage combined \$ \_\_\_\_\_

Item 4. Discovery Period

A. Discovery Period Premium \$ \_\_\_\_\_

B. Discovery Period Duration \$ \_\_\_\_\_

Item 5. Retention

A. Each **Claim** for **Employment Practices Wrongful Acts** \$ \_\_\_\_\_

B. Each **Claim** for **Third Party Employment Practices Wrongful Acts** \$ \_\_\_\_\_

Item 6. Pending and Prior Litigation Date: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Company Representative

# **EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY**

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** in the Application forming a part hereof and its attachments and the material incorporated therein, **Insurer** and the **Insureds** agree as follows:

## **Section I. Insuring Clause**

All Coverage granted for **Loss** under this Policy is provided solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or any applicable Discovery Period and reported to the **Insurer** as required by Section VIII of this Policy. Subject to the foregoing and the other terms, conditions and limitations of this Policy, this Policy affords the following coverage:

The **Insurer** will pay the **Loss** on behalf of the **Insureds** for which the **Insureds** are legally obligated to pay as a result of a **Claim** made against such **Insured** (i) by or on behalf of any past, present, future or prospective **Employee** for an **Employment Practices Wrongful Act** or (ii) by any natural person other than an **Insured Person** for a **Third Party Employment Practices Wrongful Act**.

## **Section II. Discovery Period**

### **A. *Bi Lateral Discovery Options***

If the **Company** shall cancel or the **Company** or the **Insurer** shall refuse to renew or replace this Policy, the **Insureds** shall have the right to purchase an extension of the coverage afforded by this Policy for the Discovery Period listed in Item 4B of the Declarations Page. Such extension of coverage shall apply to **Claims** first made or deemed to be first made against an **Insured** during said Discovery Period but only to the extent such **Claims** are for **Wrongful Acts** that occur prior to the end of the **Policy Period**.

### **B. *Conversion to Run Off Option***

If a transaction described in Section IX.D, Conversion to Run Off, occurs, the **Insureds** shall have the right to request an offer from the **Insurer** of an extension of the coverage afforded by this Policy after the end of the **Policy Period**. The **Insurer** shall offer such extension of coverage for such length of time ("Discovery Period") and subject to such terms, conditions exclusions and additional premium as the **Insurer** may reasonably decide. Such extension of coverage shall apply to **Claims** first made or deemed to be first made against an **Insured** during such Discovery Period but only to the extent such **Claims** are for **Wrongful Acts** that occur prior to the effective date of such transaction.

### **C. *Premium Payment and Election Requirements***

As a condition precedent to the right to purchase a Discovery Period, the total premium for this Policy must have been paid and a written request must be provided to the **Insurer** no later than thirty (30) days following the effective date of such non-renewal, cancellation or transaction. Any coverage extension provided by this Policy by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

## **Section III. Definitions**

"**Application**" means the application submitted to the **Insurer** for this Policy together with any attachments thereto and other materials and information incorporated therein or submitted to the **Insurer** in connection with the underwriting of this Policy.

"**Claim**" means:

- 1) a written demand for monetary or non-monetary relief made against any **Insured** (including any request to toll or waive any statute of limitations); or

- 2) a civil proceeding against any **Insured** commenced by the service of complaint or similar pleading; or
- 3) a criminal proceeding against any **Insured** commenced by the return of an indictment or information; or
- 4) an administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or formal investigative order, including any such proceeding initiated against any **Insured Person** before the Equal Employment Opportunity Commission or any similar state or local governmental body; or
- 5) an investigation of an **Insured**, commenced by the receipt of a target letter or similar written notice from a governmental authority identifying such **Insured** as one against whom a proceeding may be commenced; or
- 6) an arbitration or mediation proceeding against any **Insured**;

including any appeal therefrom.

However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

"**Company**" means the **Parent Company** and any **Subsidiary**. In the event any such entity is subject to bankruptcy, **Company** includes such entity as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code.

"**Defense Costs**" means reasonable legal fees, costs and expenses incurred in the investigation, adjustment, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond but will not include the obligation to apply for or furnish such bonds. **Defense Costs** shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**.

"**Directors**" and "**Officers**" means all persons who were, now are, or shall be (i) directors, officers, in-house general counsel, controller, director of investor relations, director of human resources or risk manager of the **Company**, or (ii) managers, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company, or (iii) the functional equivalent of any such positions with the **Company**.

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

"**Employee**" means any past, present or future employee of the **Company**, other than a **Director** or **Officer**, including any part-time, seasonal or temporary employee or any applicant for employment, solely in his or her capacity as such. Any natural person leased to the **Company** and any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person to the same extent as the **Company** indemnifies its permanent employees.

"**Employment Practices Wrongful Act**" means a **Wrongful Act** related to employment, including but not limited to:

- 1) adverse or unfair reprimand of an **Employee**; denial of interview or position; denial of or failure to provide training, mentoring, or advancement opportunities to an **Employee**; improper performance review or negligent evaluation of an **Employee**; derogatory or disparaging remarks to an **Employee**; wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference; employment-related misrepresentations or omissions; employment-related libel, slander, or defamation; failure to grant tenure; failure to provide an adequate employment policy or grievance procedure for **Employees**; improper discipline of an **Employee**; improper transfer, change of position or

change of work hours or shift of an **Employee**; negligent release of medical information of an **Employee**; wrongful dismissal, discharge or termination of employment, whether actual or constructive; negligent hiring, discipline, supervision or retention; breach of any oral, written, or implied employment contract; invasion of privacy; false imprisonment; infliction of emotional distress; failure or refusal to provide equal treatment or opportunities; wrongful failure to promote, transfer or employ; sexual or other workplace harassment of any kind; improper treatment of an **Employee** for their actions as a whistleblower; or **Retaliation** against an **Employee**;

- 2) violation of any federal, state or local law concerning discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992; the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto; or
- 3) violation of an **Employee's** civil rights relating to any of the above.

**"Financial Insolvency"** means the **Company** becoming a debtor in possession, or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

**"Insured(s)"** means any

- 1) **Insured Person**; and
- 2) the **Company**.

**"Insured Persons"** means:

- 1) any **Director** or **Officer**; and
- 2) any **Employee** of the **Company**.

**"Insurer"** means the insurance company identified on the Declarations.

**"Loss"** means damages, settlements, judgments (including pre- and post-judgment interest on a covered judgment), and **Defense Costs** in excess of the Retention. **Loss** also includes punitive or exemplary damages and the multiple portion of any multiplied damage award, to the extent insurable under the law of any applicable jurisdiction most favorable to insurability, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the **Insurer**, or the **Claim** is located.

**Loss** shall not include: 1) civil or criminal fines or penalties; 2) taxes; 3) any amount for which an **Insured** is legally or financially absolved from payment; 4) any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; 5) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed, 6) any amount incurred by the **Company** to comply with any injunctive or other equitable relief or any agreement to provide such relief, including without limitation any such amount incurred to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring; 7) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; 8) any other compensation earned by the claimant in the course of employment but not paid by the **Company** other than back pay or front pay; or 9) amounts owing under or assumed by the **Insured** pursuant to a written contract with or written severance obligation of the **Company** other than amounts for which the **Insured** would be liable in the absence of such written contract or obligation.

**"Management Control"** means that the **Company** has either:

- 1) an ownership interest of more than fifty percent (50%) that entitles the **Company**; or
- 2) the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization,

to elect, appoint or designate a majority of the Board of Directors or equivalent executives of such organization.

**"Parent Company"** means the entity or organization identified in Item 1 of the Declarations.

**"Policy Period"** means the period from the Inception Date to the Expiration Date as set forth in Item 2 of the Declarations, or its earlier termination if applicable.

**"Pollutants"** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof including, but not limited to nuclear material or nuclear waste. Such substances shall include, without limitation, solids, liquids, gaseous, biological, radiological or thermal irritants, contaminants or smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals or waste materials, including but not limited to, materials to be recycled, reconditioned or reclaimed; and any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

**"Related Wrongful Acts"** means all **Wrongful Acts** which are connected by reason of any common nucleus of fact, circumstance, situation, transaction, casualty, event or decision.

**"Retaliation"** means a **Wrongful Act** relating to or alleged to be in response to any of the following activities by an **Employee**:

- 1) the disclosure or threat of disclosure by an **Employee** 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;
- 2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act, Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the Occupational Safety and Health Act, or any other law relating to employee rights;
- 3) the filing of any claim under the Federal False Claims Act, or any other federal, state, local or foreign "whistleblower" law; or
- 4) an actual or threatened strike by **Employees**.

**"Subsidiary"** means:

- 1) any for-profit organization under the **Management Control** of the **Company**, either directly or indirectly, on or before the inception of the **Policy Period**;
- 2) automatically, any for-profit organization that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that (i) the securities of the organization are not publicly traded, (ii) the total assets of the organization are less than 35% of the total consolidated assets of the **Parent Company** as set forth in the **Parent Company's** then most recent audited consolidated financial statements;
- 3) any for-profit organization, other than those described in paragraph (2) above, that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that the **Company** provides the **Insurer** with the full particulars of the new **Subsidiary** within 90 days of it becoming a **Subsidiary** and the **Company** pays such additional premium and accepts such policy amendments as the **Insurer** may reasonably require.

**“Third Party Employment Practices Wrongful Act”** means any **Wrongful Act** that constitutes (i) actual or alleged harassment or unlawful discrimination as described in the definition of **Employment Practices Wrongful Act**, or (ii) the violation of the civil rights of a person relating to such harassment or discrimination, if either such **Wrongful Act** is alleged to be committed against anyone other than an **Insured Person**, including but not limited to customers, clients vendors or any other natural person.

**“Wrongful Act”** means:

- 1) with respect to **Insured Persons**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insured Persons** in their capacity as such; or
- 2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**.

#### **Section IV. Exclusions**

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

**A.** *Conduct Exclusion*

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

- 1) such **Insured** gaining, in fact, any profit, financial advantage or remuneration that he, she or it was not legally entitled to receive; or
- 2) the committing, in fact, of any deliberately fraudulent or dishonest act or any deliberately criminal act of such **Insured**;

provided, however, this Exclusion A shall not apply unless a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the **Insurer** establishes such conduct;

**B.** *Prior Written Notice*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any directors and officers, employment practices or comparable liability policy, provided the insurer of such policy does not reject such notice as invalid;

**C.** *Pending and Prior Litigation*

based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any civil, criminal, administrative or investigative proceeding, or Equal Employment Opportunity Commission notice of charge, involving the **Company** or any **Insured Person** pending on or before the Pending and Prior Date stated in Item 6 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge;

**D.** *Bodily Injury & Property Damage*

for any actual or alleged:

- 1) bodily injury (other than emotional distress and mental anguish), sickness, disease, or death of any person;
- 2) damage to or destruction of any tangible property, including the loss of use thereof;

**E.** *ERISA, Compensation & Labor Liability*

for any violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (except Section 510 thereof); the Fair Labor Standards Act (except the Equal Pay Act); the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act (WARN); the Consolidated Omnibus Budget Reconciliation Act (COBRA); the Occupational Safety and

Health Act (OSHA); all as amended; any law relating to off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, classification of **Employees** as exempt or non-exempt or failure to timely pay wages; or any other similar federal, state, local or foreign law; provided, however, this exclusion shall not apply to the extent that the **Claim** is for **Retaliation**;

**F.** *Subsidiary Wrongful Acts*

for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** where such **Wrongful Act** first occurred:

- 1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
- 2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
- 3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**;

**G.** *Employee Benefits*

based upon, arising out of, relating to, directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, medical benefits, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law, including any medical or insurance benefits to which an **Employee** allegedly was entitled or would have been entitled had the **Company** provided the **Employee** with a continuation or conversion of insurance, provided however, this exclusion shall not apply to a **Claim** for **Retaliation**;

For the purpose of determining the applicability of the Exclusions set forth in this Section IV., the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Acts** or knowledge of a **Company's** chief executive officer, chief financial officer, in-house general counsel or their functional equivalent shall be imputed to such **Company** and its **Subsidiaries**.

## Section V. Limit of Liability

- A.** The **Insurer** shall be liable to pay covered **Loss** in excess of the applicable Retention amount stated in Item 5 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B.** **Defense Costs** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Defense Costs** shall serve to reduce the Limit of Liability.
- C.** The maximum liability of the **Insurer** for all **Loss** arising from all **Claims** combined shall be the amount stated in Item 3.A of the Declarations. This amount shall be the maximum liability of the **Insurer** for the **Policy Period** and Discovery Period, if purchased, regardless of the time of payment or the number of **Claims**.

## Section VI. Retention

- A.** The **Insurer's** liability with respect to covered **Loss** resulting from each **Claim** shall be excess of the applicable Retention specified in Item 5 of the Declarations. The applicable Retentions shall be borne by the **Company** uninsured and at its own risk, and shall apply to all covered **Loss**, including **Defense Costs**.
- B.** The Retentions specified in Item 5 of the Declarations shall apply as follows:
  - 1) Item 5(A) Retention is applicable to **Loss** resulting from each **Claim** for **Employment Practices Wrongful Acts**.



- 2) Item 5(B) Retention is applicable to **Loss** resulting from each **Claim** for **Third Party Employment Practices Wrongful Acts**.
- C. If a **Company** fails or refuses within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if a **Company** is financially unable to indemnify or advance covered **Loss** due to its **Financial Insolvency**, the **Insurer** shall pay such covered **Loss** without applying the applicable Retention. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** all **Loss** otherwise covered under this Policy to the fullest extent permitted or required by applicable law. If the **Insurer** pays under this Policy any **Loss** for which the **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** shall reimburse the **Insurer** for such amounts up to the applicable Retention, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the **Insurer**.
- D. One Retention shall apply to each and every **Claim**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention, except where the **Company** is unable to indemnify the **Insured Persons** solely by reason of **Financial Insolvency**.
- E. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earliest date on which any such **Claim** was first made or deemed to be first made, regardless of whether such date is before or during the **Policy Period**.

#### Section VII. Defense Costs and Settlements

- A. The **Insured** shall not incur **Defense Costs**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. Any **Loss** resulting from any admission of liability, agreement to settle, or **Defense Costs** incurred prior to the express prior written consent of the **Insurer**, shall not be covered hereunder.
- B. Notwithstanding Section VII.A above, if all **Insureds** are able to settle all **Claims** constituting a single **Claim** for an amount that, together with the **Defense Costs** for such single **Claim**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C. Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to negotiating a settlement, subject to the provisions of this clause. The **Insureds** shall cooperate with the **Insurer** and shall provide the **Insurer** such information as the **Insurer** may reasonably require in connection with the investigation, defense or settlement of any **Claim**.
- D. The **Insurer** may make any investigation it deems necessary and may, with the written consent of the **Insured**, make any settlement of a **Claim** it deems expedient. If the **Insureds** withhold consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("Settlement Opportunity Amount"), plus (2) 70% of covered **Loss** in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 30% of such **Loss** excess of the Settlement Opportunity Amount shall be carried by the **Company** and the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the Retention amount stated in Item 5 of the Declarations.
- E. If in any **Claim** the **Insureds** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage under this Policy for such **Claim** or incur both **Loss** covered by this Policy and other amounts which are not covered by this Policy, the **Insureds** and the **Insurer** shall allocate such amounts between covered **Loss** and uncovered loss based on the relative legal and financial



exposures of the parties to covered and uncovered matters. If the **Insureds** and the **Insurer** cannot agree on an allocation of **Defense Costs**, the **Insurer** shall advance **Defense Costs** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. In such event, such allocation shall be applied retroactively to all **Defense Costs**.

- F. Subject to the preceding paragraph, the **Insurer** shall advance **Defense Costs** on a current basis but no later than ninety (90) days after the **Insurer** receives itemized invoices for such **Defense Costs**; provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.
- G. The **Insurer** will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** under this Policy after the applicable Limit of Liability for this Policy as set forth in Item 3 of the Declarations is exhausted by the payment of **Loss**, including **Defense Costs**.

#### Section VIII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery Period (if purchased). Such notice shall be given as soon as practicable after the risk manager or in-house general counsel of the **Parent Company** first learns of such **Claim**, but in no event later than 1) sixty (60) days after the end of the **Policy Period** or 2) the expiration date of the Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or any **Wrongful Acts**, fact or circumstance alleged therein, shall be deemed first made at the time such prior **Claim** was first made.
- B. If during the **Policy Period** or Discovery Period (if purchased) an **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances, shall be considered made at the time notice of such circumstances was first given to the **Insurer**; provided, however, coverage otherwise applicable to any such subsequent **Claim** shall only apply to **Loss** incurred after such **Claim** is actually made. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable after the risk manager or in-house general counsel of the **Parent Company** first learns of such **Claim**.
- C. Notice to the **Insurer** as provided in Section VIII shall be given to the Director of Claims at

By Mail:  
Director of Claims  
Plaza Insurance Company  
700 W 47<sup>th</sup> Street, Suite 350  
Kansas City, MO 64112  
Phone 877 305 7625 (toll free)  
Fax 877 742 8762 (toll free)

By Email:  
[rhnewcasualtyclaims@rhkc.com](mailto:rhnewcasualtyclaims@rhkc.com)

In all cases, reference the policy number in the correspondence.

## Section IX. General Conditions

### A. Cancellation or Non-Renewal

- 1) This Policy may be cancelled by the **Company** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D, in which case the entire premium for this Policy shall be deemed earned.
- 2) This Policy may only be cancelled by the **Insurer** if the **Company** does not pay the premium when due, in which case the **Insurer** shall give to the **Parent Company** at least ten (10) days prior written notice of such cancellation.
- 3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Company** with no less than sixty (60) days advance notice thereof.

### B. Application

The **Insureds** represent and acknowledge that statements made and information in the **Application** are accurate and complete, are the basis of this Policy and are incorporated in and constitute part of this Policy.

### C. Action Against the Insurer

- 1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- 2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

### D. Conversion to Run-Off Coverage

If during the **Policy Period** any of the following events occur:

- 1) the **Parent Company**: (i) sells all or substantially all of its assets to any other person or entity or affiliated groups of persons or entities; or (ii) merges or consolidates with another entity such that the **Parent Company** is not the surviving entity; or
- 2) any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Parent Company**;

then coverage under this Policy shall continue until expiration of the **Policy Period** or the Discovery Period, if applicable, but only for **Wrongful Acts** taking place prior to the effective date of such transaction. The entire premium for this Policy shall be deemed earned as of the date of such transaction.

### E. Other Insurance

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

### F. Coverage Extensions

1) Lawful Spouse or **Domestic Partner** Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

3) Estates and Legal Representatives

a) The coverage provided by this Policy also shall apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

b) In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company** under this Policy.

**G. Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Persons** or the **Company**. The **Insurer** shall not exercise its right of subrogation against any **Insured Person** under this Policy unless Exclusion IV.A. applies to such **Insured Person**.

**H. Assignment**

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

**I. Conformity to Statute**

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

**J. Representative of the Insurer**

Rockhill Underwriting Management, 700 W 47<sup>th</sup> Street, Suite 350, Kansas City, MO 64112 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VIII. of the Policy.

**K. Bankruptcy**

Bankruptcy or insolvency of the **Company**, any **Subsidiary** or any **Insured Persons** shall not relieve the **Insurer** of any of its obligations under this Policy.

**L. Headings**

The descriptions in the headings (including italicized headings) of this Policy form no part of the terms and conditions of the coverage under this Policy.

**M. Entire Agreement**

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**N. Authorization**

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provide for in this Policy (except the giving of notice to apply for any Discovery Period), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Parent Company** shall act on their behalf.