



PHILADELPHIA INSURANCE COMPANIES
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**Directors & Officers Protection *Flexi Plus*
Insurance Policy**

THIS IS A CLAIMS MADE POLICY

THIS POLICY ONLY COVERS THOSE “CLAIMS” FIRST MADE AGAINST THE “INSURED” DURING THIS “POLICY PERIOD.”

In consideration of the premium paid and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock company, herein called the “Company”), including all statements made in the **Application**, the Company agrees to provide coverage as shown in the Declarations and described as follows:

I. INSURING AGREEMENTS

- A. The Company will pay on behalf of the **Insured** any **Loss** and **Defense Cost**, resulting from any **Claim** first made against the **Insured** during this **Policy Period**; or, if applicable, during the Extension Period and to which this insurance applies.
- B. This insurance applies to **Loss** and **Defense Cost** only if:
1. The **Claim** results from the **Wrongful Act** of the **Insured** arising solely out of the operations of the **Organization**;
 2. The **Wrongful Act** occurs before or during this **Policy Period**;
 3. The **Wrongful Act** or the circumstances, which any **Insured** could reasonably expect would result in a **Claim**:
 - a. Were not referenced in the **Application**; and
 - b. Have not been reported to The Company or any other Insurance Company during any preceding **Policy Period**; and
 4. The **Claim** is reported to The Company in writing, in accordance with Section VII, but, not later than 60 days after the expiration date of this Policy or, any Extension Period, if applicable.
- C. The **Insured** and not The Company shall have the right and duty to defend any **Claim**. However, upon the written request of the **Insured** and subject to all of the provisions of Section V. DEFENSE COST AND SETTLEMENT, The Company agrees to undertake and manage the defense of any **Claim**, to which this insurance applies. The Company will have no duty to defend the **Insured** against any **Claim** seeking **Loss** to which this insurance does not apply.

II. DEFINITIONS

- A. **Application** means:
1. The **Application** for this Policy, a copy of which is attached hereto; and
 2. The **Application(s)**, including any material submitted therewith, for all previous policies issued by The Company providing continuous coverage until the inception date of this Policy together with the material submitted with the **Application** for this Policy, all of which shall be deemed a part of this Policy as if physically attached hereto.
- B. **Claim** shall mean:
1. Any suit;
 2. Any proceeding before an administrative agency once it has concluded its investigative phase (if applicable); or
 3. Any written notice received by The Company of an **Insured** demanding the payment of money or provision of services to redress a **Wrongful Act**.
- C. **Defense Cost** shall mean:

1. Any reasonable and necessary legal fees and expenses incurred in the defense of a **Claim**, whether by the **Insured** with The Company's consent or directly by The Company at the **Insured's** written request, in the investigation, adjustment, defense and appeal of a **Claim**, **except** that **Defense Cost** shall not include:
 - a. Any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend, regardless of whether or not such other insurer undertakes such duty; or
 - b. Salaries, wages, overhead or benefit expenses associated with any **Insured** except as specified in item 2. below; or
 - c. Salaries, wages, overhead or benefit expenses associated with employees of The Company.
 2. A daily supplemental payment for the attendance of any **Individual Insured** at hearings, trials or depositions of \$100. per day per **Individual Insured**. Such payment shall not exceed \$5000. for each **Claim**.
- D. **Employment Practice Act** means any actual or alleged:
1. Termination of or interference with an employment relationship in a manner which is against the law and wrongful or in breach of a written or implied agreement to continue employment;
 2. Discrimination in connection with the actual or anticipated employment of any person because of such person's race, color, religion, age, sex, national origin, disability, pregnancy or other protected status;
 3. Unwelcome sexual advances, requests for sexual favor or other verbal or physical contact of a sexual nature that are made a condition of employment, are used as a basis for employment decisions, or creates a work environment which is intimidating or interferes with performance.
- E. **Individual Insured** shall mean:
1. Any individual who has been, now is or shall become a director, officer, trustee, employee (whether salaried or not), volunteer or committee member of the **Organization**.
 2. The lawful spouse of a director or officer of the **Organization**. Such spouse shall be an **Insured** only for actual or alleged **Wrongful Acts** of the director or officer for which they may be deemed liable as their spouse.
- F. **Insured** shall mean the **Organization** and any **Individual Insured**.
- G. **Loss** shall mean money an **Insured** is legally obligated to pay as damages or in settlement. But, **Loss** shall not include:
1. Criminal or civil fines or penalties imposed by law; or
 2. Taxes; or
 3. Matters deemed uninsurable under the law to which this Policy shall be construed; or
 4. Punitive or exemplary damages or the multiple portion of any damages award.
- H. **Organization** shall mean:
1. The **Parent Organization**, and
 2. Any **Subsidiary** of the **Organization**.
- I. **Parent Organization** shall mean the entity named in Item 1. of the Declarations.
- J. **Policy Period** shall mean the period of time specified in the Declarations of this Policy, or if applicable, a prior or subsequent policy.
- K. **Subsidiary** shall mean any non-profit entity, association or corporation of which the **Parent Organization** owns more than 50% of the voting stock, or in cases where no stock has been issued, controls such **Subsidiary** at the time of policy inception, and shall be limited to any **Subsidiary** identified as such in the **Application** and any **Subsidiary** created or acquired by the **Parent Organization** of which The Company is informed in writing. The Company shall not pay **Loss** and **Defense Cost** for **Claims** against any **Subsidiary** and its **Individual Insureds** for any **Wrongful Act** occurring before the date such entity became a **Subsidiary**. The Company shall have the right to reject the inclusion under this Policy of any **Subsidiary** not identified on the **Application** within 30 business days of the receipt of the notification of its creation or acquisition. Any additional premium required with respect to an added **Subsidiary** shall be paid to The Company within 10 days of invoicing for coverage to be effective.

In the event of separation or dissolution of a **Subsidiary** after the inception of this Policy, coverage shall not apply for any **Wrongful Acts** committed after such sale or dissolution, but the

Subsidiary shall still be covered under the terms of this Policy for **Wrongful Acts** committed prior to such sale or dissolution to the same extent such sale or dissolution did not occur.

L. **Wrongful Act** shall mean any actual or alleged:

1. **Employment Practice Act**; or
2. a. act;
b. error;
c. omission;
d. misstatement
e. misleading statements; or
f. neglect or breach of duty; not included in 1. above.

III. EXCLUSIONS

The Company shall not be liable to make payment for **Loss** or **Defense Cost** in connection with any **Claim** made against any **Insured** arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- A. Any actual or alleged: personal injury or advertising injury, meaning one or more of the following offenses:
 1. False arrest, detention or imprisonment;
 2. Malicious prosecution;
 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
 4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 5. Oral or written publication of material that violates a person's right of privacy;
 6. Misappropriation of advertising ideas or style of doing business; or
 7. Infringement of copyright, title or slogan.
- B. Any actual or alleged: bodily injury, mental anguish, emotional distress, loss of consortium, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof;
- C. Any **Insured** gaining any profit, remuneration or advantage to which they were not legally entitled; or any dishonest fraudulent act or omission or any criminal or malicious act or omission. However, the **Insured** shall be reimbursed for all amounts which would otherwise be covered under this Policy if such allegations are not subsequently proven;
- D. The discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water or any cost or expense arising out of any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants;
- E. Any bodily injury or property damage regarding asbestos including, without limitation, the use, exposure, presence, existence, detection, removal, elimination or avoidance of asbestos to any persons and in any environment, building or structure;
- F. Any activities in a fiduciary capacity as respects any employee benefit or pension plan, including the Employee Retirement Income Security Act of 1974 (ERISA), as now or hereafter amended, or similar state laws;
- G. Any pending or prior litigation as of the inception date of this Policy, as well as all future **Claims** or litigation based upon the pending or prior litigation or the facts or circumstances (actual or alleged) that on which such prior or pending litigation is based;
- H. any **Claim** brought by or on behalf of the **Organization** or any director or trustee of the **Organization**;
- I. The printing of periodicals, advertising matter, or any and all jobs taken by the **Insured** to be printed for a third party, when the periodical, advertising matter, or other printing is not a regular part of the **Insured's** own publication;
- J. The violation of statute or ordinance committed by or with the knowledge or consent of an **Insured**;

- K. The radioactive, toxic, or explosive properties of nuclear material which includes, but is not limited to, **Source Material**, **Special Nuclear Material** and **By Product Material** as those terms are defined in the Atomic Energy Act of 1954 and any amendments thereto and any similar provisions of any federal, state or local statutory or common law;
- L. Any actual or alleged breach of contract or agreement. This exclusion shall not apply to any of the following:
 1. Liability of the **Organization** which would have attached even in the absence of such contract or agreement.
 2. **Claims for Employment Practice Acts**. However, The Company assumes no obligation to pay damages determined to be owing under an express contract of employment or an express obligation to make payments in the event of the termination of employment.
 3. **Defense Cost** of up to \$25,000. For **Claims** for any actual or alleged breach of contract or agreement. However, The Company assumes no obligation to pay any settlement or judgment associated with such **Claims**.
- M. The services of an **Insured** as a director or trustee for any entity other than the **Organization**, even if directed or requested to serve by **the Organization**.

No **Wrongful Act** of any **Insured** shall be imputed to any **Individual Insured** for purposes of determining the applicability of Exclusions C and J.

IV. LIMITS OF LIABILITY

Regardless of the number of **Insureds** under this Policy, **Claims** made or suits brought on account of **Wrongful Acts**, The Company's liability is limited as follows:

- A. The Limit of Liability specified in the Declarations hereof shall be the maximum liability for **Loss** and **Defense Cost** combined for all **Claims** for each **Policy Period**.
- B. With respect to the Retention as stated in the Declarations, The Company shall only be liable to pay, subject to the Limits of Liability provisions stated above, for **Loss** and **Defense Cost** in excess of such Retention in respect of each and every **Claim**, hereunder.
- C. For **Claims** concerning anti-trust, restraint of trade and price fixing activities, the Limit of Liability shall be \$150,000. And will be limited to **Defense Cost** only.
- D. The Limit of Liability for any Extension Period, if applicable, shall be a part of and not in addition to the Limit of Liability specified in the Declarations.
- E. **Claims** based on or arising out of the same **Wrongful Act**, interrelated **Wrongful Acts**, or a series of similar or related **Wrongful Acts** shall be:
 1. Considered a single **Claim**; and
 2. Considered first made only during the **Policy Period**, including the Extension Period, (if applicable), or during any prior or subsequent **Policy Period** in which the earliest **Claim** arising out of such **Wrongful Act(s)** was first made. Such **Claims** whenever made, shall be assigned to only one policy (whether issued by this or any other insurer) and if that is this Policy, only one Limit of Liability and one Retention shall apply.

V. DEFENSE COST AND SETTLEMENT

- A. No settlement shall be made or offer extended without The Company's consent, such consent not to be unreasonably withheld.
- B. In the event that a **Claim** is made against the **Insured**, the **Insured** shall take reasonable measures to protect their interests. If defense of suit is required, then the **Insured** shall appoint counsel.
- C. The Company will not be held responsible for **Defense Costs** until the **Insured** obtains the express approval of The Company, such approval not to be unreasonably withheld or delayed.
- D. If more than one **Insured** is involved in a **Claim**, The Company may withhold approval of separate counsel for one or more of such **Insured** unless there is a material (actual or potential) conflict of interest among such **Insureds**.
- E. The Company may have counsel of its choice associated in the defense of any **Claim**. The Company reserves the right at any time to take over control of the defense of any **Claim**.
- F. If requested in writing by the **Insured**, The Company will undertake and manage the defense of any **Claim**. If more than one **Insured** is involved in a **Claim**, the **Parent Organization** shall act

for all **Insureds** with respect to this election unless there is a material (actual or potential) conflict of interest among such **Insureds**.

- G. The **Insureds** agree to provide The Company with all information, assistance and cooperation which The Company reasonably requests and agree that in the event of a **Claim**, the **Insureds** will do nothing that may prejudice The Company's position or its potential rights of recovery.
- H. Notwithstanding the foregoing, The Company at its sole option and discretion shall have the right to investigate any **Claim** and negotiate the settlement thereof, as it deems expedient, but The Company shall not commit the **Insured** to any settlement without their consent.
- I. If the **Insured** shall refuse to consent to a settlement which The Company has recommended in writing and elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then The Company's liability for such **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Defense Cost** incurred, up to the date of such refusal.

VI. ADVANCEMENT OF DEFENSE COST

Upon determination by The Company that a **Claim** may be covered in whole or in part by the terms and conditions of this Policy, such determination not to be unreasonably withheld, The Company shall in accordance with such determination advance **Defense Cost** prior to the final disposition of the **Claim** pursuant to a written agreement. Such payments by The Company shall be repaid by the **Insured** in the event that it is finally determined that the **Insured** is not entitled to payment of such **Defense Cost**.

VII. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to The Company:

- A. In the event that a **Claim** is made against the **Insured**, the **Insured** shall, as a condition precedent to the obligations of the Company under this Policy, give written notice as soon as practicable to The Company during this **Policy Period**, or, if applicable during any Extension Period, but, not later than 60 days after the expiration date of this Policy or any Extension Period, if applicable.
- B. If during this **Policy Period** an **Insured** first becomes aware of any circumstances which may subsequently give rise to a **Claim** being made against any **Insured** for a specific alleged **Wrongful Act** and, as soon as practicable thereafter, but before the expiration or cancellation of this Policy, gives written notice to The Company of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to the **Wrongful Act**, dates and persons involved, than any **Claim** which is subsequently made against the **Insured** arising out of such **Wrongful Act** will be considered made during this **Policy Period**.

VIII. CANCELLATION AND NON RENEWAL

- A. The Company may not cancel this Policy except for failure to pay a premium when due, in which case 10 days written notice shall be given to the **Parent Organization** for such cancellation to be effective.
- B. The **Parent Organization** may cancel this Policy for itself and all other **Insureds** by surrender of this Policy to The Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. If the **Parent Organization** cancels, earned premium shall be computed in accordance with the customary short rate table procedure.
- C. The Company shall not be required to renew this Policy upon its expiration.

IX. REPRESENTATIONS AND SEVERABILITY

- A. The **Insureds** represent that the particulars and statements contained in the **Application** are true and agree that (1) those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; (2) those particulars and statements are material to the acceptance of the risk assumed by The Company; and (3) this Policy is issued in reliance upon the truth of such representations.
- B. Except for material facts or circumstances known to the **Individual Insureds** signing the **Application**, no statement in the **Application** or knowledge or information possessed by any

Insured shall be imputed to any other **Individual Insured** for the purpose of determining the availability of coverage.

X. SUBROGATION

In the event of any payment under this Policy, The Company shall be subrogated to the right of recovery possessed by any **Insured** respecting such **Claims**. The **Insured** shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights and shall do nothing to prejudice or compromise such rights without The Company's express consent.

XI. EXTENSION PERIOD

- A. If The Company shall cancel or refuse to renew this Policy for reason other than nonpayment of premium, the following will apply:
The Company will provide, with no additional premium required, a 60 day extension of the cover granted by this Policy to any **Claim** which may be first made against the **Insured** during the 60 days after the date of such cancellation or non-renewal, but only with respect to any **Wrongful Act** committed before the date of such cancellation or non-renewal and otherwise covered by this Policy. This 60 day automatic extension period shall not apply if the **Insured** has purchased similar insurance from this or any other Company covering **Claims** first made during the automatic extension period.

Upon expiration of the 60 day automatic extension of cover granted by this Policy, the **Parent Organization** shall have the right, upon payment of an additional 35% of the annual premium to an extension of the cover granted by this Policy to any **Claim** first made against the **Insured** during the twelve (12) months after the date of such expiration of the 60 day automatic extension period, but only with respect to any **Wrongful Act** committed before the date of such cancellation or non-renewal and otherwise covered by this Policy, provided, however, that the request for this extension must be made to The Company in writing and payment of the premium must be made prior to the expiration of the 60 day automatic extension period.

- B. If the **Parent Organization** cancels or does not renew this Policy or The Company cancels for nonpayment of premium, the following will apply:

The **Parent Organization** shall have the right, upon payment of an additional 35% of the annual premium, to an extension of the cover granted by this Policy to any **Claim** which may be first made against the **Insured** during the twelve (12) months after the date of such cancellation or non-renewal, but only in respect of any **Wrongful Act** committed before the date of such cancellation or non-renewal and otherwise covered by this Policy, provided, however, that the request for this extension must be made to The Company in writing and payment of the premium must be made within 60 days following the date of such cancellation or non-renewal. In the event similar insurance is in force covering **Claims** first made during this Extension Period, coverage provided by this Policy shall be excess over any such insurance.

If the cancellation or non-renewal is for the non-payment of premium, this extension will not go into effect until any earned premium due is paid within 60 days after the effective date of such cancellation or expiration.

- C. All premium paid with respect to an Extension Period shall be deemed fully earned as of the first day of the Extension Period. For the purpose of this clause, any change in premium or terms on renewal shall not constitute a refusal to renew.

XII. CHANGES

Except by written endorsement issued to the **Insured** forming a part of this Policy, nothing shall effect a change in or addition to the provisions of this Policy. Furthermore, under no circumstances shall The Company be deemed to have waived or be estopped from asserting any right under this Policy, at law, or in equity respecting any **Claim**, except as stated in writing by The Company's authorized **Claims** department representative.

XIII. ASSIGNMENT

Assignment of interest in this Policy shall not bind The Company until its consent is endorsed hereon.

XIV. AUTHORIZATION CLAUSE AND NOTICES

By acceptance of this Policy, each **Insured** agrees that the **Parent Organization** shall act on behalf of all **Insureds** with respect to the giving and receiving of any return premiums and notices that may become due under this Policy. Notice to the **Parent Organization** shall be directed to the individual named in the **Application**, or such other person as shall be designated by the **Parent Organization** in writing. Such notice shall be deemed to the notice to all **Insureds**. The **Parent Organization** shall be the agent of all **Insureds** to effect changes in this Policy.

XV. OTHER INSURANCE

If the **Insured** has any other insurance for **Claims** covered hereunder, the insurance provided by this Policy shall be excess over such other insurance, regardless of whether such other insurance is collectible or designated as primary or excess.

XVI. TERMS OF POLICY CONFORMED TO STATUTE

Terms of this Policy which are in conflict with the statutes of any state in which this Policy is issued are hereby amended to conform to such statutes.

XVII. ACCEPTANCE

This Policy embodies all agreements existing between the parties hereunder or any of their agents relating to this insurance.

XVIII. ACTION AGAINST THE COMPANY

- A. No action shall lie against The Company unless as a condition precedent thereto there has been full compliance with all of the terms of this Policy, and until the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after actual trial or by written settlement agreement of the **Insured** regarding a **Claim**.
- B. Any **Insured** or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join The Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall The Company be impleaded by the **Insured** or their legal representatives. Bankruptcy or insolvency of the **Insured** or their successors in interest shall not relieve The Company of its obligations hereunder.

XIX. MERGER OR CONSOLIDATION

In the event the **Organization** acquires by merger, or consolidates with, or is merged into any other entity after the effective date of this Policy, immediate written notice thereof shall be given to The Company together with such information as The Company may request, and the **Parent Organization** shall pay any additional premium required in the event The Company agrees to continue this Policy.

XX. TWO OR MORE COVERAGE PARTS OR POLICIES ISSUED BY US

It is our stated intention that the various coverage parts or policy issued to the **Parent Organization** by The Company, or any affiliated company, do not provide any duplication or overlap of coverage for the same **Claim** or suit. We have exercised diligence to draft our coverage parts or policies to reflect this intention, but should the circumstances of any **Claim** give rise to such duplication or overlap of coverage, then, notwithstanding the other insurance provision, if this Policy and any other coverage part or policy issued to the **Parent Organization** by The Company, or any affiliated company, apply to the same **Wrongful Act**, professional incident, occurrence, offense, accident or **Loss**, the maximum Limit of Liability under all such coverage parts or policies combined shall not exceed the highest applicable Limit of Liability under any one coverage part or policy.

IN WITNESS WHEREOF, The Company has caused this Policy to be signed by its President and Secretary, but same shall not be binding upon The Company unless countersigned by an authorized representative of The Company.

Secretary

President

Specimen