



In consideration of payment of the premium and subject to the Declarations, limitations, conditions, provisions and other terms of this Policy, the Company and the Insured Person agree as follows:

Insuring Clause

1. The Company will pay on behalf of the **Insured Person Loss** on account of a **Claim** first made during the **Policy Period**, except to the extent that such **Loss** is paid by any other insurance or as indemnification from any source.

Nature of Coverage and Underlying Insurance

2. (a) Except as specifically set forth below, all coverage afforded by this Policy shall be excess of, and shall not contribute with, all **Underlying Insurance**, provided that all coverage afforded by this Policy shall be subject only to the limitations, conditions, provisions and other terms of this Policy and shall not follow or be subject to the limitations, conditions, provisions and other terms of the **Underlying Insurance**. Coverage under this Policy shall attach only after all applicable **Underlying Insurance** has been exhausted by actual payment of loss thereunder.

- (b) In the event **Loss** for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Insured Person** in his or her **Insured Capacity** on behalf of an **Organization** is not paid under all applicable **Underlying Insurance** with respect to, or maintained by, such **Organization** because:

- (i) of **Financial Impairment** of the issuers of such **Underlying Insurance**;
- (ii) such **Underlying Insurance** have been rescinded, other than as a result of any statement, representation or information made or provided, or other act, error or omission, by the **Insured Person**;
- (iii) coverage under such **Underlying Insurance** has been denied as a result of a materially false warranty made or provided by any insured thereunder, other than the **Insured Person**; or
- (iv) a United States bankruptcy court has ruled that such **Underlying Insurance** and its proceeds are assets of such **Organization's** bankruptcy estate and are unavailable to pay such **Loss**,

this Policy will respond to such **Loss** as if it were primary, subject to all of the limitations, conditions, provisions and other terms of this Policy and without prejudice to the Company's excess position. By so responding, the Company does not waive, compromise or release its right to recover **Loss** paid under this Policy from the issuers of such **Underlying Insurance**.

- (c) In the event **Defense Expenses** for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Insured Person** in his or her **Insured Capacity** on behalf of an **Organization** are not paid under all applicable **Underlying Insurance** with respect to, or maintained by, such **Organization** because coverage thereunder has been denied, other than as a result of (i) any statement, representation, information or warranty made or provided, or other act, error or omission, by the **Insured Person**, or (ii) the failure of any insured under such **Underlying Insurance** to comply with any limitation, condition, provision or other term thereunder, including but not limited to any requirement with respect to



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reporting or notice, this Policy will respond to such **Loss** as if it were primary, but only to pay such **Defense Expenses**, subject to all of the limitations, conditions, provisions and other terms of this Policy and without prejudice to the Company's excess position. By so responding, the Company does not waive, compromise or release its right to recover **Defense Expenses** paid under this Policy from the issuers of such **Underlying Insurance**.

Maintenance of and Compliance with Underlying Insurance

3. (a) All **Underlying Insurance** shall be maintained in full effect during the **Policy Period** and shall afford at least the same coverage provided by all **Underlying Insurance** in effect upon the inception of the **Policy Period**, except for any depletion or exhaustion of the **Underlying Insurance** solely by reason of actual payment of loss thereunder.
- (b) All insureds under all **Underlying Insurance** shall comply with all of the limitations, conditions, provisions or other terms thereunder, including but not limited to any requirement with respect to reporting or notice.
- (c) If any **Underlying Insurance** is not maintained in full effect or does not afford at least the same coverage in effect upon the inception of the **Policy Period**, or if any insured under any **Underlying Insurance** fails to comply with any limitation, condition, provision or other term thereunder, including but not limited to any requirement with respect to reporting or notice, the Company shall not be liable under this Policy to any earlier or greater degree or extent than the Company would have been had such **Underlying Insurance** been maintained or such insured complied with such limitations, conditions, provisions and other terms thereunder. Under such circumstances, there may be a gap in coverage such that, before coverage under this Policy will attach, some or all of any loss for which such **Underlying Insurance** would have provided coverage may be uninsured. The Company shall not be liable under this Policy unless and until the full amount of such gap is paid by the issuers of such **Underlying Insurance**, the insureds under such **Underlying Insurance**, or otherwise.

Definitions

4. When used in this Policy:

Application means any signed application, including any attachment and other material submitted therewith or incorporated therein, submitted by the **Insured Person** to the Company for this Policy or for any policy of which this Policy is a direct or indirect renewal or replacement.

Claim means:

- (a) a written demand for monetary damages or non-monetary relief; or
- (b) a civil proceeding commenced by the service of a complaint or similar pleading,

against the **Insured Person** for a **Wrongful Act**.

Defense Expenses means reasonable legal fees and expenses incurred by the **Insured Person** in defense of a **Claim** and the premium for appeal, attachment or similar bonds. **Defense Expenses** shall not include regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of an **Organization**.



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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 an **Organization**.

Financial Impairment means the status of an organization resulting from:

- (a) 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 such organization; or
- (b) such organization becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

Insured Capacity means service by the **Insured Person** as a duly appointed director of an **Organization**, provided that the **Insured Person** is not also an officer, consultant or employee of such **Organization** or any affiliate or subsidiary of such **Organization**.

Insured Capacity does not include any position or capacity held by the **Insured Person** in any organization other than an **Organization**, even if an **Organization** directed or requested the **Insured Person** to serve in such position or capacity in such other organization.

Insured Person means the natural person designated in Item 1 of the Declarations.

Loss means the amount that the **Insured Person** becomes legally obligated to pay on account of a **Claim**, including but not limited to damages (including punitive or exemplary damages, if and to the extent that such punitive or exemplary damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the **Insured Person**, to the Company, or to the **Claim** giving rise to the damages), judgments, settlements, pre-judgment and post-judgment interest and **Defense Expenses**.

Organization means any organization designated in Item 4 of the Declarations.

Policy Period means the period of time specified in Item 2 of the Declarations, subject to prior termination in accordance with Section 16 Termination of this Policy.

Pollutants means:

- (a) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials; or
- (b) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.

Related Claims means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

Underlying Insurance means the policies designated in Item 5 of the Declarations and any direct or indirect renewal or replacement of such policies.



Wrongful Act means:

- (a) any error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted, or allegedly committed or attempted by the **Insured Person** in his or her **Insured Capacity**; or
- (b) any other matter claimed against the **Insured Person** solely by reason of his or her serving in an **Insured Capacity**.

Exclusions

5. The Company shall not be liable for **Loss** on account of any **Claim**:

- (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception of the **Policy Period** as set forth in Item 2 of the Declarations, was the subject of any notice given under any policy;
- (b) based upon, arising from, or in consequence of any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against the **Insured Person** or any **Organization**, on or prior to the Pending or Prior Date set forth in Item 7 of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
- (c) brought or maintained by or on behalf of, at the behest of, or in the name or right of the **Insured Person**, any **Organization** or any director or officer of any **Organization** in any capacity; provided that this Exclusion (c) shall not apply to a **Claim** brought or maintained derivatively on behalf of an **Organization** solely by one or more securityholders of such **Organization**, provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by, the **Insured Person** or any **Organization**;
- (d) based upon, arising from, or in consequence of:
 - (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,

including but not limited to any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from, or in consequence of any matter described in clause (i) or (ii) of this Exclusion (d);

- (e) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (f) for an actual or alleged violation of the responsibilities, obligations or duties imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto, or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;



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- (g) for any **Wrongful Act** by the **Insured Person** in his or her capacity as a director, officer, manager, trustee, regent, governor or employee of any entity other than an **Organization**, even if the **Insured Person's** service in such capacity is with the knowledge or consent or at the request of an **Organization**;
- (h) for an accounting of profits made from the purchase or sale by the **Insured Person** of securities of an **Organization** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, any amendments thereto, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;
- (i) based upon, arising from, or in consequence of:
- (i) the committing in fact of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by the **Insured Person**; or
- (ii) the **Insured Person** having gained in fact any profit, remuneration or advantage to which the **Insured Person** was not legally entitled,
- as evidenced by (aa) any written statement or written document by the **Insured Person**, or (bb) any judgment or ruling in any judicial, administrative or alternative dispute resolution proceeding; or
- (j) to the extent that any **Organization** or other source fails or refuses to indemnify the **Insured Person** for such **Loss** to the fullest extent permitted or required by law, other than for reason of **Financial Impairment** of such **Organization**; for the purposes of this Exclusion (j), any by-law, certificate of incorporation, charter, article of association, shareholder resolution, board of director resolution, board of manager resolution, or other organizational document of an **Organization** or other source shall be deemed to provide indemnification to the fullest extent permitted or required by law.

Spousal Liability

6. It is agreed that if a **Claim** against the **Insured Person** includes a claim against the **Insured Person's** lawful spouse or **Domestic Partner** solely by reason of (a) such person's status as a spouse or **Domestic Partner** of the **Insured Person**, or (b) such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** by the **Insured Person**, all loss which such spouse or **Domestic Partner** becomes legally obligated to pay on account of such **Claim** shall be treated for purposes of this Policy as **Loss** which the **Insured Person** becomes legally obligated to pay on account of such **Claim**. All of the limitations, conditions, provisions and other terms of this Policy applicable to the **Insured Person's Loss** shall also be applicable to spousal or **Domestic Partner** loss. The coverage provided by this Section 6 shall not apply with respect to any loss arising from any act or omission by the **Insured Person's** lawful spouse or **Domestic Partner**.

Extended Reporting Period

7. If the Company or the **Insured Person** terminates or does not renew this Policy, other than termination by the Company for nonpayment of premium, the **Insured Person** shall have the right, upon payment of the additional premium set forth in Item 6(B) of the Declarations, to an extension of the coverage granted by this Policy for **Claims** that are (a) first made during the period set forth in Item 6(A) of the Declarations (the "Extended Reporting Period") following the effective date of termination or nonrenewal, and (b) reported to the Company in writing within the time provided in



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Section 9 Reporting and Notice, but only to the extent such **Claims** are for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Person** before the earlier of the effective date of termination or nonrenewal or the date of any applicable event described in clause (a) or (b) of Section 13 Changes in Exposure. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew. The right to purchase an extension of coverage as described in this Section 7 shall lapse unless written notice of election to purchase the extension, together with payment of the additional premium due, is received by the Company within thirty (30) days after the effective date of termination or nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.

Limits of Liability

8. (a) The Company's maximum liability for all **Loss** on account of each **Claim** shall be the Limit of Liability for each **Claim** set forth in Item 3(A) of the Declarations. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 3(B) of the Declarations.
- (b) **Defense Expenses** are part of, and not in addition to, the Limits of Liability set forth in Item 3 of the Declarations, and the payment by the Company of **Defense Expenses** shall reduce and may exhaust such applicable Limits of Liability.
- (c) All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Section 9 Reporting and Notice, regardless of whether such date is before or during the **Policy Period**.
- (d) The Company's Limit of Liability for all **Loss** on account of all **Claims** first made during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate Limit of Liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Period**.

Reporting and Notice

9. (a) The **Insured Person** shall, as a condition precedent to exercising any right to coverage under this Policy, give the Company written notice of any **Claim** as soon as practicable after it is first made, but in no event later than sixty (60) days after the date on which the **Insured Person** first becomes aware that such **Claim** has been made.
- (b) If, during the **Policy Period**, the **Insured Person** becomes aware of any circumstances which could give rise to a **Claim** and gives the Company written notice of such circumstances with full particulars of the specific **Wrongful Act** involved, then any **Claim** subsequently made against the **Insured Person** for such **Wrongful Act** shall be deemed to have been first made during the **Policy Period**.



Defense and Settlement

10. (a) It shall be the duty of the **Insured Person** and not the duty of the Company to defend **Claims** made against the **Insured Person**.
- (b) The **Insured Person** agrees not to retain defense counsel, incur any **Defense Expenses**, settle or offer to settle any **Claim**, or assume any obligation or admit any liability with respect to any **Claim** without the Company's prior written consent. The Company shall not be liable for any element of **Loss** incurred, for any obligation assumed, or for any admission made, by the **Insured Person** without the Company's prior written consent. Provided the **Insured Person** complies with clause (a) of Section 15 Cooperation, Assignment and Subrogation and clause (c) of this Section 10, the Company shall not unreasonably withhold any such consent.
- (c) With respect to any **Claim** that appears reasonably likely to be covered in whole or in part under this Policy, the Company shall have the right and shall be given the opportunity to effectively associate with the **Insured Person**, and shall be consulted in advance by the **Insured Person**, regarding the investigation, defense and settlement of such **Claim**.
- (d) If the **Insured Person** withholds consent to any settlement acceptable to the claimant and the Company, the Company's liability for all **Loss** on account of such **Claim** shall not exceed the amount for which the Company could have settled such **Claim** plus **Defense Expenses** accrued as of the date such settlement was proposed in writing by the Company to the **Insured Person**.
- (e) Any advancement of **Defense Expenses** shall be repaid to the Company by the **Insured Person** if and to the extent it is determined that such **Defense Expenses** are not insured under this Policy.

Allocation

11. (a) If, on account of a **Claim**, the **Insured Person** incurs both **Loss** that is covered under this Policy and loss that is not covered under this Policy, either because such **Claim** includes both covered and non-covered matters or because such **Claim** is made against both the **Insured Person** and others (including an **Organization**), the **Insured Person** and the Company shall allocate such amount between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to such covered and non-covered matters and, in the event of a settlement of such **Claim**, based also on the relative benefits to the parties from such settlement. The Company shall not be liable under this Policy for the portion of such amount allocated to non-covered loss.
- (b) If the **Insured Person** and the Company agree on an allocation of **Defense Expenses**, the Company shall advance on a current basis **Defense Expenses** allocated to the covered **Loss**. If the **Insured Person** and the Company cannot agree on an allocation:
- (i) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (ii) the Company shall advance on a current basis **Defense Expenses** which the Company believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- (iii) the Company, if requested by the **Insured Person**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with



respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Person**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

- (c) Any negotiated, arbitrated or judicially determined allocation of **Defense Expenses** on account of a **Claim** shall be applied retroactively to all **Defense Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

Other Insurance and Indemnification

12. (a) Except as specifically set forth in Section 2 Nature of Coverage and Underlying Insurance, all coverage under this Policy shall be excess of, and shall not contribute with:
- (i) any directors and officers liability or other similar insurance, and
 - (ii) any other insurance, including but not limited to any insurance under which there is a duty to defend,

whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise; provided that this Policy shall not be subject to the limitations, conditions, provisions or other terms of any other insurance.

- (b) All coverage under this Policy shall also be excess of, and shall not contribute with, any indemnification to which the **Insured Person** may be entitled from any source, including but not limited to any **Organization**.

Changes in Exposure

13. (a) If:
- (i) any person or entity or any group of persons and/or entities acting in concert acquires all or substantially all of the assets of an **Organization**, or an **Organization** merges into or consolidates with another entity such that such **Organization** is not the surviving entity;
 - (ii) any receiver, conservator, liquidator, trustee, rehabilitator or similar official is appointed to take control of, supervise, manage or liquidate an **Organization**; or
 - (iii) any person or entity or any group of persons and/or entities acting in concert acquires securities or voting rights which results in ownership or voting control of fifty percent (50%) or more of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors, managers or members of the Board of Managers of an **Organization**,

coverage under this Policy shall continue until termination of this Policy for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Person** in his or her **Insured Capacity** on behalf of such **Organization**, but only with respect to such **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Person** before such acquisition, merger, consolidation or appointment.



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- (b) If the **Insured Person**, while serving as a duly appointed director of an **Organization**, becomes an officer, consultant or employee of such **Organization** or any affiliate or subsidiary of such **Organization**, coverage under this Policy shall continue until termination of this Policy for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Person** in his or her **Insured Capacity** on behalf of such **Organization**, but only with respect to such **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insured Person** before the **Insured Person** became an officer, consultant or employee of such **Organization** or any affiliate or subsidiary of such **Organization**.
- (c) The **Insured Person** shall give written notice of any event described in clause (a) and (b) of this Section 13 Changes in Exposure to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such event.
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Representations

14. (a) In issuing this Policy, the Company has relied upon the statements, representations and information in each **Application** for this Policy. The **Insured Person** acknowledges and agrees that all the statements, representations and information in each **Application**: (i) are true and accurate; (ii) were made or provided in order to induce the Company to issue this Policy; and (iii) are material to the Company's acceptance of the risk to which this Policy applies.
- (b) In the event that any statement, representation or information in any **Application** is not true and accurate and the **Insured Person** knew as of the effective date of such **Application** that such statement, representation or information was not true or accurate, this Policy shall be void.
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Cooperation, Assignment and Subrogation

15. (a) In the event of a **Claim**, or after giving the Company notice of circumstances which could give rise to a **Claim**, the **Insured Person** agrees to provide the Company with all information, assistance and cooperation which the Company may reasonably require. The **Insured Person** shall promptly give notice and request coverage in respect of such **Claim** or circumstances under any applicable policy, including but not limited to the **Underlying Insurance** and any other policy of directors and officers liability insurance. The **Insured Person** shall promptly seek indemnification to which he or she may be entitled from any applicable source, including but not limited to any **Organization**. The **Insured Person** shall do everything necessary to secure and preserve coverage under all applicable policies and indemnification from all applicable sources.
- (b) The **Insured Person** will do nothing that could prejudice the Company's position or the Company's potential or actual rights of recovery in the event of a **Claim**.
- (c) In the event of payment under this Policy, the Company shall be subrogated to, and entitled to an assignment of, all of the **Insured Person's** rights of recovery, including but not limited to the **Insured Person's** rights of recovery: (i) under any other applicable policy, including but not limited to the **Underlying Insurance** and any other policy of directors and officers liability insurance; and (ii) against any person or entity, including but not limited to an **Organization**, for nonpayment of indemnification. The **Insured Person** shall do everything necessary to secure and preserve such rights, including but not limited to the execution of any document necessary to enable the Company effectively to bring suit or otherwise pursue and enforce such rights in the name of the **Insured Person**.
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Termination of this Policy

16. (a) This Policy shall terminate at the earliest of the following times:
- (i) sixty (60) days after receipt by the **Insured Person** of written notice of termination from the Company for any reason other than non-payment of premium;
 - (ii) twenty (20) days after receipt by the **Insured Person** of written notice of termination from the Company for non-payment of premium;
 - (iii) upon receipt by the Company of written notice of termination from the **Insured Person**;
 - (iv) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
 - (v) at such other time as may be agreed upon by the Company and the **Insured Person**.
- (b) The Company shall not be required to renew this Policy upon its expiration.
- (c) If the Policy is terminated prior to expiration, the Company shall refund any unearned premium computed on a pro rata basis. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of a notice of termination, but such payment shall be made as soon as practicable thereafter.

Action Against the Company

17. No action may be taken against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the limitations, conditions, provisions and other terms of 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 Person** to determine the **Insured Person's** liability nor shall the Company be impleaded by the **Insured Person** or legal representatives of the **Insured Person**.

Alteration and Assignment

18. No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy which is signed by an authorized employee of Chubb & Son, a division of Federal Insurance Company.

Bankruptcy

19. Bankruptcy or insolvency of the **Insured Person** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

Headings

20. The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the limitations, conditions, provisions and other terms of coverage.