

OLD REPUBLIC INSURANCE COMPANY

THE ADVANTAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

NON-PROFIT ORGANIZATION AND MANAGEMENT LIABILITY INSURANCE POLICY – (DUTY TO DEFEND)

It is understood and agreed that:

1. ALLOCATION PROVISION

The following is added at the end of the last paragraph of Section IX., **DEFENSE, SETTLEMENTS AND ALLOCATION**:

Notwithstanding anything in this paragraph to the contrary and solely with respect to a **Claim** for which the **Insurer** has a right and duty to defend, one hundred percent (100%) of **Defense Costs** incurred by **Insureds** as a result of such **Claims** which are otherwise subject to an allocation as described in this paragraph shall be covered **Loss**.

2. NON-APPEALABLE FINAL ADJUDICATION FOR CONDUCT EXCLUSION

Exclusions A. 1. and A. 2. in Section IV. **EXCLUSIONS**, are deleted and replaced with the following:

1. arising out of, based upon, or attributable to:

- a) any deliberately criminal or deliberately fraudulent act or omission by such **Insured**; or
- b) such **Insured** gaining any financial profit or financial advantage or receiving financial remuneration to which such **Insured** was not legally entitled;

if a final and non-appealable adjudication in an underlying proceeding establishes such **Insured** committed such criminal or fraudulent conduct or received such profit, advantage or remuneration;

3. INDEPENDENT CONTRACTORS

The definition of "**Insured Person(s)**", as defined in Section II. J. of the Policy, is amended to also include any natural person who has been, now is or shall become an independent contractor of the **Organization**, but only to the extent such individual performs work or services for or on behalf of the **Organization** and only to the extent such individual is indemnified by the **Organization**.

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4. EXTENDED REPORTING PERIOD ELECTION – 90 DAYS

Section **X.**, **EXTENDED REPORTING PERIOD** is amended by deleting the words “thirty (30)” and substituting the words “ninety (90)” therefor.

5. NO SUBROGATION AGAINST AN INSURED PERSON UNLESS CONDUCT EXCLUSION APPLIES

Section **XIII.**, **SUBROGATION**, of this Policy is deleted and replaced with the following:

XIII. SUBROGATION

In the event of any payment by the **Insurer** under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds**' rights of recovery, including without limitation the **Insured Person's** rights to indemnification or advancement from the **Organization**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**. In no event shall the **Insurer** subrogate against an **Insured Person** unless and to the extent Exclusion A. 1. in Section IV. of this Policy (as amended by this endorsement) applies to such **Insured Person**.

Any recoveries by the **Insurer** of **Loss** paid under this Policy shall be the sole property of the **Insurer**, but an amount equal to the amount of such recoveries, minus all costs incurred by the **Insurer** to obtain such recoveries, shall reinstate, in such amount and as of the date each recovery is received by the **Insurer**, the Limits of Liability and any Sublimit of Liability of this Policy that were eroded or exhausted by such payment.

6. CRISIS MANAGEMENT COVERAGE

a. This Policy shall pay the **Crisis Management Loss** of the **Organization** arising from a **Crisis Management Event** first commencing during the **Policy Period**, up to the amount of the **Crisis Management Fund**.

b. With respect to this Crisis Management Coverage, the following additional definitions apply:

1) **Material Effect** means the publication of unfavorable information regarding the **Organization** which can reasonably be considered to lessen public confidence in the competence, integrity, financial viability or reliability of the **Organization**. Such publication must occur in either:

a) A daily newspaper of general circulation in the geographic area of the **Organization**;
or

b) A radio or television news report regarding an **Organization** broadcast in the geographic area of the **Organization**.

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- 2) **Crisis Management Event** means one of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause, a **Material Effect**:
- a) Management Crisis:

The death, incapacity or criminal indictment of any director, trustee or officer, including but not limited to the executive director, of the **Organization**, or any employee of the **Organization** on whom the **Organization** maintains key person life insurance.
 - b) Member Abuse:

The public announcement or accusation that an individual under the management control of the **Organization** has intentionally caused bodily injury to, or death of, a member or proposed member of the **Organization**, or has sexually abused a member of the **Organization**.
 - c) Debt default:

The public announcement that the **Organization** has defaulted or intends to default on its debt.
 - d) Bankruptcy:

The public announcement that the **Organization** intends to file or has filed for bankruptcy protection or that a third-party intends to file or has filed an involuntary bankruptcy proceeding against the **Organization**, or that a voluntary or involuntary bankruptcy proceeding for the **Organization** appears imminent.
 - e) Contribution Revocation:

The withdrawal, revocation, cancellation or return of any non-governmental grant, contribution or bequest in excess of \$500,000.
- 3) Provided, however, that the term **Crisis Management Event** does not include any event relating to:
- a) any **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time;
 - b) (i) any pending or prior litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission, filed or pending as of inception of the first policy issued by the **Insurer** to the **Organization** of which this Policy is a direct or indirect renewal; or (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such

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litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission;

- c) the actual, alleged or threatened discharge, dispersal, release, escape seepage, migration or disposal of Pollutants; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so; or
 - d) the hazardous properties of nuclear materials.
- 4) **Crisis Management Firm** means any public relations firm, crisis management firm or law firm hired by the **Organization** or its directors, officers or employees to perform **Crisis Management Services** in connection with a **Crisis Management Event**, the selection of which has been consented to by the **Insurer**, such consent not to be unreasonably withheld. Attached to this endorsement is a list of firms which have been pre-approved by the **Insurer** and may be hired by the **Organization** without further approval by the **Insurer**.
- 5) **Crisis Management Fund** means \$50,000.
- 6) **Crisis Management Loss** means the following amounts incurred during the pendency of or within ninety (90) days prior to and in anticipation of, the **Crisis Management Event**, regardless of whether a **Claim** is ever made against an **Insured** arising from the **Crisis Management Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:
- a) Amounts for which the **Organization** is legally liable for the reasonable and necessary fees and expenses incurred by a **Crisis Management Firm** in the performance of **Crisis Management Services** for the **Organization** arising from a **Crisis Management Event**; and
 - b) Amounts for which the **Organization** is legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Organization** or the **Crisis Management Firm**, in connection with the **Crisis Management Event**.
- 7) **Crisis Management Services** means those services performed by a **Crisis Management Firm** in advising the **Organization** or any of its directors, officers or employees on minimizing the potential harm to the **Organization** arising from the **Crisis Management Event**, including but not limited to maintaining and restoring public confidence in the **Organization**.
- c. For the purpose of this Crisis Management Coverage, a **Crisis Management Event** shall first commence when the **Organization** or any of its directors or **Executive Officers** shall first become aware of the event during the **Policy Period** and shall conclude at the earliest of the

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time when the **Crisis Management Firm** advises the **Organization** that the crisis no longer exists or when the **Crisis Management Fund** has been exhausted.

- d. Section **IV., EXCLUSIONS**, is not applicable to **Crisis Management Loss**.
- e. The following is added to Section **V. and VI., LIMIT OF LIABILITY** and **RETENTIONS**:

The **Insurer's** maximum liability for all **Crisis Management Loss** arising from all **Crisis Management Events** occurring during the **Policy Period**, in the aggregate, shall be the amount set forth above as the **Crisis Management Fund**. This limit shall be part of and not in addition to the Aggregate Limit of Liability stated in Item 3. of the Declarations.

There shall be no Retention amount applicable to **Crisis Management Loss**.

- f. The following is added to Section **VIII., NOTICE**:

An actual or anticipated **Crisis Management Event** shall be reported to the **Insurer** as soon as practicable, but in no event later than thirty (30) days after the **Organization** first incurs **Crisis Management Loss** for which the coverage will be requested under this Policy.

- g. The following is added to Section **IX., DEFENSE, SETTLEMENTS AND ALLOCATION**:

There shall be no requirement for the **Organization** to obtain prior written approval of the **Insurer** before incurring any **Crisis Management Loss**, provided that the **Crisis Management Firm** selected by the **Organization** to perform the **Crisis Management Services** has been approved by the **Insurer**.

7. EMPLOYED LAWYER EXTENSION

- a. The definition of “**Insured Persons**” is amended to also include **Employed Lawyers** (as defined below) but only if and to the extent:
 - 1) a **Claim** otherwise covered under this Policy is made against both an **Employed Lawyer** and an **Insured Person** identified in Section III. K. 1. of this Policy; and
 - 2) the **Claim** against the **Employed Lawyer** is for a **Wrongful Act** by the **Employed Lawyer** in the rendering or failure to render professional legal services for or on behalf of the **Organization** at the specific request or direction of, or as part of the duties regularly assigned to the **Employed Lawyer** by, the **Organization**, provided such services are related to such **Employed Lawyer’s** employment with the **Organization** and are rendered in his or her capacity as an employee of the **Organization**.
- b. For purposes of paragraph a. above:
 - 1) “**Employed Lawyer**” means any employee of the **Organization**, in their capacity as such, who is admitted in good standing to practice law in the applicable jurisdiction.

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- 2) **Organization** documents and board of director resolutions shall be deemed to provide indemnification for **Defense Costs** and other **Loss** incurred by an **Employed Lawyer** to the fullest extent permitted by law.

8. IMMIGRATION LAW DEFENSE SUBLIMIT

This Policy shall include Immigration Law Defense Coverage pursuant to the following terms:

- a. Exclusion B. 3. in Section **IV.**, **EXCLUSIONS**, shall not apply to **Defense Costs** allocated to that portion of a covered **Claim** alleging violation of any **Immigration Law**, provided the **Insurer's** maximum liability for all such **Defense Costs** shall be [\$ _____], which is part of and not in addition to the Limit of Liability otherwise applicable to this Policy.
- b. This Immigration Law Defense Coverage shall not apply to, and the **Insurer** shall not be liable for, any **Defense Costs** otherwise described in paragraph a. above which are attributable to any violation of any **Immigration Law** if any:
 - 1) **Insured Person** within the **Organization's** HR or Risk Management department;
 - 2) **Insured Person** with personnel or risk management responsibilities; or
 - 3) **Executive Officer**,had actual knowledge of such violation prior to inception of the **Policy Period**.
- c. Notwithstanding anything in this Policy to the contrary, any **Claim** which is covered solely by reason of this Immigration Law Defense Coverage shall be defended by the **Insureds**, not the **Insurer**. The **Insureds** and the **Insurer** shall allocate the defense costs in any such **Claim** between **Defense Costs** attributable to defense of the **Immigration Law** violation and all other defense costs based on the relative legal exposure of the **Insureds** to the **Immigration Law** violation and all other allegations in the **Claim**.
- d. For purposes of this Immigration Law Defense Coverage, "**Immigration Law**" means the Immigration Control Act of 1986 and any similar federal, state, or local law or regulation governing or related to the payment of wages, including the payment of overtime, on-call time or minimum wages, or the classification of **Insured Persons** for the purpose of determining eligibility for compensation under such law(s).

9. PRIORITY OF PAYMENTS PROVISION

Section **V.**, **LIMIT OF LIABILITY**, is amended by the addition of the following:

If the amount of any covered **Loss** which is otherwise due and owing by the **Insurer** under this Policy exceeds the then-remaining Limit of Liability applicable to such **Loss**, the **Insurer** shall pay such **Loss** (subject to such Limit of Liability) in the following priority:

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- a. First, the **Insurer** shall pay any such **Loss** covered under Insuring Agreement A.
- b. Second, only if and to the extent the payment under subparagraph a. above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay any such **Loss** covered under any other Insuring Agreement.
- c. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the **Organization**, delay any payment of covered **Loss** otherwise due and owing under Insuring Agreement B. and/or Insuring Agreement C. until such time as the **Organization** designates, provided the **Insurer's** liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

10. DEFINITION OF CLAIM TO INCLUDE TOLLING OR WAIVING THE STATUTE OF LIMITATIONS AND CRIMINAL PROCEEDINGS

The definition of **Claim** in Section II. C., **DEFINITIONS**, is deleted in its entirety and replaced with the following:

"Claim" means:

- 1. a written demand against an **Insured** for monetary, non-monetary or injunctive relief; or
- 2. a civil or arbitration proceeding against an **Insured** for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading; or
- 3. a formal civil administrative or regulatory adjudicatory or investigative proceeding against any **Insured Person** or, with respect to any **Wrongful Act** described in the definition of **Employment Claim**, against the **Organization** commenced by the filing of a notice of charge, formal investigative order or similar document, including without limitation any proceeding by the Equal Employment Opportunity Commission or other similar governmental authority; or
- 4. a criminal proceeding against an **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**; or
- 5. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand.

provided **Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

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