

MODEL PATENT INFRINGEMENT INDEMNITY INSURANCE POLICY

(Monoline Model Policy)

In consideration of the payment of the premium and in reliance on the application and underwriting information provided by the **Insured**, on the statements made in the **Declarations**, and subject to the **Retention, Limits of Indemnity, Coinsurance Percentage**, and the terms and conditions contained in this **Patent Infringement** Indemnity Insurance Policy (hereinafter "this Policy"), SR International Business Insurance Co. Ltd (hereinafter "SRI") and the **Insured** agree as follows:

1. INSURING AGREEMENTS

a. INSURANCE COVERAGE FOR DAMAGES

This Policy shall reimburse the **Insured** for **Damages**:

- (1) which the **Insured** shall become legally obligated to pay and shall have paid resulting from any **Claim** first made against the **Insured** and reported in writing to SRI during the **Policy Period** or, if applicable, the **Extended Reporting Period**;
- (2) provided such **Claim** is for **Covered Infringement** caused by the manufacture, use, importation, distribution, advertising, offer for sale or sale of a **Covered Product**, committed by any **Insured**, and occurring on or after the **Retroactive date** and before the end of the **Policy Period**;

but in no event shall this Policy reimburse the **Insured** for **Damages** for **Patent Infringement** that occurs before the **Retroactive Date** or after the end of the **Policy Period**.

b. DEFENSE EXPENSES (INCLUDED IN THE LIMITS OF INDEMNITY)

This Policy shall reimburse the **Insured** for sums which the **Insured** shall have incurred and paid as **Defense Expenses**:

- (1) with respect to a **Claim** seeking **Damages** reimbursable under Insuring Agreement 1.a. above; or
- (2) with respect to an **Injunction Claim** first made against the **Insured** and reported in writing to SRI during the **Policy Period** or, if applicable, the **Extended Reporting Period**, for alleged **Patent Infringement** first commencing before the end of the **Policy Period**.

All sums reimbursed as **Defense Expenses** shall erode and not be in addition to the amount of the **Limits of Indemnity**.

SRI shall have no obligation to reimburse the **Insured** for **Defense Expenses** prior to the **Final Disposition** of any **Claim** or **Injunction Claim**. SRI shall have no obligation to reimburse the **Insured** for **Defense Expenses** after the then remaining applicable **Limits of Indemnity** has been exhausted.

The **Insured** shall give SRI full access to all information relevant to, and SRI shall have the right to participate in, any legal proceedings and settlement discussions relating to any **Claim** or **Injunction Claim** that appears reasonably likely to involve this Policy.

The **Insured** shall not admit liability for or settle any **Claim**, stipulate to any judgment or incur any **Defense Expenses** likely to involve this Policy without SRI's prior written consent, which consent shall not be unreasonably withheld. SRI shall have no obligation under this Policy for any liability so admitted, judgments stipulated to, or sums incurred in settlement of any **Claim** or payment of **Defense Expenses** made without such written consent.

c. DECLARATORY RELIEF ACTION EXPENSES (INCLUDED IN THE LIMITS OF INDEMNITY)

In the event of a reasonable apprehension of an imminent suit against the **Insured** alleging **Patent Infringement** caused by a **Covered Product** which if true would be **Covered Infringement** for which coverage is afforded under this policy, SRI or the **Insured**, each only with the consent of the other, which consent shall not be unreasonably withheld, shall have the right but not the duty to initiate on behalf and in the name of the **Insured** a declaratory relief action respecting some or all of the rights alleged to have been or be infringed by the **Insured**, provided, however, that no such action shall be commenced without a prior written opinion of patent counsel advising that the expected suit would be based, in whole or in substantial part, on a patent that is invalid, unenforceable, or not infringed by the **Insured** and, provided further that the **Insured** and SRI agree that the commencement of such an action is a reasonable and prudent strategic option in the pre-emptive defense of an imminent and reasonably expected suit

against the **Insured**. Notwithstanding the foregoing, if the **Insured** shall initiate such declaratory relief action without the consent of SRI, then any patent infringement **Claim** or **Injunction Claim** that the patentholder files in response to such declaratory relief action shall be deemed not to be for a **Covered Infringement**

2. DEFINITIONS

- a. **Claim** means a demand for **Damages**, whether or not made together with, as part of, or in addition to an **Injunction Claim**; **Claim** also means a declaratory relief action, provided the declaratory relief action is initiated by SRI or the **Insured** pursuant to Insuring Agreement 1.c. above.
- b. **Coinsurance Percentage** shall have meaning as that term is used in the Section of this Policy entitled "Coinsurance".
- c. **Covered Infringement** means any **Patent Infringement** caused by the manufacture, use, importation, distribution, advertising, offer for sale or sale of a **Covered Product**, provided, however, that no **Patent Infringement** shall be **Covered Infringement**
 - (1) if a reasonably prudent patent attorney familiar with the type of business in which the **Insured** is engaged would recommend that the **Insured** conduct an **Infringement Search** and **Infringement Safeguarding** prior to the first manufacture, use, importation, distribution, advertising, offer for sale or sale of a **Covered Product** and the **Insured** did not do so; or
 - (2) if, after the first manufacture, use, importation, distribution, advertising, offer for sale or sale of a **Covered Product**, and before a **Claim** or **Injunction Claim** is first made, the **Insured** learns of facts which would cause a reasonably prudent patent lawyer familiar with the type of business in which the **Insured** is engaged to recommend that the **Insured** conduct **Infringement Safeguarding**, and the **Insured** did not promptly do so.

Regardless of when, during the **Policy Period**, a **Claim** or **Injunction Claim** is made, any **Covered Infringement** which is the subject of a **Claim** or **Injunction Claim** involving the **Insured** and the same patent and **Covered Product** as any other **Covered Infringement(s)** shall be considered as a single **Covered Infringement**

d. **Covered Product** means:

- (1) any product manufactured, used, imported, distributed, advertised, offered for sale or sold; or
- (2) any process used, imported, distributed, advertised, offered for sale or sold

by the **Insured** on or before the Inception date of the **Policy Period** and which are described or otherwise documented in the application attached hereto and made a part hereof.

Additional products or processes first manufactured, used, imported, distributed, advertised, offered for sale or sold after the Inception date of this Policy will be **Covered Products** upon approval by SRI and payment of additional premium, if any, required by SRI relating to such new product or process. The **Insured** shall provide notice of any such product or process it requests to be included as a **Covered Product** under this policy, along with a description of any **Infringement Search** or **Infringement Safeguarding** which the **Insured** undertook in connection with such new product or process, and shall afford SRI an opportunity to evaluate such new product or process.

e. **Damages** means monetary sums paid to a claimant pursuant to either judgments or settlements negotiated with the written consent of SRI, whichever is applicable, as and only as:

- (1) damages for **Patent Infringement** in the form of past lost profits and/or past reasonable royalties, which **Patent Infringement** shall have occurred on or after the **Retroactive date** and before either (a) the end of the **Policy Period** or (b) before the date of the judgment, whichever is earlier;
- (2) reasonable attorneys fees assessed by the court against the **Insured** and incurred by the claimant after the **Retroactive date** and prior to the end of the **Policy Period**

provided that **Damages** shall not include fines, penalties, punitive, exemplary, enhanced or multiplied damages, non-pecuniary relief and taxes, or any amount for which the **Insured** is not financially liable or any amount as to which there is no legal recourse by the person who is awarded such relief against the **Insured**, or any such matters which are uninsurable under the law pursuant to which this Policy shall be construed.

For **Patent Infringement** occurring partly within the **Policy Period** and partly after the end of the **Policy Period**, and/or prior to the **Retroactive date**, only the portion of such sums attributable to lost profits and/or reasonable royalties for **Patent Infringement** occurring after the **Retroactive date** and before the end of the **Policy Period** shall be considered **Damages**.

f. **Declarations** shall refer to the document attached to this Policy and entitled "DECLARATIONS - Patent Infringement Indemnity Insurance Policy between SR International Business Insurance Co. Ltd. and the Named **Insured**."

g. **Defense Expense(s)** means:

- (1) reasonable expenses incurred by the **Insured** in defense of a **Claim** or **Injunction Claim** based on allegations of **Covered Infringement** to which this Policy applies, other than loss of earnings, expenses and costs incurred by the **Insured** for salaries and expenses of its officers, staff, in-house attorneys, directors, employees, and of outside attorneys or consultants who function in the capacity of any of the foregoing, and rent or other necessary operating costs of the **Insured**;
- (2) expenses incurred by SRI in any **Claim** or **Injunction Claim**;
- (3) costs levied against the **Insured** in any **Claim** or **Injunction Claim**;
- (4) interest on the entire amount of any judgment against the **Insured** which interest accrues after entry of the judgment and before SRI has paid or tendered or deposited in court that part of the judgment that does not exceed SRI's then remaining applicable **Limits of Indemnity**; and
- (5) premiums on appeal bonds and bonds to release attachments, to the extent that the face amount of such bonds do not exceed SRI's then remaining applicable **Limits of Indemnity** and are required in any **Claim** defended by SRI, provided, however, neither this provision nor any other in this Policy shall be construed as requiring SRI to commence or prosecute any appeal or to apply for or furnish such bonds.

h. **Extended Reporting Period** shall have meaning as that term is used in the Section of this Policy entitled "Extended Reporting Period".

i. **Final Disposition** means the resolution, whether by settlement, judgment or otherwise, of a **Claim** or **Injunction Claim** against the **Insured**, which is not subject to further amendment, modification, reversal or vacation, all times for appeal having run and all options and opportunities to modify having been fully and irrevocably exhausted, expired or validly terminated.

j. **Infringement Search** means the careful review by a patent attorney or patent agent to determine whether or not the manufacture, use, importation, distribution, advertising, offering for sale or sale of a **Covered Product** that the **Insured** is about to first manufacture, use, import, distribute, advertise, offer for sale, or sell would result in **Patent Infringement**

k. **Infringement Safeguarding** means concluding in good faith, by means of a written opinion prepared by a patent attorney retained or employed by the **Insured**, that the **Insured's** intended manufacture, use, importation, distribution, advertisement, offer for sale or sale of the **Covered Product**

- (1) will not result in **Patent Infringement**; or

- (2) would result in **Patent Infringement** but for the fact that said patent attorney found to be invalid the patents(s) that would be infringed; or
- (3) would result in **Patent Infringement** and the **Insured** either:
 - (a) designs around the **Patent Infringement** so as to avoid **Patent Infringement**; or
 - (b) purchases sufficient rights to the infringed patent through license, cross-license or assignment, so as to avoid **Patent Infringement**,

and concludes in good faith, by means of a written opinion prepared by patent attorney retained or employed by the **Insured**, that the **Insured's** action pursuant to this sub-paragraph 2.k.(3) is sufficient such that the subsequent manufacture, use, importation, distribution, advertisement, offering for sale or sale by the **Insured** of the **Covered Product** will not result in **Patent Infringement**.

Copies of all opinion letters and other documentation prepared by the **Insured's** patent attorneys or agents verifying the performance of **Infringement Searches** and **Infringement Safeguarding** shall be maintained permanently on file by the **Insured** and the **Insured** shall provide such opinion letters or documentation to SRI upon request.

- l. **Injunction Claim** means a demand that the **Insured** limit or cease the manufacture, use, importation, distribution, advertising, offering for sale or sale of a **Covered Product** based on an allegation that such acts would result in **Patent Infringement** which if true would be **Covered Infringement** under this Policy.
- m. **Insured** means the entity listed as the Named **Insured** in the **Declarations** and any **Subsidiary Companies** which were **Insureds** at the time that a **Covered Infringement** was committed or alleged to have been committed upon which the **Claim(s)** or **Injunction Claim(s)** are based.
- o. **Limits of Indemnity** means the amounts indicated in Item 4 of the **Declarations** as the per **Claim** and Aggregate amounts of indemnity available under this Policy for **Damages** and **Defense Expense** for **Covered Infringement**, which are applicable as provided in the Section of this Policy entitled "Limits of Indemnity".
- p. **National Patent Office** means the official body or agency created by law for the purpose of issuing patents within a given sovereign territory.
- n. **Patent Infringement** means the unauthorized manufacture, use, importation, distribution, advertising, offer for sale or sale by the **Insured** of any **Covered Product** in violation of the enforceable and valid rights of another (including rights arising under or enforceable by virtue of an international treaty with one or more foreign governments) which rights arise from the grant by a **National Patent Office** of a patent which results in a **Claim** or **Injunction Claim** against the **Insured**.
- q. **Policy Period** means the period of one year beginning on the Inception date shown in the applicable **Declarations** and ending on the earlier of the Expiration date shown in such **Declarations** or on the effective date of cancellation of this Policy.
- r. **Retention** shall have meaning as that term is used in the Section of this Policy entitled "Retention".
- s. **Retroactive date** means the date indicated as such in the **Declarations**.
- t. **Subsidiary Company** means a corporation of which the Named **Insured** on or before the Inception date directly or indirectly owns or, subject to SRI's decision to extend coverage to a new **Subsidiary Company** as provided herein, during the **Policy Period** acquires, greater than 50% of the outstanding and issued voting common stock.

3. EXCLUSIONS

This Policy shall not reimburse the **Insured** for **Damages** resulting from any **Claim**, or for **Defense Expenses** relating to any **Claim** or **Injunction Claim**:

- a. arising out of the committing in fact of any criminal or deliberate fraudulent act;
- b. arising out of willful or intentional **Patent Infringement** provided that in this context **Patent Infringement** is willful or intentional where the **Patent Infringement** is willful or intentional within the meaning of the applicable patent laws;

- c. arising out of the manufacture, use, importation, distribution, advertising, offer for sale or sale of any **Covered Product** manufactured, used, imported, distributed, advertised, offered for sale or sold by any **Subsidiary Company** occurring at any time when the Named **Insured** did not own more than 50% of the issued and outstanding voting stock of such corporation either directly or indirectly through one or more of its **Subsidiary Companies**;
- d. arising out of bodily injury, sickness or disease sustained by any person, including death resulting therefrom at any time, or mental anguish, emotional distress or any other form of mental injury;
- e. for loss of, or damage to or destruction of any tangible property from any cause, including the resulting loss of use thereof (including but not limited to property in the care, custody and control of an **Insured** or its agent, or in transit);
- f. brought by or on behalf of:
 - (1) one **Insured** against another **Insured**, or
 - (2) any business enterprise which:
 - (a) is or was managed, operated or controlled, directly or indirectly, by any **Insured**, or in which any **Insured's** ownership interest exceeds ten percent (10%); or
 - (b) at any time owned, managed, operated or controlled, directly or indirectly, in whole or in part, any **Insured**;
or
 - (c) is or was affiliated with any **Insured** through common majority ownership or control; or
 - (3) any parent, subsidiary, successor or assign of any business enterprise described in 3.f.(2) (a)-(c) above;
- g. initiated by or on behalf of the **Insured** as plaintiff against a third party, except as provided in Insuring Agreement 1.c;
- h. brought by or on behalf of any government entity; however, this exclusion does not apply to any **Claim** or **Injunction Claim** by any such entity which seeks to enforce its rights in a patent held by that entity;
- i. arising out of liability assumed by the **Insured** under any oral or written contract or agreement, or arising out of another's use, importation, distribution, advertising, sale or offer for sale of a **Covered Product**;
- j. arising from the violation of any right in non-patented intellectual property, including but not limited to any right in trademark, trade dress, copyright or trade secret;
- k. arising out of either the amount or timeliness of payment of royalties, licensing fees or other contractual arrangements;
- l. brought against any director, officer, or employee of any **Insured**;
- m. arising out of any manufacture, use, importation, distribution, advertising, offer for sale or sale of a **Covered Product**, which the **Insured**, prior to the Inception date of this Policy reasonably should have known would result in **Patent Infringement**;
- n. arising out of the same or related patent, **Covered Product** or **Covered Infringement** alleged or at issue in any **Claim** or **Injunction Claim** which has been reported by the **Insured**, or in any circumstances of which notice has been given by the **Insured**, under any policy of which this Policy is a renewal or which this Policy may succeed in time;
- o. arising out of any pending or prior litigation as of the Inception date of this Policy, or from the same or substantially related facts as alleged in such prior litigation;
- p. brought to enforce any judgment entered or enforced by any court of any state not within the scope of the Policy Territory.

4. LIMITS OF INDEMNITY

- a. Regardless of the number of **Insureds**, **Claims**, **Injunction Claims** or claimants, and subject to the Section of this Policy entitled Coinsurance, the **Limit of Indemnity** stated in Item 4 of the **Declarations** as applicable "per **Claim**" is the total liability of SRI for all amounts payable hereunder in satisfaction of judgments, settlements, and **Defense Expense** arising out of the same or related patent, **Covered Product** or **Covered Infringement**. If additional

Claims or **Injunction Claims** are subsequently made which arise out of the same or related patent, **Covered Product** or **Covered Infringement** as any **Claim** or **Injunction Claim** that already has been made and reported to SRI, all such **Claims** or **Injunction Claims** whenever reported shall be considered first made within the applicable **Policy Period** or the **Extended Reporting Period** (if applicable) in which the earliest **Claim** or **Injunction Claim** arising out of such patent, **Covered Product** or **Covered Infringement** was first made and reported to SRI and all such **Claims** and **Injunction Claims** collectively shall be subject to one such “per **Claim**” **Limit of Indemnity** for all such **Claims** and **Injunction Claims** combined.

- b. Regardless of the number of **Insureds**, **Claims**, **Injunction Claims** or claimants, and subject to the Section of this Policy entitled Coinsurance, the total liability of SRI for all amounts payable hereunder in satisfaction of judgments, settlements, and **Defense Expense** shall not exceed the **Limit of Indemnity** stated in Item 4 of the **Declarations** as “Aggregate”.
- c. **Defense Expense** paid or reimbursable by SRI, as well as amounts paid by SRI in satisfaction of judgments, and settlements, are subject to the applicable **Limits of Indemnity** in Item 4 of the **Declarations**.
- d. If two or more policies of insurance of any class and issued by SRI or by any other member company of Swiss Re Group covering any **Insured(s)**, as defined in this Policy, is/are held to apply to and provide any coverage whatsoever for any **Claim(s)** or **Injunction Claim(s)** in connection with the same **Covered Infringement** for which the **Insured(s)** is/are jointly or severally liable, then SRI shall not be liable under this Policy for a greater proportion of such loss than the applicable **Limits of Indemnity** under this Policy bears to the total of the applicable limits of indemnity or liability under all such applicable policies; however, the total amount payable under all such policies held to provide coverage for such **Claim(s)** or **Injunction Claim(s)** shall not exceed the highest applicable then remaining limit of indemnity or liability payable under any one policy.

5. RETENTION

The **Insured** hereby warrants that the amount of the **Retention** shall be borne by the **Insured** at its own risk and shall remain uninsured.

The **Retention** shall apply to each and every **Claim** or **Injunction Claim**. Any amount of **Damages** or equivalent values recovered by or agreed to be transferred to the **Insured** pursuant to indemnification agreements shall not erode the **Retention**. **Claims** or **Injunction Claims** arising out of the same **Covered Infringement** shall be subject to only one **Retention**.

SRI shall be liable only for those amounts payable hereunder in satisfaction of judgments, settlements, or **Defense Expense** which are in excess of the applicable **Insured's Retention**. The amount of the **Insured's Retention** is indicated in the **Declarations**.

6. COINSURANCE

The **Insured** hereby warrants that the **Coinsurance Percentage** indicated in the **Declarations** is to be borne by the **Insured** at its own risk and shall remain uninsured.

The **Insured** shall be liable to pay the **Coinsurance Percentage** of **Damages**, and **Defense Expense** indicated in the **Declarations** in excess of the amount of the **Insured's Retention**, which **Coinsurance Percentage** is part of and not in addition to the **Limits of Indemnity**.

SRI (only to the extent that the **Insured** is not a Co-Insurer) shall be liable to pay the remaining percentage of **Damages**, and **Defense Expense** in excess of the **Insured's Retention** amount until the **Limits of Indemnity** are exhausted.

7. EXTENDED REPORTING PERIOD

- a. If the SRI cancels this Policy for any reason other than non-payment of premium or refuses to renew it, or if the Named **Insured** cancels or refuses to renew this Policy, the Named **Insured** shall have the right, as set forth in 7.b below, to an **Extended Reporting Period** in which to give written notice to SRI of **Claims** first made against the **Insured** during such **Extended Reporting Period** for any alleged **Patent Infringement** on or after the **Retroactive Date** and before the end of the **Policy Period** and otherwise covered by this Policy.
- b. If the Named **Insured** makes a written request to SRI and pays the additional premium for an **Extended Reporting Period** Endorsement within thirty (30) days after the end of the **Policy Period**, the **Extended Reporting Period** will be twelve (12) months from the effective date of cancellation or nonrenewal. The additional premium shall be

125% of the whole annual premium for this Policy, and shall be fully earned upon the effective date of the Endorsement. The **Extended Reporting Period** Endorsement shall not be canceled.

8. CONDITIONS

a. POLICY TERRITORY

This Policy applies to any **Covered Infringement** committed anywhere in the world but only if the **Claim** or **Injunction Claim** is made and the action brought in and judgment entered and enforced exclusively by a court or appropriate administrative tribunal of the country in which the **Covered Infringement** was committed.

b. INSURED'S DUTY TO MAINTAIN QUALITY OF INFRINGEMENT SEARCH PRACTICES

It shall be a condition precedent to any **Patent Infringement** being deemed a **Covered Infringement** under this Policy that the **Insured** shall not, at any time during the **Policy Period**, diminish the quality of its company **Infringement Search** practices and shall at all times maintain, as though it were not insured, the same **Infringement Search** standards as were in effect prior to the inception of this Policy.

c. COVERAGE FOR NEW SUBSIDIARY COMPANIES

As a condition precedent to coverage being afforded under this Policy as respects any corporation which during the **Policy Period** becomes a **Subsidiary Company**, the Named **Insured** shall first give notice to SRI of such new **Subsidiary Company** within sixty (60) days after such corporation becomes a **Subsidiary Company** and afford SRI an opportunity to evaluate the risk posed by such new **Subsidiary Company** and to make a decision concerning whether SRI wants to extend coverage for such new **Subsidiary Company** and, if so, the additional premium to be charged therefor. Coverage for the new **Subsidiary Company** is conditioned upon the **Insured** paying when due any additional premium required by SRI relating to such new **Subsidiary Company**.



d. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to SR International Business Insurance Company, Ltd., Contact Office, P.O. Box 4288, CH-8022 Zurich, Switzerland. If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- (1) The **Insured** shall, as a condition precedent to the availability of the rights provided under this Policy, give written notice to SRI as soon as practicable during the **Policy Period** or, if applicable, during the **Extended Reporting Period**, of any **Claim** or **Injunction Claim** made against the **Insured**.
- (2) If during the **Policy Period** or, if applicable, during the **Extended Reporting Period** written notice of a **Claim** or **Injunction Claim** has been given to SRI pursuant to clause 8.e(1) above, then any **Claim** or **Injunction Claim** which is subsequently made against the **Insured** and reported to SRI alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** or **Injunction Claim** of which such notice has been given, or alleging any **Covered Infringement** which is the same as or related to any **Covered Infringement** alleged in the **Claim** or **Injunction Claim** of which such notice has been given, shall be considered made at the time such notice was given.
- (3) If during the **Policy Period** or, if applicable, during the **Extended Reporting Period** the **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** or **Injunction Claim** being made against the **Insured** and shall give written notice to SRI of the circumstances and the reasons for anticipating such a **Claim** or **Injunction Claim**, with full particulars as to the dates, persons, companies, products and patents involved, then any **Claim** or **Injunction Claim** which is subsequently made against the **Insured** and reported to SRI alleging, arising out of, based upon or attributable to such circumstances or alleging any **Covered Infringement** which is the same as or related to any **Covered Infringement** alleged or contained in such circumstances, shall be considered made at the time such notice of circumstances was given.

e. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate fully with SRI in making accessible, on SRI's request, all non-privileged information SRI may require for the purpose of assessing the **Insured's** exposure hereunder.

The **Insured** shall periodically report to and update SRI as regards the general factual basis of the dispute underlying any **Claim** or **Injunction Claim** likely to involve this Policy, and on the status, progress, and settlement prospects of such **Claim** or **Injunction Claim**. At the request of SRI, the **Insured** shall provide a complete sample of the allegedly infringing product as well as a copy, to the extent permitted by law, of the allegedly infringed patent or any part thereof.

The **Insured** shall assist SRI in the prosecution of subrogation actions or proceedings and shall enforce, or assist SRI in enforcing, any right of contribution or indemnity the **Insured** has against any person or organization who may be liable to the **Insured**. The **Insured** shall, at the request of SRI, but at the **Insured's** own and sole expense, attend hearings, trials and depositions and assist in securing and giving evidence and obtaining the attendance of witnesses in providing such assistance.

The **Insured** shall not, except at its own cost which shall not be reimbursed under this Policy, voluntarily make any settlement, payment, or assume any obligation to pay damages.

For the purpose of SRI's participation in settlement proceedings, the **Insured** shall assist SRI in qualifying SRI's attorneys and other representatives under any applicable protective orders or confidentiality agreements so that such attorneys or representatives may obtain access to documents, materials and proceedings relevant to the defense of any **Claim** or **Injunction Claim**, so that such SRI may participate in settlement proceedings concerning such **Claim** or **Injunction Claim** to the extent that SRI shall determine to be necessary.

f. OTHER INSURANCE; INDEMNIFICATION AGREEMENTS

This Policy shall be excess over any other valid and collectible insurance or indemnification agreement between any third party and the **Insured**, whether such insurance or indemnification agreement is stated to be primary, pro-rata, contributory, excess, contingent or otherwise; however, this clause shall not apply to other insurance written specifically as excess over the **Limits of Indemnity**.

g. SUBROGATION

In the event of any payment under this Policy, SRI shall be subrogated to all the **Insured's** rights of recovery therefor or on any counterclaim the **Insured** brings against the claimant in connection with the defense of the **Claim** or **Injunction Claim**. The **Insured** shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights.

h. DECLARATIONS AND REPRESENTATIONS

By acceptance of this Policy the **Insured(s)** agree(s) that the information in the **Declarations** and its application and underwriting submission and materials, as well as information provided on an ongoing basis, are its representations, that they shall be deemed material and that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and SRI, or any of its agents, relating to this insurance.

i. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop SRI from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

j. CANCELLATION; RENEWAL

This Policy may be cancelled by the Named **Insured** at any time by surrender thereof to SRI or by mailing to SRI written notice stating when thereafter the cancellation shall be effective.

This Policy may be cancelled by SRI if the Named **Insured** has failed to pay a premium, **Retention** amount, **Coinurance Percentage** amount, or any other amount, when due, by mailing a written notice of cancellation to the Named **Insured** at the address shown in this Policy stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

Unless this Policy (a) has been cancelled or (b) is renewed by written agreement of the Named **Insured** and SRI, the parties hereby agree that this Policy shall expire on the Expiration date shown in the **Declarations**. On renewal, SRI shall issue new **Declarations** indicating the new Inception and Expiration dates for the new **Policy Period**.

If the Named **Insured** cancels, earned premium shall be computed pro rata. Payment or tender of unearned premium by SRI shall not be a condition of cancellation, but such payment shall be made as soon as practicable after cancellation becomes effective. A proof of mailing of any notice of cancellation or shall be sufficient proof of notice; a delivery of such written notice either by the Named **Insured** or by SRI shall be equivalent to mailing.

k. TERMINATION OF COVERAGE AFTER CERTAIN TRANSACTIONS

If during the **Policy Period**:

- (1) the Named **Insured** shall consolidate with or merge into, or sell all its assets to, any other person or entity or group or persons and/or entities acting in concert; or
- (2) any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the Named **Insured**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction")

then, unless otherwise agreed in writing, there shall be no coverage afforded by any provision of this Policy (including but not limited to rights relating to the **Extended Reporting Period**) for any **Patent Infringement** occurring or alleged to occur after the effective date of the Transaction.

The Named **Insured** shall give SRI written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transactions.

If during the **Policy Period** a sale or transfer occurs transferring control of a division, **Subsidiary Company** or other part of the assets of the **Insured**, then coverage with respect to such sold or transferred entities/assets shall not apply to **Claims** or **Injunction Claims** arising from **Patent Infringement** or alleged **Patent Infringement** occurring subsequent to such Transaction.

l. SOLE AGENT

The Named **Insured** named in the **Declarations** shall act on behalf of all the **Insureds** with respect to giving and receiving notice of cancellation, payment of premiums and the receipt of any return premiums that may become due under this Policy, the acceptance of any endorsement issued to form a part of this Policy, and exercising or declining to exercise any right to an **Extended Reporting Period**.

m. ASSIGNMENT

Assignment of interest under this Policy shall not bind SRI unless and until its consent is endorsed hereon in writing.

n. ARBITRATION

Any controversy arising out of or relating to this Policy or its breach shall be settled by final and binding arbitration, from which there shall be no appeal, in accordance with the following.

Unless otherwise agreed, the United Kingdom Arbitration Act 1996 shall apply and the arbitration shall be held in London, England unless otherwise agreed to by the parties.

Three arbitrators shall comprise the arbitration panel.

The majority of the three arbitrators shall issue a written award resolving the controversy before them within thirty (30) days of the time both parties are required to submit their case and related documentation, unless such time is extended by the consent of the parties. The panel shall make an award of compensatory monetary damages but not of punitive or exemplary or enhanced damages. Said award shall be final and binding upon both parties in a court of competent jurisdiction.

Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the chairperson/umpire. The remaining costs of the arbitration proceedings shall be allocated by the panel.

o. ENFORCEMENT OF ARBITRATION AWARD

Subject to Section 8.n. of this Policy, entitled Arbitration, it is agreed that in the event of failure of SRI to pay an amount claimed to be due hereunder, SRI, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction. Nothing in this condition constitutes or should be understood to constitute a waiver of SRI's rights to commence an action in any court of competent jurisdiction, to remove an action to another court of competent jurisdiction, or to seek a transfer of a case to another court as permitted by applicable law. It is further agreed that service of process in such suit may be made upon Legal and Claims Counsel, SR International Business Insurance Co. Ltd, P.O. Box 4288, CH-8022 Zurich, Switzerland, and that in any suit instituted against SRI upon this contract SRI will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any applicable statute which makes provision therefor, SRI hereby designates the Superintendent, Commissioner, or Director of Insurance, other officer specified for that purpose in the statute, or his or her successor or successors in office as is true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer authorized to mail such process or a true copy thereof.

Executed this ___th day of _____, 2000

by the Named Insured:

_____ and

by SR International Business Insurance Co. Ltd.:

_____ in Zurich, Switzerland.

