

Putting risk in its place



BusinessRisk
P A R T N E R S

COMBINED EMPLOYMENT PRACTICES, DIRECTORS' & OFFICERS', FIDUCIARY AND CRIME INSURANCE POLICY

Various provisions in this **Policy** restrict coverage. Please read the entire **Policy** carefully to determine rights, duties, and what is and is not covered.

Throughout this **Policy** the words “you” and “your” refer to the **Insured Company** shown in the Declarations. The words “we,” “us,” and “our” refer to the Underwriters providing this insurance. The word “**Insured**” means any person or organization qualifying as such under the definition of **Insured** as defined in the General Terms and Conditions, below, and in each Coverage Section.

Other words and phrases that appear in **bold** have special meaning as described in the definitions found in the General Terms and Conditions, below, and in each Coverage Section.

In consideration of payment of the premium and in reliance upon the statements made in the **Application**, which is made a part of and deemed attached to this **Policy**, and subject to the Declarations and the limitations, conditions, provisions, and other terms of this **Policy**, the Underwriters and the **Insureds** agree as follows:

GENERAL TERMS AND CONDITIONS

I. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

Except for these General Terms and Conditions, or unless stated to the contrary in any Coverage Section, the terms and conditions of each Coverage Section of this **Policy** apply only to that Coverage Section and shall not apply to any other Coverage Section of this **Policy**. If any provision in the General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control for purposes of that Coverage Section.

II. DEFENSE AND SETTLEMENT

Except with respect to Coverage Section D., we have the right and duty to defend any **Claim** covered by the **Policy** and such obligation is limited to amounts constituting **Defense Costs**.

Our duty to defend any **Claim** will end once the Limit of Liability, as stated in the Declarations, is exhausted by the payment of **Loss**, including **Defense Costs**. If our duty to defend ends with respect to any **Claim**, we will notify you so that you can arrange to take control of the defense of the **Insureds**. We will take whatever steps are necessary to avoid a default judgment during a transfer of control of the defense of any such **Claim**. If we do so, you agree to repay the

reasonable expenses incurred by us during the transfer and further agree that, in undertaking the steps necessary to avoid a default judgment during the transfer, we have not waived any rights under the **Policy**.

We may, with your consent, settle any **Claim** for any monetary amount that we consider reasonable.

The **Insureds** will not incur any **Defense Costs**, settle, or offer to settle any **Claim**, assume any contractual obligation, admit liability, voluntarily make any payment or confess or otherwise consent to any damages or judgments with respect to any **Claim** without our prior written consent, which will not be unreasonably withheld. We will not be liable for any **Defense Costs**, settlement, assumed obligation, admitted liability, voluntary payment, or confessed damages or judgments to which we have not consented.

The **Insureds** will provide full cooperation and all information and particulars that we may request to conduct an investigation, defend a **Claim**, or to reach a settlement of a **Claim**. The **Insureds** agree that in the event of a **Claim**, they will do nothing that may prejudice our position or rights of recovery. The failure of any natural person **Insured** or **Insured Person** to comply with the foregoing shall not impair the rights of any other natural person **Insured** or **Insured Person** under this Policy.

III. DEFINITIONS

- A. **Application** means all applications, including attachments and submitted materials, for this **Policy**. All such applications, attachments, and materials are deemed attached to and incorporated into this **Policy** in accordance with Section XI. of these General Terms and Conditions.
- B. **Defense Costs** means reasonable and necessary fees, costs, and expenses incurred by counsel, experts or investigators appointed or pre-approved by us in the investigation, defense and appeal of any **Claim** or participating in an **Voluntary Compliance Program**; but **Defense Costs** do not include any wages, salaries, fees, or expenses of any **Insured**. **Defense Costs** will include legal and investigation fees necessary to respond to potential claims, if incurred at our request and direction.
- C. **Employee** means any individual whose labor or service is engaged by and directed by the **Insured Company**, including volunteers and all staff members, whether part-time, full-time, seasonal, or temporary.
- Employee** does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative or other person of the same general character, except that as respects Coverage Section A only, **Leased Employees** and independent contractors will also be considered **Employees**.
- D. **ERISA** shall mean the Employee Retirement Income Security Act of 1974, as amended.
- E. **Financial Impairment** means the status of the **Insured Company** resulting from the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Company**.
- F. **Insured Company** means:

- (1) the organization(s) listed in Item 1. of the Declarations, whether as a corporation, partnership, joint venture, association, or otherwise,
- (2) any **Insured Subsidiary**, including any such organization(s) as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, and
- (3) any foundation, charitable trust or political action committee totally funded or controlled by the organization(s) listed in Item 1. of the Declarations or any **Insured Subsidiary**.

G. **Insured Fiduciary**, either in the singular or plural, shall mean:

- (1) one or more natural persons who were, now are or shall hereafter be a director, officer, partner, trustee or employee of the **Sponsor Company** or of any **Insured Plan**; or
- (2) any other natural persons who were, now are or shall hereafter be a fiduciary of an **Insured Plan**, provided further that such fiduciary is sued solely in his or her capacity as a fiduciary of an **Insured Plan**.

Insured Fiduciary does not mean any agent, broker, independent contractor, broker/dealer, registered representative, investment advisor, custodian or other person or entity of the same general character.

H. **Insured Plan**, either in the singular or plural, shall mean:

- (1) any government-mandated insurance program for unemployment, social security or disability benefits for employees of the **Sponsor Company**, except for workers' compensation;
- (2) any welfare benefit plan as defined in **ERISA** or any similar common or statutory law of the United States or other jurisdiction anywhere in the world, which is sponsored solely by the **Sponsor Company** or jointly by the **Sponsor Company** and a labor organization solely for the benefit of the employees of the **Sponsor Company** located anywhere in the world and which existed on the inception date of this **Policy**;
- (3) any non-qualified plan not subject to regulation under Title I of **ERISA** or which does not meet the qualification requirements under Section 401(a) of the Internal Revenue Code of 1986, as amended, but only for a **Fiduciary Wrongful Act** as defined herein;
- (4) any plan, fund or program specifically listed in the **Application** to this **Policy**; and
- (5) an **ESOP** but solely with respect to **ESOP Administration**. No **ESOP** is included within the definition of **Plan** with respect to **Claims** for any **Fiduciary Wrongful Act** other than **ESOP Administration** unless that **ESOP** is specifically included within the definition of **Plan** by written endorsement attached hereto.

provided however, **Insured Plan** shall not include any multi-employer plan, as defined in **ERISA**.

- I. **Insured Subsidiary** means:
- (1) any organization in which more than 50% of the outstanding voting securities representing the present right to vote for election of directors is owned, directly or indirectly, by the **Insured Company**; or
 - (2) any organization in which the **Insured Company** has the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Insured Company** to elect, appoint or designate a majority of the board of directors.
- J. **Interrelated Claims** means all **Claims** based upon or arising from **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions, or causes. **Claims** may be **Interrelated Claims** whether or not they involve the same cause, claimants, **Insured**, or legal theory.
- All **Interrelated Claims** shall be deemed one **Claim**, and such **Claim** shall be deemed to have been first made on the date the earliest of such **Claims** was first made, regardless of whether such date was before or during the **Policy Period**.
- K. **Leased Employee** means any **Employee** who is leased to you to perform work at and for the **Insured Company** and over whom you control the means and manner of their work.
- L. **Loss**, with respect to each Coverage Section except Coverage Section D, shall include **Defense Costs**, and shall have the meaning set forth in that Coverage Section; provided, however, with respect to all such Coverage Sections, **Loss** shall also include punitive, multiple, and exemplary damages, to the extent insurable under the law of any applicable jurisdiction most favorable to insurability.
- With respect to the coverage for punitive, multiple and exemplary damages, any applicable law most favourable to the insurability of such damages shall apply, and where the **Insureds** are able to demonstrate in good faith (including presenting a written legal opinion) that such damages are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this provision, “any applicable law” shall include but not be limited to the law: a) where the **Claim** seeking such damages was brought, b) where the **Wrongful Acts** giving rise to the **Claim** seeking such damages took place, c) where the **Insureds** are incorporated, have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business.
- M. **Policy** means, collectively, the Declarations, the **Application**, this **Policy** form, and any endorsements.
- N. **Policy Period** means the period of time specified in Item 2. of the Declarations, subject to any prior cancellation described in Section XXVI. of these General Terms and Conditions.
- O. **Sponsor Company** shall mean the entity named in Item 1 of the Declarations and any **Insured Subsidiary**.
- P. **Wrongful Act(s)** means, for purposes of these General Terms and Conditions, **Wrongful Employment Practices** and **Third-Party Discrimination** as defined in the Employment

Practices Coverage Section, **Wrongful Acts** as defined in the Directors and Officers Liability Coverage Section and **Fiduciary Wrongful Acts** as defined in the Fiduciary Liability Coverage Section, but only where each such Coverage Section is purchased and included.

IV. LIMITS OF LIABILITY

- A. The separate amounts set forth in Items 4.A., 4.B. and 4.C. of the Declarations shall be separate Limits of Liability for Coverage Sections A., B. and C. (where included) and shall be our maximum aggregate Limit of Liability for all **Loss** and **Defense Costs** combined on account of all **Claims** first made during the **Policy Period** with respect to each such Coverage Section.

The amount set forth in Item 4.B. of the Declarations as ‘Derivative Demand Sublimit’ shall be our maximum aggregate Sublimit of Liability for all **Costs of Investigation** arising from all **Derivative Demands** under Insuring Agreement I.D. of Coverage Section B. Such Sublimit of Liability shall be part of and not in addition to the overall Limit of Liability set forth in Item 4.B. of the Declarations.

- B. The separate amount set forth in Item 4.D. of the Declarations shall be a separate Limit of Liability for each Insuring Agreement under Coverage Section D (where included) and shall be our maximum aggregate Limit of Liability for all losses under all Insuring Agreements under Coverage Section D. combined.
- C. The scheduled Limit of Liability for Coverage Sections A., B. C. and D. are subject to the Aggregate Limit of Liability as specified in Item 4.E. of the Declarations. As such, each Coverage Section’s Limit of Liability is a sublimit which further limits and does not increase our maximum liability for all such Coverage Sections. If no Aggregate Limit of Liability is specified in Item 4.E. of the Declarations, the Scheduled Limits of Liability set forth for each such Coverage Section are not subject to an Aggregate Limit of Liability, combined, for all such Coverage Sections.

Payments of **Loss** by us under Coverage Sections A., B. and C., including **Defense Costs**, shall reduce the Limit of Liability. If the Limit of Liability for any Coverage Section is exhausted by payment of **Loss**, including **Defense Costs**, our obligations under such Coverage Section shall be deemed completely fulfilled and extinguished.

- D. **Defense Costs** under Coverage Sections A., B. and C. shall be part of, and not in addition to, each of the Limits of Liability set forth in the Declarations, and **Defense Costs** shall reduce each such Limit of Liability. **Claim Expenses** under Coverage Section D. shall be part of, and not in addition to, the Limit of Liability set forth in the Declarations.
- E. The Limits of Liability for the Extended Reporting Period and the Retired and Resigned Insured Persons Extension Period, if exercised, shall be part of and not in addition to each of the Limits of Liability for the **Policy Period**. The purchase of the Extended Reporting Period and the Retired and Resigned Insured Persons Extension Period shall not increase or reinstate the Limits of Liability set forth in the Declarations, which shall be our maximum liability for all **Loss** and **Defense Costs** on account of all **Claims** first made during such **Policy Period** and Extended Reporting Period or the Retired and Resigned Insured Persons Extension Period, combined.

V. SELF-INSURED RETENTION

- A. Our liability under Coverage Sections A., B. and C. with respect to **Loss**, including **Defense Costs**, arising from any single **Claim** shall apply only to that part of such **Loss**, including **Defense Costs**, in excess of the applicable Self-Insured Retention set forth in the Declarations for such Coverage Section. If **Loss** on account of a single **Claim** is subject to different Self-Insured Retentions under different Coverage Sections, the total applicable Self-Insured Retentions shall not exceed the single largest applicable Self-Insured Retention. The Self-Insured Retention amount shall be your uninsured responsibility and shall apply to **Defense Costs** as well as other **Loss**. We shall have no responsibility to make any payment unless the Self-Insured Retention has been exhausted or unless the Insured Company is unable to meet its uninsured responsibility of account of **Financial Impairment**.
- B. The Self-Insured Retention amount applies to each **Claim** or **Interrelated Claims**, regardless of the number of claimants.
- C. Our liability under Coverage Section D. shall apply only to that part of loss excess of the applicable self-Insured Retention set forth in the Declarations.
- D. Solely in respect of Coverage Section A, if the **Insured Company** consents to a settlement of a **Claim** within thirty (30) days of the first request by Underwriters to consent and the settlement is accepted by the claimant, then the applicable Self-Insured Retention for that Coverage Section shall be retroactively reduced by ten percent (10%). Any consent to the same or another settlement after such time shall not reduce the Self-Insured Retention.
- E. Solely in respect of Coverage Section A, if, prior to the termination of any **Employee**, the **Insured** obtains and adopts the written advice of legal counsel recommended or approved by us as respects such termination, then the Self-Insured Retention for that Coverage Section shall be reduced by fifty percent (50%) for any **Claim** commenced by that **Employee** arising from the events of the termination.
- F. Solely in respect of Coverage Section A, if a **Claim** is reported within thirty (30) days of when it was first made, the applicable Self-Insured Retention for that Coverage Section will be reduced by ten percent (10%).
- G. Solely in respects of Coverage Sections A and B, in the event of: (1) a determination of No Liability of all **Insureds**; or (2) a dismissal or a stipulation to dismiss a **Claim** without prejudice and without payment by any **Insured**, then the applicable Self-Insured Retention for that Coverage Section shall be retroactively reduced by an amount up to twenty-five percent (25%) or \$100,000, whichever is less; provided, however, that in the case of (2), any amounts to be returned shall be returned ninety (90) days after the date of dismissal or stipulation as long as the **Claim** is not reinstated (or any other **Claim** which is subject to the same single Self-Insured Retention) within that time, and further subject to an undertaking by the **Insured Company** in a form acceptable to Underwriters that such amounts shall be paid back to Underwriters in the event the **Claim** (or any other **Claim** which is subject to the same single Self-Insured Retention) is brought after such 90-day period and before the expiration of the statute of limitations for such **Claim**.

“No Liability” for purposes of this provision means: (1) a final judgment of no liability obtained prior to trial, in favor of all **Insureds**, by reasons of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial in favor of all **Insureds**, after the exhaustion of all

appeals. In no event shall the term “No Liability” apply to a **Claim** made against an **Insured** for which a settlement has occurred.

- H. The aggregate reduction in any one Self-Insured Retention as a result of these subsections D., E., F., and G. shall not exceed 50% or \$100,000, whichever is less.

VI. SPOUSAL AND DOMESTIC PARTNER EXTENSION

If a **Claim** against an **Insured** includes a claim against the lawful spouse or domestic partner of such **Insured** solely by reason of (a) such spouse's or domestic partner's legal status, or (b) such spouse's or domestic partner's direct or beneficial ownership interest in property or assets that are sought as recovery for the **Wrongful Acts** of such **Insured**, all loss that such spouse or domestic partner shall become legally obligated to pay by reason of such claim shall be treated, for purposes of this **Policy**, as **Loss** that such **Insured** is legally obligated to pay on account of the **Claim** made against such **Insured**. The extension of coverage afforded by this Section VI. shall not apply to the extent the **Claim** alleges any act, error or omission by such spouse or domestic partner. All terms and conditions of this **Policy**, including the Self-Insured Retention, will be applicable to such **Claim**.

VII. EXCLUSIONS

The following exclusions are applicable to Coverage Sections A., B. and C., but are not applicable to Coverage Section D. Other exclusions are reflected in each Coverage Section.

We are not obligated to defend or pay **Loss**, including **Defense Costs**, on account of any **Claim**.

- A. based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance, or situation:
- (i) that was the subject of written notice given under any prior directors and officers, employment practices liability or fiduciary liability policy;
 - (ii) that was the subject of any written demand, investigation, proceeding, arbitration or litigation against any **Insured** of which the **Insured** had notice, whether administrative, regulatory, civil or criminal, as of the applicable Prior and Pending Date identified in Item 5. of the Declarations, including but not limited to the same or substantially the same facts, circumstances, or situations underlying or alleged in the prior or pending matter; or
 - (iii) that was identified in any summary or statement of claims or potential claims or circumstances identified in connection with the **Application**.
- B. for, based upon, arising from, or in any way related to:
- (i) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
 - (ii) any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste.

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, or toxin including but not limited to smoke, vapor, soot, fumes, dust, fibers, mold, spores, fungi, germs, acids, alkalis, chemicals, odors, noise, lead, lead compounds, silica, oil or oil products, radiation, radon, asbestos or asbestos-containing products or any like substances, and waste, and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

Provided, however,:

- (1) this Exclusion B.(i) shall not apply to Insuring Agreement I.A. of Coverage Section B.; and
- (2) this Exclusion B.(i) and B.(ii) shall not apply to Insuring Agreement I.B. and I.C. of Coverage Section B. in respect of any **Claim** brought by a shareholder of the **Insured Company** in its capacity as such.

VIII. NOTICE PROVISIONS

The following provisions are applicable to Coverage Sections A., B. and C., but are not applicable to Coverage Section D.

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give our Authorized Representatives, as identified in Item 7. of the Declarations, written notice of any **Claim** made against the **Insureds** as soon as practicable after any **Insured**, who is chief executive officer, chief financial officer, general counsel or human resource manager, becomes aware that the **Claim** has been made, but in no event later than:

- (1) ninety (90) days after the expiry of the Policy; or
- (2) in the event this Policy is renewed with Underwriters, one hundred and twenty (120) days after the expiry of the Policy.

Along with the notice of the **Claim**, the **Insureds** shall provide our Authorized Representatives with copies of all documentation comprising the **Claim** as well as all authorization, cooperation, or assistance as we may require throughout the duration of the **Claim**.

Under no circumstances shall we be obligated to pay any **Defense Costs** incurred prior to **Claim** notification.

B. If, during the **Policy Period**, or the Extended Reporting Period if purchased, any **Insured**:

- (1) first becomes aware of a circumstance that could give rise to a **Claim**, or
- (2) receives any request to toll, extend or waive a period or statute of limitation or a contractual timebar which may be applicable to any **Claim**,

and if during the **Policy Period**, or the Extended Reporting Period if purchased, the **Insureds** give written notice to us, as soon as practicable, of:

- (a) the specific **Wrongful Act** or the request to toll, extend or waive a period or statute of limitation or a contractual timebar;
- (b) the consequences which have resulted or may result therefrom; and
- (c) the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently and arising out of such **Wrongful Act** or the request to toll, extend or waive a period or statute of limitation or a contractual timebar shall be

deemed for the purposes of this **Policy** to have been made at the time such notice was first given.

- C. Notice to us, as required by this Section VIII., shall be given to our Authorized Representatives, as identified in Item 7. of the Declarations, and shall be a condition precedent to coverage under this **Policy**.

IX. OTHER INSURANCE

Unless expressly written to be excess over other valid and collectible insurance, and except for: (i) **Claims** against **Leased Employees** and **Claims** for **Third-Party Discrimination** (where and if included), and (ii) Coverage Section D., which is governed by Section VII. of Coverage Section D., this **Policy** is intended to apply as primary insurance for **Wrongful Acts** covered by this **Policy**. With respect to **Claims** against **Leased Employees** and **Claims** for **Third-Party Discrimination**, this **Policy** applies excess of all indemnification and insurance available to any **Insured**. Nothing in this provision, however, shall prevent us or the **Insureds** from seeking contribution or coverage from any other insurer or indemnitor.

X. CHANGES IN EXPOSURE

- A. If during the **Policy Period** the **Insured Company** acquires securities in another entity or creates another entity, which as a result becomes an **Insured Subsidiary**, or if the **Insured Company** acquires another entity by merger or consolidation, coverage under Coverage Sections A., B. and C. only will automatically be available provided that (a) the fair value of such acquired or created entity, including all cash, securities, assumed liabilities and other consideration, does not exceed 50% of the total consolidated assets of the **Insured Company** as of the inception of the **Policy Period**; and (b) provided further, that the total number of your **Employees** does not increase by more than 50% as a result of such acquired or created entity and (c) provided further, that with respect to Coverage Section C., the plan assets of any created or acquired **Insured Plan(s)** in the aggregate do not exceed 50% of the total plan assets of the **Insured Plan(s)** as of the inception date of the **Policy Period**.
- B. If during the **Policy Period** the **Insured Company** or any **Insured Subsidiary** is acquired, or control assumed by another entity, coverage under this **Policy** will continue but only with respect to **Wrongful Acts** taking place prior to the effective date of the acquisition or change of control. The **Policy** may not be cancelled after the effective date of the acquisition or change of control and the premium will be deemed fully earned on such date.
- C. If the **Insured Company** acquires or creates another entity with a value of greater than 50% of the **Insured Company's** value as described in Section X.A., above, or if the total number of your **Employees** is increased by more than 50%, or if the plan assets of any newly created or acquired **Insured Plan** exceed the value stated above, coverage will be afforded for a period of ninety (90) days to such entity or merged operations for **Wrongful Acts** that occurred after the date of such acquisition, creation or increase in employees. Coverage beyond such ninety (90) day period shall only be available if we are notified of the circumstances as soon as practicable, but in any event within ninety (90) days. We will be entitled to impose such amended terms and conditions and adjust the premium as we may require.
- D. With respect to Coverage Section C., if during the **Policy Period** the **Sponsor Company** terminates any **Insured Plan**, coverage under this **Policy** shall apply solely with respect

to **Fiduciary Wrongful Acts** that occurred prior to the date of asset distribution on condition that the **Sponsor Company** gives us notice of such termination as soon as practicable, but in any event within ninety (90) days.

XI. REPRESENTATIONS AND SEVERABILITY

In issuing this **Policy**, we relied upon the information, particulars, representations and statements contained in, attached to or referred to in the Application. The **Insureds** represent that all such information, particulars, representations and statements are both true and deemed material to the acceptance of the risk or the hazard assumed by us under this **Policy**.

The **Insureds** agree that in the event any such information, particulars, representations and statements are untrue, the **Policy** shall be void, ab initio, with respect to any of the following **Insureds**: (1) any **Insured** who knew the facts that were not truthfully disclosed in the **Application**; provided that, solely with respect to the coverage afforded under Coverage Section B.I.A., we shall not be entitled to rescind the **Policy**; and (2) the **Insured Company**, if the chairman of the board, chief executive officer, chief financial officer or general counsel of the **Insured Company** knew the facts that were not truthfully disclosed.

For purposes of this provision, no knowledge possessed by an **Insured** shall be imputed to any other **Insured**.

XII. ALLOCATION

If both **Loss** covered by this **Policy** and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this **Policy**, then such covered **Loss** and non-covered loss shall be allocated as follows:

- A. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss** except costs associated with the defense of actual or alleged violations of any federal, state or local wage and hour laws or regulations;
- B. Settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-Insureds' exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then the Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

Notwithstanding the above, the **Insureds** and the Underwriters agree to use their best efforts to determine a fair and proper allocation of all covered **Defense Costs** and non-covered defense costs associated with the defense of **Claims** alleging violations of any federal, state or local wage and hour laws or regulations. In the event that an allocation cannot be agreed to, then the Underwriters shall make an interim payment of the amount of **Defense Costs** that the parties agree is not in dispute until a final amount is agreed upon or adjudicated.

XIII. COORDINATION AMONG COVERAGE SECTIONS

In the event that any **Claim** is a subject of coverage under more than a single Coverage Section, the terms, conditions, definitions and exclusions of each Coverage Section shall be applied separately to that part of the **Claim** covered by each such Coverage Section. The **Insured Company** and Underwriters shall use their best efforts to reach agreement on the question of whether more than a single Coverage Section applies to any **Claim**. In the event that more than a single Coverage Section is applicable, the single largest applicable Limit of Liability, and its corresponding Self-Insured Retention, shall be applied to the **Claim**. If the largest applicable Limit of Liability is equal to the Limit of Liability of another Coverage Section that also applies, then the largest applicable Self-Insured Retention shall be applied to the **Claim**. Under no circumstances will more than one Limit of Liability be available to any **Claim** or **Interrelated Claims**.

XIV. BANKRUPTCY

The bankruptcy or insolvency of the **Insured Company** or any **Insured Subsidiary** shall not relieve us of any obligations hereunder.

If a liquidation or reorganization proceeding is commenced by the **Insured Company** or any **Insured Subsidiary** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim**, under this **Policy**, Underwriters and the **Insureds** hereby agree not to oppose or object to any efforts by Underwriters or any of the **Insureds** to obtain relief from any stay or injunction applicable to the proceeds of this **Policy** as a result of the commencement of such liquidation or reorganization proceeding.

XV. ORDER OF PAYMENTS

It is agreed that we will use best efforts to pay all **Loss** under this **Policy** in the following order of priority:

First, we will pay all **Loss** for which coverage is provided under Coverage Sections B.I.A. and B.I.B.; and

Second, with respect to whatever remaining amount of the Limit of Liability may be available after payment of **Loss** under Coverage Section B.I.A. and B.I.B., we will pay all **Loss** for which coverage is provided under Coverage Sections A., B.I.C. and C. and all loss for which coverage is provided under Coverage Section D.;

Provided always that should there be any dispute concerning priority of payment as between Coverage Sections B.I.A. and B.I.B., we and the **Insured Company** will use best efforts to agree upon priority, and failing agreement, will submit any such dispute to binding arbitration pursuant to Section XXI. of the General Terms and Conditions of this **Policy**.

XVI. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, you agree to act on behalf of the **Insureds** with respect to the giving and receiving of notice of **Claim** or cancellation, the payment of premiums, and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements and the giving or receiving of any notice provided for in this **Policy** (except the giving of notice to apply for the Extended Reporting Period), and the **Insureds** agree that you will act on their behalf.

XVII. SUBROGATION

In the event of any payment under this **Policy**, we will be subrogated to the extent of such payment to all of your and any **Insured's** rights of recovery. You and the **Insureds** will execute all required papers and do everything necessary to secure and preserve such rights. Notwithstanding the foregoing, Underwriters agree to waive their rights of subrogation against any of the **Insured Persons**, except where a final non-appealable adjudication in the underlying action adverse to the relevant **Insured Persons** establishes that the relevant **Insured Persons** have committed a deliberately dishonest, malicious, criminal or fraudulent act or omission or willfully violated a law.

XVIII. ALTERATION AND ASSIGNMENT

This **Policy** cannot be changed, modified, or assigned without our written, signed endorsement.

XIX. TERRITORY

Coverage under Coverage Sections A., B. and C. of this **Policy** will extend to **Wrongful Acts** taking place and **Claims** made anywhere in the world. Coverage under Coverage Section D. of this **Policy** will extend to losses anywhere in the world.

XX. ACTION AGAINST UNDERWRITERS

No action shall lie against us unless, as a condition precedent thereto, there shall have been full compliance with all terms and conditions of this **Policy**. No person or organization shall have any right under this **Policy** to join us as a party to any action against any **Insured** to determine the liability of such **Insured**, nor shall we be impleaded by any **Insured** or their legal representative.

XXI. SERVICE OF SUIT

We agree, at the request of any **Insured**, to submit to the jurisdiction of a court of competent jurisdiction within the United States and we will comply with all requirements necessary to give such court jurisdiction. Nothing in this paragraph constitutes or should be understood to constitute a waiver of our rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the firm shown under Item 1. of the Declarations, and that in such suit instituted against any of the Underwriters of this **Policy**, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The firm shown under Item 6. of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of any **Insured** to give a written undertaking to such **Insured** that they will enter general appearance upon Underwriters' behalf in the event such a suit is instituted.

Further, pursuant to the statute of any state, territory, or district of the United States which makes provision for such, Underwriters designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his or her successor or successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of any **Insured** or any beneficiary of this **Policy**, and designate the firm shown under Item 1. of the Declarations as the firm to whom said officer is authorized to mail such process.

XXII. ESTATES AND LEGAL REPRESENTATIVES

Whenever the term **Insured**, as used in this **Policy**, refers to a natural person, such term shall include the estates and legal representatives of such natural person **Insured**. Neither death, bankruptcy, incapacity nor insolvency of any natural person **Insured**, will relieve us of any obligations under the **Policy**.

XXIII. EXTENSIONS TO THE POLICY PERIOD

A. Extended Reporting Period

In the event of non-renewal or cancellation of this **Policy**, you shall have the right, upon payment of an additional premium of 100% of the premium charged for the non-renewed or cancelled **Policy**, to an extension of the coverage available under this **Policy** in respect of Coverage Sections A., B. and C. for a period of twelve (12) months following the effective date of such non-renewal or cancellation, or 120% for a twenty-four (24) month extension, or 140% for a thirty-six (36) month extension, but only with respect to **Claims** otherwise covered by this **Policy** and only for **Wrongful Acts** taking place prior to the effective date of such non-renewal or cancellation.

A written request for the Extended Reporting Period must be received by us within thirty (30) days from the effective date of the non-renewal or cancellation. The premium due for the Extended Reporting Period must be received by us within forty-five (45) days of such effective date. The entire premium for the Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

B. Retired and Resigned Insured Persons Extension Period

In the event of non-renewal or cancellation of this **Policy**, any of your natural person Insureds or Insured Persons who have retired or resigned prior to or during the **Policy Period** shall have an automatic extension of the coverage available under this **Policy** in respect of Coverage Sections A., B. and C. for a seventy-two (72) months extension following the effective date of such non-renewal or cancellation, but only with respect to **Claims** otherwise covered by this **Policy** and only for **Wrongful Acts** taking place prior to the effective date of such non-renewal or cancellation.

The above automatic extension of coverage shall not apply in the event the **Insured Company** has purchased other insurance to replace, in whole or in part, the insurance provided under this **Policy**.

C. In the event the Extended Reporting Period or the Retired and Resigned Insured Persons Extension Period, if exercised and the law in any foreign country imposes a requirement for a minimum extension period, then the extension period under this **Policy** shall be extended in order to comply with any such minimum extension period but solely with respect to any **Claim** first brought and maintained in such country.

XXIV. NON-RENEWAL

If we decide not to renew this **Policy**, we will mail or deliver to the **Insured Company** written notice of non-renewal not less than sixty (60) days before the expiration date. If the notice is mailed, proof of mailing will be sufficient notice of non-renewal.

XXV. CANCELLATION

You may cancel this **Policy** by mailing written notice to us stating when thereafter such cancellation shall be effective. We may cancel this **Policy** only for non-payment of premium, by mailing written notice to you at the address shown in the Declarations, stating when, not less than twenty (20) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient proof of notice. Delivery of such written notice shall be equivalent to mailing. The effective date and hour of cancellation as stated in the notice shall become the end of the **Policy Period**.

If you cancel, earned premium shall be computed in accordance with the standard short rate table. If we cancel, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

XXVI. LIBERALIZATION

In the event the identical unendorsed policy form is amended by us subsequent to the inception date of this **Policy** such that the coverage under such identical unendorsed policy form is broader as a result of the amendments, this **Policy** shall be construed to include the broadened coverage.

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COVERAGE SECTION A

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

I. INSURING AGREEMENT

We will pay all **Loss** that an **Insured** becomes legally obligated to pay as a result of **Claims** first made against such **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for a **Wrongful Employment Practice** or **Third Party Discrimination** (where and if coverage for **Third Party Discrimination** is included, as reflected on Item 4. of the Declarations).

II. DEFINITIONS

The following terms, whenever used in this Coverage Section, shall have the meanings indicated below. Other terms shall have the meanings found in the General Terms and Conditions of the **Policy**.

A. **Civil Rights Violation** means a violation of an individual's right to receive equal treatment regardless of race, gender, religion, national origin, sexual orientation or preference, transgender status, pregnancy, disability (including HIV), marital or family status, mental status, age, obesity, or genetic information or predisposition (including BRCA status).

B. **Claim** means:

- (1) a written demand for monetary damages or non-monetary relief, or written notice of an intention to hold an **Insured** responsible, for a **Wrongful Employment Practice** or **Third-Party Discrimination** (where and if included);
- (2) a charge, complaint or other notice of commencement of federal, state, or local administrative proceedings by or before any agency with authority over the **Insured Company's** employment practices;
- (3) the filing of a civil lawsuit or arbitration proceeding; or
- (4) the filing of a criminal lawsuit or the institution of criminal proceedings; provided, however, that the decision to consider such lawsuit or proceedings a **Claim** shall be at the discretion and express request of the **Insured Company**; or
- (5) a labor or union grievance proceeding once it has reached arbitration.

A **Claim** is deemed first made when it is received by an **Insured**.

C. **Insured** means the **Insured Company** and individuals who are your former, current or future principals, partners, officers, directors, trustees, shareholders, members of the Board of Management, management committee members, in-house general counsel and those **Employees** for whom you request coverage at the time of **Claim**, acting in their capacities as such. If, at any time during the **Claim**, you no longer want us to provide coverage for any such **Employee(s)**, you shall send us written notice requesting that

coverage for the **Employee(s)** be withdrawn. Coverage for the **Employee** shall cease as of the date we receive such notice.

- D. **Loss** means damages, judgments, settlements, verdicts, and awards, including compensatory damages, back pay, front pay, statutory attorneys' fees, pre-judgment and post-judgment interest, statutory liquidated damages and **Defense Costs** in excess of the applicable Self-Insured Retention.

Loss does not include: (1) fines, penalties, or taxes; (2) any amount for which the **Insured** is absolved from payment; (3) stock options or amounts reflecting the value of stock options; (4) amounts owed under employment contracts, partnership, stock, or other ownership agreements, or any other type of contract; (5) severance pay, (6) disability, social security, workers' compensation, medical, insurance, retirement or pension benefits, or settlement amounts representing benefits payments; (7) the cost to modify any premises or provide any accommodation to any disabled person; (8) the cost of instituting or conducting any program, procedure, or training; (9) the cost of instating or reinstating employment, or providing any non-monetary relief; or (10) any relief, whether pecuniary or injunctive, imposed or agreed to in connection with criminal lawsuits or proceedings.

- E. **Third-Party Discrimination** means any actual or alleged discrimination, including harassment, or **Civil Rights Violation** by an **Insured** against any non-**Employee**.

- F. **Privacy Violation** means wrongful disclosure, theft or misuse of an **Employee's** confidential, personal and/or identifying information, including breach of, violation, or non-compliance with, data protection laws relating to employee data.

- G. **Social Media** means the use by an **Insured** of any internet or mobile-based devices for the purpose of sharing, disseminating and discussing information through any media application.

- H. **Wrongful Employment Practice** means any actual or alleged:

- (1) violation of any federal, state, local or common law, prohibiting any kind of employment-related discrimination;
- (2) harassment, including any type of sexual or gender harassment as well as racial, gender, religious, national origin, sexual orientation or preference, transgender status, pregnancy, disability (including HIV), marital or family status, mental status, pregnancy, age, obesity, genetic information or predisposition (including BRCA status) - based harassment and including harassment via **Social Media** and workplace harassment by non-employees;
- (3) abusive or hostile work environment;
- (4) workplace bullying;
- (5) wrongful discharge or termination of employment, whether actual or constructive;
- (6) breach of an implied employment contract, breach of the implied covenant of good faith and fair dealing, or promissory estoppel;;

- (7) breach of an actual or alleged written employment contract as long as another **Wrongful Employment Practice** is also alleged;
- (8) wrongful failure or refusal to hire or promote, or wrongful demotion;
- (9) wrongful failure or refusal to provide equal treatment or opportunities;
- (10) employment terminations, disciplinary actions, demotions or other employment decisions that violate public policy or the Family Medical Leave Act or similar state or local law;
- (11) defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy;
- (12) wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies or procedures;
- (13) wrongful, excessive or unfair discipline;
- (14) wrongful infliction of emotional distress, mental anguish, or humiliation;
- (15) **Privacy Violation;**
- (16) retaliation, including retaliation for exercising protected rights, supporting in any way another's exercise of protected rights, or threatening or actually reporting wrongful activity of an **Insured** such as violation of any federal, state, or local "whistle blower" law,
- (17) wrongful deprivation of career opportunity, negligent evaluation or failure to grant tenure;
- (18) wrongful use of background checks in any employment decision to hire, fire, discipline, promote or demote;
- (19) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (20) negligent hiring or negligent supervision of others, including wrongful failure to provide adequate training, in connection with (1) through (15) above,

but only if employment-related and claimed by or on behalf of an **Employee**, former **Employee**, or applicant for employment, and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.

III. EXCLUSIONS

We are not obligated to defend or pay **Loss**, including **Defense Costs**, on account of any **Claim**:

- A. for an actual or alleged violation of the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, **ERISA**, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state, or local statutory or common law, including any actual or alleged violations of any federal,

state or local wage and hour laws or regulations, whether or not such allegations are made in connection with any governmental or administrative proceedings *provided, however*, that: 1) this exclusion will not apply to any **Claim** of any actual or alleged retaliatory treatment on account of the exercise of rights pursuant to any such law; and 2) in the event such **Claim** also alleges unrelated **Wrongful Employment Practices** otherwise covered by this **Policy**, notwithstanding the provisions of Section II of this **Policy**, **Defense and Settlement**, we agree to pay **Defense Costs** or **Loss**, but solely for that portion of the **Claim** involving such unrelated **Wrongful Employment Practices** and subject to all other terms, conditions and exclusions contained in this **Policy**.

- B. arising out of, based upon, or attributable to, the adjudicated criminal or fraudulent act on the part of any **Insured** as determined by a final non-appealable adjudication in the underlying action provided, however, that the criminal or fraudulent act of one **Insured** shall not be imputed to any other **Insured** for purposes of this exclusion;
- C. based upon, arising out of, or attributable to, liability of others assumed by any **Insured** under any contract or agreement, except to the extent any **Insured** would have been liable in the absence of the contract or agreement; or
- D. based upon any wrongful act or omission of any **Insured** serving in any capacity other than as your principal, officer, director, trustee, or **Employee**.

IV. LIMIT OF LIABILITY

Notwithstanding the provisions of Section IV. of the General Terms and Conditions, an additional Limit of Liability for Coverage Section A., if purchased and indicated in Item 4. of the Declarations, shall apply for coverage of **Defense Costs** only (referred to as the "Defense-Only Limit"). This Defense-Only Limit shall apply to **Defense Costs** in the first instance, leaving the original Limits of Liability as indicated for all other coverages set forth under Item 4., Coverage Section A., of the Declarations to apply second to: (1) **Defense Costs** incurred in excess of, and after exhaustion of, the Defense-Only Limit and/or (2) any other **Loss**, such as damages, judgments, settlements, verdicts, and awards, until the original Limit of Liability is exhausted.

In no event shall the Defense-Only Limit apply to **Loss** other than **Defense Costs**, and in no event shall we be obligated to pay more than the original Limits of Liability indicated for all other coverages listed under Item 4., Coverage Section A., of the Declarations toward **Loss**.

In no event shall our obligations under the **Policy** exceed the combination of the Aggregate Limit of Liability for All Coverage Sections Combined in Item 4.E. of the Declarations plus the Defense-Only Limit indicated in Item 4., Coverage Section A., of the Declarations. If a Defense-Only Limit is purchased, all references to a Limit of Liability for Coverage Section A. of Item 4. shall refer to the combination of the original Limit of Liability and the Defense-Only Limit, subject to all other limitations and conditions of coverage.

Purchase of the Defense-Only Limit shall not alter your Self-Insured Retention obligations.

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COVERAGE SECTION B

DIRECTORS' & OFFICERS' LIABILITY COVERAGE SECTION

I. INSURING AGREEMENTS

A. Directors' and Officers' Liability Coverage

We will pay all **Loss** that an **Insured** becomes legally obligated to pay as a result of **Claims** first made against such **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for **Wrongful Acts**, except for **Loss** for which the **Insured Company** is permitted or required to indemnify such **Insured**.

B. Insured Company Reimbursement Coverage

We will pay all **Loss** for which the **Insured Company** is permitted or required to indemnify **Insured Persons** as a result of **Claims** first made against the **Insured Persons** during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for **Wrongful Acts**.

C. Insured Company Liability Coverage

We will pay all **Loss** resulting from **Claims** first made against the **Insured Company** during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for **Wrongful Acts**.

D. Derivative Demand Coverage

We will pay all **Costs of Investigation** resulting from any **Derivative Demand** first made during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for **Wrongful Acts**

II. DEFINITIONS

The following terms, whenever used in this Coverage Section, shall have the meanings indicated below. Other terms shall have the meanings found in the General Terms and Conditions of the **Policy**.

A. **Claim** means:

- (1) a written demand for monetary damages, non-monetary or injunctive relief;
- (2) a civil, criminal, administrative or regulatory proceeding commenced against any **Insureds** in which they may be subjected to binding adjudication of liability for damages or other relief, including any appeal therefrom;
- (3) as respects **Insured Persons** only, a civil, criminal, administrative, or regulatory investigation commenced by the service upon or other receipt by an **Insured Person** of a written notice, including receipt of a subpoena, a wells notice or a

target letter, from an investigating authority specifically identifying such **Insured Person** as a target individual against whom formal charges may be commenced;
or

- (4) any official request for **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
- (5) an arbitration, mediation or other alternative dispute resolution proceeding against any of the **Insureds**;
- (6) a request or demand by the **Insured Company** or a **Regulatory Authority** for any of the **Insured Persons** to appear for an interview or meeting or to provide sworn testimony or to produce documents in connection with an inquiry or investigation by a **Regulatory Authority**, regarding such **Insured Person's** capacity as such or the business of the **Insured Organization**, but shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulatory entity;
- (7) solely for the purpose of coverage afforded under Insuring Agreement I.D., a **Derivative Demand**.

- B. **Costs of Investigation** means reasonable and necessary legal fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Persons** or the **Insured Company's** overhead expenses) incurred by the **Insured Company** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Derivative Demand**.
- C. **Defense Costs** means, for purposes of this Coverage Section B. only, and in addition to the meaning set forth in III.B. of the General Terms and Conditions, those reasonable and necessary fees, costs, and expenses incurred through legal counsel and consented to by us, such consent shall not be unreasonably withheld, resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of such **Insured Person**, including but not limited to appealing any order or other grant of **Extradition** of such **Insured Person**. **Defense Costs** means only **Costs of Investigation** for the purpose of coverage afforded under Insuring Agreement I.D.
- D. **Derivative Demand** means a written demand by one or more owners of voting securities of the **Insured Company** upon the board of directors of the **Insured Company** to bring a civil proceeding in a court of law against any of the **Insured Persons** for a **Wrongful Act**.
- E. **Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- F. **Insured** shall mean **Insured Persons** and, with respect to Insuring Agreement C., the **Insured Company**.
- G. **Insured Persons**, either in the singular or plural, means any one or more persons who were, now are or shall be duly elected directors or duly elected or appointed officers of

the **Insured Company**, or, with respect to an **Insured Subsidiary** incorporated outside the United States, their functional equivalent. **Insured Persons** also will include:

- (1) managing members of an **Insured Subsidiary** that is a Limited Liability Company,
- (2) all natural persons who were, now are, or shall be shadow directors, as defined under Section 251 of the United Kingdom Companies Act 2006, of the **Insured Company** or any **Insured Subsidiary** operating or incorporated in the United Kingdom or the Republic of Ireland,
- (3) any de facto or alleged de facto director of the **Insured Company**; and
- (4) **Employees** of the **Insured Company**.

H. **Loss** means the total amount which the **Insured Persons** or, with respect to Insuring Agreement C. and D., the **Insured Company** are legally obligated to pay on account of any **Claim** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments and settlements negotiated with our consent, such consent shall not be unreasonably withheld. **Loss** shall also include **Defense Costs** in excess of the applicable Self-Insured Retention.

Loss does not include:

- (1) any amount not indemnified by the **Insured Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- (2) any amount incurred by the **Insured Company** (including its board of directors or any committee of the board of directors) in connection with its investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Insured Company** other than **Costs of Investigation**;
- (3) taxes, fines or penalties imposed by law (except a) fines or civil penalties assessed against any of the **Insureds** pursuant to Section 78dd 2(g)(2)(B) or Section 78ff (c)2(B) of the Foreign Corrupt Practices Act, 15 U.S.C. or any statute or law similar to the foregoing in any jurisdiction or b) under Insuring Clause I.A. only for any taxes owed by the **Insured Company** for which any of the **Insured Persons** are held legally liable or any other fine or civil penalty imposed against any of the **Insured Persons** where the applicable law allows coverage for such tax, fine or civil penalty, subject to a maximum sublimit of USD 10,000 each of the **Insured Persons** but in no event exceeding USD 100,000 in the aggregate for the **Policy Period** all **Insured Persons**, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section); and
- (4) matters uninsurable under the law pursuant to which this **Policy** is construed.

I. **“Regulatory Authority”** means any federal, state, local or foreign law enforcement or governmental authority (including the Department of Justice and any attorney general) or the enforcement unit of any self-regulating body.

J. **Wrongful Act(s)** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted before or during the **Policy Period**:

- (1) by any of the **Insured Persons** acting in their capacity as such, including any matter claimed against such **Insured Persons** solely by reason of their serving in such capacity;
- (2) by the **Insured Company**.

III. EXCLUSIONS

We are not obligated to defend or pay **Loss**, including **Defense Costs**, on account of any **Claim**:

- A for bodily injury, assault, battery, invasion of privacy, mental anguish, emotional distress, sickness, disease or death of any person, false arrest, false imprisonment, defamation, libel, slander or damage to or destruction of any tangible property, including loss of use thereof; provided, however, that this exclusion shall not apply to any **Claim** brought by a shareholder of the **Insured Company** in its capacity as such;
- B. for any actual or alleged violation of **ERISA**, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state, or local statutory or common law, including any actual or alleged violations of any federal, state or local wage and hour laws or regulations, or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations and amendments promulgated thereto;
- C. brought or maintained by or on behalf of the **Insured Company** or any **Insured Person** in any capacity except:
 - (i) a **Claim** that is a derivative action brought or maintained on behalf of the **Insured Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the solicitation, assistance or active participation of the **Insured Company** or any **Insured Person**;
 - (ii) a **Claim** brought by a bankruptcy trustee or creditor's committee or any representative appointed by a bankruptcy court;
 - (iii) a **Claim** brought by a former employee, director or officer who has not been employed by, or associated with, the **Insured Company** for more than two (2) years;
 - (iv) a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** which is otherwise covered under this **Policy**;
 - (v) a **Claim** brought or maintained by a shareholder in its capacity as such who is not a duly elected director or duly elected or appointed officer of the **Insured Company** if such **Claim** is made without the solicitation, assistance or active participation of a duly elected director or duly elected or appointed officer of the **Insured Company**;
 - (vi) a **Claim** that is a **Derivative Demand**; or

- (vii) a **Claim** brought or maintained by a whistleblower, as a *qui tam* plaintiff, under the False Claims Act or any similar state or local law.

Provided, however, that this Exclusion III.C. shall not apply to:

1. any **Claim** that is brought or maintained outside of the United States, Canada, Australia or any other common law jurisdiction; or
 2. to **Defense Costs** incurred in connection with any **Claim** under Insuring Agreement I.A.;
- D. based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Employment Practice** or **Third-Party Discrimination** as those terms are defined in the Employment Practices Liability Coverage Section;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) any initial public offering undertaken and consummated by the **Insured Company**, including all activities in connection therewith, or
 - (ii) the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission promulgated thereunder, any other federal, state, local or provincial statute relating to securities, or any rules or regulations promulgated thereunder, all as amended, for any **Wrongful Act** actually or allegedly committed subsequent to such initial public offering.

If at least 30 days prior to an offering of securities of the **Insured Company**, we receive notice of the proposed transaction and any additional information requested by us, the **Insured Company** may request a proposal for coverage subject to any additional terms and conditions and payment of any additional premium we may specify in such proposal. However, we will not be obligated to provide such coverage;

- F. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
- (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services; or
 - (ii) the use or performance of any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Insured Company**;

provided, however, that these Exclusions F(i) and F(ii) shall apply only to the **Insured Company** and except that these Exclusions shall not apply to any **Claim** brought by a shareholder of the **Insured Company** in its capacity as such.

- (iii) the performance of or failure to perform services or professional services for others, or any actual or alleged act, error or omission relating to such services or professional services provided, however, that this Exclusion F(iii) shall apply only to the **Insured Company**;

- G. for liability of **Insured Company** under any contract or agreement, except to the extent the **Insured Company** would have been liable in the absence of the contract or agreement;
- H. arising out of, based upon, attributable to, or alleging any conduct, act, error or omission of any **Insured** serving in any capacity other than as your principal, officer, director, trustee, fiduciary or **Employee**;
- I. based on, arising out of, or in any way involving an **Insured** serving in any capacity in any organization which at the time of such service was not an **Insured Company** or **Insured Subsidiary**;
- J. for, based upon, or arising from any conduct or **Wrongful Act** by any **Insured** involving an **Insured Subsidiary** where such conduct or **Wrongful Act** occurred before such entity became an **Insured Subsidiary** or after such entity ceased to be an **Insured Subsidiary**;
- K. based on, arising out of, or in any way involving an **Insured** or the **Insured Company** gaining any profit, remuneration or financial advantage to which such party was not legally entitled, as determined by a final non-appealable adjudication against such **Insured** or the **Insured Company** in the underlying action; and
- L. for, based upon, or arising from any deliberately dishonest, malicious, criminal or fraudulent act or omission or any willful violation of law by an **Insured**, as determined by a final non-appealable adjudication against such **Insured** in the underlying action.

No fact pertaining to or knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person** for purposes of the above-listed exclusions and only the **Wrongful Acts** of any past, present or future chief executive officer, chief financial officer, general counsel of the **Insured Company** or the individual(s) who executed the **Application** shall be imputed to the **Insured Company**.

IV. **OUTSIDE BOARD EXTENSION**

This **Policy** shall cover **Loss**, including **Defense Costs**, for any **Claim** arising from an **Insured Person** having served, with the knowledge and consent of the **Insured Company**, as director, officer, trustee, governor, executive director or similar position for any eleemosynary or not-for-profit corporation where such **Insured Person** is entitled to indemnification by the **Insured Company**; provided, however, this extension shall be excess of any indemnification and/or insurance that may be provided by such eleemosynary or corporation regardless of payment made by or on behalf of such eleemosynary or corporation, including but not limited to, any other director and officer liability insurance or similar insurance provided for, to, or by any such eleemosynary or corporation.

V. **ADDITIONAL SIDE A D&O LIMIT**

If purchased as indicated in the Declarations, the applicable amount shown in the Declarations shall be the Additional Side A D&O Limit of Underwriters applicable only to **Claims** under Insuring Agreement I.A. above, which Limit shall be separate and in addition to any other limit shown in the Declarations. The Additional Side A D&O Limit shall apply excess of the aggregate limit of liability applicable to the Directors' and Officers' Liability Coverage Section and all policies of insurance providing excess coverage.

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COVERAGE SECTION C

FIDUCIARY LIABILITY COVERAGE SECTION

I. INSURING AGREEMENT

- A. We will pay all **Loss** that an **Insured** becomes legally obligated to pay as a result of **Claims** first made against such **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, and reported in accordance with the notice provisions of Section VIII. of the General Terms and Conditions, for any **Fiduciary Wrongful Act**.
- B. We will also pay all **Voluntary Compliance Fees** and **Defense Costs** in an amount not to exceed USD100,000 that an **Insured** becomes legally obligated to pay as a result of **Voluntary Compliance Notice**. Such amount shall be subject to the Self-Insured Retention set forth in the Declarations and shall be part of and not in addition to the Limit of Liability set forth in the Declarations. This Insuring Agreement shall not apply to any **Voluntary Compliance Fees** and **Defense Costs** incurred with respect to any **Insured's** participation in any **Voluntary Compliance Program** initiated prior to the inception date of this **Policy**.

II. DEFINITIONS

The following terms, whenever used in this Coverage Section, shall have the meanings indicated below. Other terms shall have the meanings found in the General Terms and Conditions of the **Policy**.

- A. **Claim** shall mean:
- (1) a written demand for monetary or injunctive relief commenced by the receipt of such demand by any **Insured**,
 - (2) a judicial, administrative or arbitration proceeding commenced against any **Insured** in which such Insured may be subjected to a binding adjudication of liability for damages or injunctive relief, or
 - (3) a regulatory proceeding or investigation commenced against any **Insured** by the filing or service of a notice of charges, formal investigative order or similar document, including but not limited to any proceeding or investigation brought by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar federal, state or local government body, or
 - (4) an **Internal Appeal**; or
 - (5) With respect to Insuring Agreement I.B., a **Voluntary Compliance Notice**.
- B. **"ESOP"** means any employee stock ownership plan as defined in **ERISA** or any **Insured Plan** under which investments are made primarily in securities of the **Sponsor Company**.
- C. **"ESOP Administration"** means one of more of the following administrative duties or activities with respect to an **ESOP**:
1. giving notice to employees, participants or beneficiaries;

2. interpreting benefits;
3. handling records; or
4. effecting enrollment, termination or cancellation of employees, participants, or beneficiaries.

Provided, however, that **ESOP Administration** does not include the giving of advice or counsel with respect to any matter relating to securities issued by the **Sponsor Company**.

D. **Fiduciary Wrongful Act** shall mean:

- (1) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of any **Insured Plan** by **ERISA** or any similar law of any state or other jurisdiction anywhere in the world;
- (2) any actual or alleged negligent act, error or omission in handling records, counseling employees, effecting enrollment of employees, and termination or cancellation of benefits in connection with an **Insured Plan**;
- (3) any other matter claimed against any **Sponsor Company** or any **Insured Fiduciary** solely by reason of their serving as fiduciaries of an **Insured Plan**; or
- (4) any actual or alleged negligent act, error or omission by any **Insured** while acting in a settlor capacity in connection with a **Plan**.

E. **Insured(s)**, either in the singular or plural, shall mean for purposes of this Coverage Section C:

- (1) **Sponsor Company**,
- (2) **Insured Plan**,
- (3) **Insured Fiduciary**, or
- (4) any other person or organization who were, now are, or shall be acting as a plan administrator of any of **Insured Plan** with the consent of the **Sponsor Company**.

F. **“Internal Appeal”** means an appeal of an adverse benefits determination made by any of the **Insureds** pursuant to the U.S. Department of Labor's claim procedure regulation, 29 C.F.R. 2560.501-1(h) or similar claim procedures under applicable law.

G. **Loss** shall mean that amount an **Insured** is legally obligated to pay solely as a result of a covered **Claim** (other than a **Voluntary Compliance Notice**), including compensatory damages, settlement amounts and legal fees and costs awarded pursuant to judgments, and **Defense Costs** in excess of the applicable self-Insured Retention, but excluding fines, penalties, taxes or matters uninsurable pursuant to applicable law, except that **Loss** shall include:

- (1) the five (5) percent or less and the twenty (20) percent or less penalties imposed upon an **Insured Fiduciary** under Section 502(i) and Section 502(l) of **ERISA**, as amended, with respect to covered settlements or judgments,

- (2) all civil fines for violation of the Health Insurance Portability and Accountability Act subject to a maximum aggregate sublimit of USD 1,000,000, such sublimit to be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations,
- (3) **Voluntary Compliance Fees,**
- (4) all civil penalties under the Patient Protection and Affordable Care Act (PPACA) subject to a maximum aggregate sublimit of USD 250,000, such sublimit to be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations,
- (5) all civil penalties imposed upon an **Insured Fiduciary** under Section 502(c) of **ERISA** subject to a maximum aggregate sublimit of USD 250,000, such sublimit to be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations,
- (6) all civil penalties imposed upon an **Insured Fiduciary** under the Pension Protection Act of 2006 subject to a maximum aggregate sublimit of USD 250,000, such sublimit to be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations, and
- (7) the 15% or less tax penalty imposed upon an **Insured Fiduciary** under Section 4975 of the Internal Revenue Code of 1986; subject to a maximum aggregate sublimit of USD 250,000, such sublimit to be part of and not in addition to the Limit of Liability stated in Item 4. of the Declarations. No Self_Insured Retention shall apply to **Loss** constituting the 15% or less tax penalty imposed upon an **Insured Fiduciary** under Section 4975 of the Internal Revenue Code of 1986.

H. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any **Insured** becomes legally obligated to pay as a result of **Fiduciary Wrongful Acts**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Coverage Section shall be construed.

I. **“Voluntary Compliance Notice”** means a written notice given to Underwriters indicating an **Insured’s** intent to participate in a **Voluntary Compliance Program** during the **Policy Period**.

J. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States of America, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.

III. EXCLUSIONS

We are not obligated to defend, or pay **Defense Costs** or **Loss** on account of any **Claim**:

- A. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, any bodily injury, sickness, disease,

emotional distress, mental anguish, outrage, humiliation or death of any person, or damage to or destruction of any tangible property including loss of use thereof; or false arrest, detention or imprisonment, assault or battery, or malicious prosecution; the publication or utterance of a libel or slander or of other defamatory or disparaging material; a publication or utterance in violation of an individual's right of privacy; wrongful entry or eviction; or the invasion of the right of private occupancy;

- B. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, any conduct or **Fiduciary Wrongful Act** by any **Insured** that actually or allegedly occurred at any time when such **Insured Plan** was not sponsored by a **Sponsor Company**;
- C. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, the failure of the **Insured** to comply with any law governing workers' compensation, unemployment or employment insurance benefits, social security, old age security benefits or government disability benefits or any similar law;
- D. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, an **Insured** serving as a fiduciary of any plan, fund or program which is not an **Insured Plan**, even if such service is at the direction or request of the **Sponsor Company**;
- E. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, the liability of any **Insured**, or the liability of others assumed by any **Insured**, under any contract or agreement, either oral or written, except in accordance with the agreement or declaration of trust pursuant to which any **Insured Plan** was established, unless the **Insured** would have been liable in the absence of such contract or agreement;
- F. based on, arising out of, or in any way involving an **Insured** gaining any profit, remuneration or financial advantage to which such party was not legally entitled, as determined by a final non-appealable adjudication in the underlying action;
- G. for, based upon, or arising from any deliberately dishonest, malicious, criminal or fraudulent act or omission or any willful violation of law by an **Insured**, as determined by a final non-appealable adjudication in the underlying action.
- H. for, based upon, or arising from, directly or indirectly, or in consequence of, or in any way involving, any **Wrongful Employment Practice** or **Third-Party Discrimination**, as those terms are defined in the Employment Practices Liability Coverage Section;
- I. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, any actual or alleged taking or retention of a surplus or reversion from any **Insured Plan** by the **Sponsor Company** or to any successor or assign of the **Sponsor Company**;
- J. for, based upon, arising out of, resulting from, in consequence of, in connection with, or in any way related to, directly or indirectly, the failure to fund an **Insured Plan** in accordance with **ERISA** or the **Insured Plan's** document or to collect contributions owed to an **Insured Plan**; or
- K. for benefits due or to become due under the terms of an **Insured Plan** unless, and to the extent that, (1) the **Insured** is a natural person and the benefits are payable by such

Insured as a personal obligation, and (2) recovery for the benefits is based upon a covered **Fiduciary Wrongful Act**.

Except that with respect to a **Claim** alleging those excluded matters identified in Exclusions I., J. and K. only, we will pay **Defense Costs**.

The **Fiduciary Wrongful Act** of any **Insured Fiduciary** shall not be imputed to any other **Insured Fiduciary** for purposes of applying the exclusions set forth in this Section III. and only the **Fiduciary Wrongful Acts** of any past, present or future chief executive officer, chief financial officer, general counsel of the **Insured Company** or the individual(s) who executed the **Application** shall be imputed to the **Insured Company**

IV. NON-RECOURSE

We will have all rights of recourse permitted by law. In the event, however, this **Policy** has been purchased by an **Insured** other than an **Insured Plan**, we will have no right of recourse against an **Insured Fiduciary**.

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COVERAGE SECTION D

CRIME COVERAGE SECTION

We will pay you for direct loss that you sustain which is directly caused by a **Covered Event** taking place at any time and which is **Discovered** by you during the **Policy Period** or during the Extended Discovery Period, pursuant to the terms set forth in Section V. of this Coverage Section.

I. INSURING AGREEMENTS

This Coverage Section shall provide coverage under each of the following Insuring Agreements.

A. FIDELITY

1. Employee Theft

We will pay you for your direct loss of, or your direct loss from damage to, **Money, Securities and Other Property** directly caused by **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

2. ERISA Fidelity

We will pay you for direct loss of, or direct loss from damage to, **Money, Securities and Other Property** that belongs to an **Insured Plan**, directly caused by **Theft or Forgery** committed by an **Insured Fiduciary**, whether identified or not, acting alone or in collusion with other persons.

3. Employee Theft of Client Property

We will pay you for direct loss of, or direct loss from damage to, **Money, Securities and Other Property** sustained by your **Client**, directly caused by **Theft or Forgery** committed by an identified **Employee**.

B. ON PREMISES

We will pay you for:

1. your direct loss of **Money and Securities** located inside the **Premises** directly caused by **Theft**, committed by a person present inside such **Premises**;
2. your direct loss of **Money and Securities** located inside the **Premises** directly caused by disappearance or destruction;
3. your direct loss of, or your direct loss from damage to, **Other Property** located inside the **Premises**:
 - a. directly caused by an actual or attempted **Robbery**; or
 - b. in a safe or vault, directly caused by an actual or attempted **Safe Burglary**; and

4. your direct loss from damages to the **Premises** or its exterior resulting directly from an actual or attempted **Theft, Robbery** or **Safe Burglary**, if you are the owner of the **Premises** or are liable for damages to it; or
5. your direct loss of, or loss from damages to, a locked safe, vault, cash register, cash box or cash drawer located inside the Premises resulting directly from an actual or attempted **Theft, Robbery** or **Safe Burglary**, if you are the owner of the locked safe, vault, cash register, cash box or cash drawer or are liable for damages thereto.

C. FORGERY OR ALTERATION

1. We will pay you for your direct loss directly caused by **Forgery** or alteration of, on or in any written **Covered Instruments** that are:
 - a. made by, drawn by, or drawn upon, you, or purported to have been so made or drawn; or
 - b. made or drawn by one acting as your agent, or purported to have been so made or drawn; and
2. We will reimburse you for reasonable legal defense expenses that you have paid if you are sued for refusing to pay any written **Covered Instrument** under this Insuring Agreement C. on the basis that it has been **Forged** or altered. Reimbursement of such legal expenses is conditioned upon your receipt of our prior written consent to defend against such suit. A signature that is a mechanical or electronic reproduction of a handwritten signature produced by a mechanical check-writing machine or a computer printer shall be treated the same as a handwritten signature. An **Electronic Signature** is not treated the same as a mechanical or electronic reproduction of a handwritten signature and is not a **Forgery** under this Insuring Agreement C.

D. MONEY ORDERS AND COUNTERFEIT MONEY

We will pay you for your direct loss directly caused by your good faith acceptance of:

1. original money orders, issued or purportedly issued by any post office, express company or bank located in the United States of America, its territories and possessions, Canada, or any other country in which you maintain a physical **Premises**, that are not paid upon presentation; or
2. Counterfeit **Money**, of the United States of America, its territories and possessions, Canada, or any other country in which you maintain a physical presence, that is acquired during the regular course of business;

in exchange for merchandise, **Money** or services.

E. IN TRANSIT

1. We will pay you for your direct loss of **Money** and **Securities** directly caused by **Theft**, disappearance or destruction while in transit outside the **Premises** and in the care and custody of a **Messenger** (including while temporarily within the living quarters of a **Messenger**) or an armored motor vehicle company.

2. We will pay you for your direct loss of, or your direct loss from damage to, your **Other Property** directly caused by an actual or attempted **Robbery** while in transit outside the **Premises** and in the care and custody of a **Messenger** or an armored motor vehicle company.
3. We will pay you for your direct loss of, or your direct loss from damage to, your **Other Property** directly caused by an actual or attempted **Theft** of your **Other Property** while it is temporarily within the living quarters of a **Messenger**.

Coverage under this Insuring Agreement E. begins immediately upon receipt of the **Money, Securities** or **Other Property** by the transporting party and ends immediately upon delivery to the designated recipient or its agent.

F. COMPUTER FRAUD

We will pay you for your direct loss of, or your direct loss from damage to, **Money, Securities** and **Other Property** directly caused by **Computer Fraud**.

G. FUNDS TRANSFER FRAUD

We will pay you for your direct loss of **Money** and **Securities** contained in your **Transfer Account** on deposit as a **Financial Institution** directly caused by **Funds Transfer Fraud**.

H. CLAIM EXPENSE

We will pay you for reasonable **Claim Expenses** incurred and paid by you to establish the existence, amount and preparation of your proof of loss in support of a covered claim for loss under any Insuring Agreement of this Coverage Section.

The following conditions specifically apply to this Insuring Agreement H.:

1. Any **Claim Expenses** payable to you are only applicable to any covered loss which exceeds the Self-Insured Retention amount for the Insuring Agreement that is the subject of a claim under this Coverage Section;
2. **Claim Expenses** that are payable to you are part of and not in addition to the Limit of Liability for the Insuring Agreement that is the subject of a claim under this Coverage Section; and
3. **Claim Expenses** payable to you will be paid to you at the same time as the payment of the valid and collectible loss under the Insuring Agreement that is the subject of a claim under this Coverage Section.

II. DEFINITIONS

The following terms, whenever used in this Coverage Section, shall have the meanings indicated below. Other terms shall have the meanings found in the General Terms and Conditions of the **Policy**.

- A. **Claim Expenses** means reasonable fees, costs and expenses of attorneys, consultants, outside accountants, or experts retained by you to determine the amount and extent of loss covered under this Coverage Section. The reasonableness of such expenses shall be

determined by us. The phrase does not mean or include any of your internal corporate fees, costs (direct or indirect), obligations or **Employee** wages and salaries.

B. **Client** means an entity for which you perform services as specified in a written agreement, but only while the written agreement is in effect.

C. **Computer Fraud** means:

The use of any computer to fraudulently cause a transfer of **Money, Securities or Other Property** from inside the **Premises**:

1. to a person (other than a **Messenger**) outside the **Premises**; or
2. to a place outside the **Premises**.

D. **Counterfeit** means an imitation of **Money** that is intended to deceive and to be taken as genuine.

E. **Covered Event** means:

1 for purposes of Insuring Agreement A.:

- a. an individual act;
- b. the combined total of all separate acts; or
- c. a series of related acts;

committed by an **Employee** or committed by more than one **Employee** acting alone or in collusion with other persons both during and before the **Policy Period**;

2. for purposes of Insuring Agreement C., all loss caused by any person, or loss in which that person is involved, whether the loss involves one or more written **Covered Instruments** or **Covered Personal Instruments**; and

3. for purposes of all other Insuring Agreements:

- a. any act or series of related acts or events involving one or more persons; or
- b. any act, acts or events involving a person or group of persons acting together;

whether identified or not both during and before the **Policy Period**.

F. **Covered Instruments** means:

1. checks, drafts, promissory notes, bills of exchange or similar written promises, orders or directions to pay a sum certain in **Money**; and
2. written instruments required in conjunction with any transaction involving any **Credit, Debit** or **Charge Card** issued to you, your **Employees** or your **Management Person** for business purposes.

- G. **Covered Personal Instruments** means:
1. checks, drafts, promissory notes or similar written promises, orders or directions to pay a sum certain in **Money**; and
 2. written instruments required in conjunction with any transaction involving any **Credit, Debit or Charge Card** issued to a **Management Person** for personal use.
- H. **Credit, Debit or Charge Card** means any card, plate or other similar device used for the purpose of obtaining **Money**, property, labor or services on credit or for immediate payment. The terms do not mean a note, check, draft, money order or other negotiable instrument.
- I. **Digital Signature** means an electronic identifier created by computer, within, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- J. **Discover, Discovered, or Discovery** means the moment when you, your partner or **Management Person**:
1. first become(s) aware of facts which would cause a reasonable person to assume that a loss of a type covered by this Coverage Section has been or will be incurred regardless of when the act or acts causing or contributing to such loss occurred, even though the exact details of loss may not then be known; or
 2. first receive(s) notice of an actual or potential claim against you alleging facts which if true would constitute a loss under this Coverage Section.
- K. **Electronic Signature** means a **Digital Signature**, an electronic sound, symbol or process, within, attached to, or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- L. **Financial Institution** means:
1. a bank, savings bank, credit union, savings and loan association or similar thrift institution; or
 2. a stock brokerage firm, mutual fund, liquid assets fund or similar investment institution;
- where you maintain a **Transfer Account**.
- M. **Forgery, or Forged** means the signing of the name of another person or organization with a handwritten signature physically affixed directly to **Covered Instruments** or **Covered Personal Instruments**, without authority and with the intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority in any capacity, for any purpose.
- N. **Funds Transfer Fraud** means:
1. an electronic, telegraphic, cable, teletype or telephone instruction fraudulently transmitted to a **Financial Institution** directing such institution to debit your **Transfer Account** and to transfer, pay or deliver **Money** or **Securities** from your

Transfer Account which instruction purports to have been transmitted by you, but was in fact fraudulently transmitted by someone other than you without your knowledge or consent;

2. a fraudulent written instruction, other than one covered under Insuring Agreement C., issues to a **Financial Institution** directing such **Financial Institution** to debit a **Transfer Account** and to transfer, pay or deliver **Money** or **Securities** from such **Transfer Account** by use of an electronic funds transfer system at specified intervals or under specified conditions which written instruction purports to have been issued by you but was in fact fraudulently issued, **Forged** or altered by someone other than you without your knowledge or consent; or
 3. an electronic, telegraphic, cable, teletype or telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an **Employee**, but which was in fact fraudulently transmitted by someone else without your or the **Employee's** consent.
- O. **Management Person** means your proprietor, natural person partner, member of the board of directors, member of the board of trustees, officer, risk manager, in-house general counsel, **Manager**, or **Member**.
- P. **Manager** means any natural person who was, is or becomes a manager, member of the board of managers, or a functionally equivalent executive of a limited liability company.
- Q. **Member** means any natural person who has an ownership interest in a limited liability company.
- R. **Messenger** means any **Management Person**, or relative thereof, any **Shareholder-Officer**, or any **Employee**, duly authorized, while having care and custody of covered property outside the **Premises**.
- S. **Money** means a medium of exchange in current use and authorized or adopted by a domestic or foreign government, including currency, coins, bank notes, bullion, travelers checks, registered checks and money orders held for sale to the public.
- T. **Other Property** means any tangible property other than **Money** and **Securities** that has intrinsic value.
- U. **Premises** means the interior of that portion of any building you occupy in conducting your business.
- V. **Robbery** means the unlawful taking of **Money**, **Securities** and **Other Property** from the care and custody of you, your partners or any other person (except any person acting as a watchperson or janitor) by one who has:
1. caused or threatened to cause that person bodily harm; or
 2. committed an unlawful act witnessed by that person.
- W. **Safe Burglary** means the unlawful taking of:

1. **Money, Securities and Other Property** from within a locked safe or vault by a person lawfully entering the safe or vault as evidenced by marks or forcible entry upon its exterior; or
 2. a safe or vault from inside the **Premises**.
- X. **Securities** means written negotiable and non-negotiable instruments or contracts representing **Money** or property including but not limited to:
1. tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
 2. evidence of debt issued in connection with any **Credit, Debit or Charge Card**, which is not issued by you; but does not include **Money**.
- Y. **Shareholder-Officer** means any officer who has a twenty-five percent (25%) or greater ownership interest in any **Insured Company**.
- Z. **Theft** means:
1. under Insuring Agreement A.3., the intentional unlawful taking of **Money, Securities and Other Property** to the deprivation of a **Client**;
 2. under Insuring Agreement B or E., the intentional unlawful taking of **Money and Securities** to your deprivation.
 3. under all other Insuring Agreements, the intentional unlawful taking of **Money, Securities and Other Property** to your deprivation.
- AA. **Transfer Account** means an account maintained by you at a **Financial Institution** from which you can initiate the transfer, payment or delivery of **Money or Securities**:
1. by means of electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly or through an electronic funds transfer system; or
 2. by means of written instructions (other than those described in Insuring Agreement C.) establishing the conditions under which such transfers are to be initiated by such **Financial Institutions** through an electronic funds transfer system.

III. EXCLUSIONS

This Coverage Section does not cover:

- A. loss resulting directly or indirectly from war, whether or not declared; civil war; insurrection; rebellion or revolution; military, naval or usurped; governmental intervention, expropriation or nationalization; or any act or condition related to any of the foregoing;
- B. loss resulting directly or indirectly from seizure or destruction of property by order of governmental authority;

- C. loss resulting directly or indirectly from any fraudulent, dishonest or criminal act committed by you, your natural person partners, any **Member** or **Shareholder-Officer** whether acting alone or in collusion with others; provided, this Exclusion C. shall not apply to loss covered under Insuring Agreement A.2.;
- D. loss resulting directly or indirectly from any other fraudulent, dishonest or criminal act by any **Employee** or **Insured Fiduciary** whether acting alone or in collusion with others, unless covered under Insuring Agreements A.1., A.2. or A.3.;
- E. loss resulting directly or indirectly from any **Funds Transfer Fraud**, unless covered under Insuring Agreements A.1., A.2., A.3., or G.;
- F. loss resulting directly or indirectly from your acceptance of money orders or **Counterfeit Money**, unless covered under Insuring Agreements A.1., A.2., A.3., or D.;
- G. loss resulting directly or indirectly from forged, altered or fraudulent documents or written instruments used as source documentation in the preparation of electronic data, unless covered under Insuring Agreements A.1., A.2., or A.3.;
- H. any expenses incurred by you in establishing the existence or the amount of any loss covered under this Coverage Section, unless covered under Insuring Agreement H.;
- I. loss of income, whether or not earned or accrued, or potential income, including interest and dividends, not realized by you as the result of any loss covered under this Coverage Section;
- J. damages of any type, except your direct compensatory damages resulting from a loss covered under this Coverage Section;
- K. indirect or consequential loss of any nature, including, but not limited to, fines, penalties, multiple or punitive damages;
- L. loss resulting directly or indirectly from any **Theft**, disappearance, damage, destruction or disclosure of any intangible property or confidential information including trade secret information, confidential processing methods or other confidential information or intellectual property of any kind, or electronic data;
- M. loss of, or damage to, manuscripts, records, accounts, microfilm, tapes or other records, whether written or electronic, or the cost of reproducing any information contained in such lost or damaged records, except when covered under Insuring Agreement B. or E.;
- N. loss, or that part of any loss, the proof of which as to its existence or amount is dependent solely upon:
 - 1. an inventory computation or physical count; or
 - 2. a profit and loss computation;

provided that where you establish wholly apart from such computations or physical count that you have sustained a loss covered under Insuring Agreements A.1., A.2., A.3. or F. then you may offer your inventory records and an actual physical count of inventory in support of other evidences as to the amount of loss claimed;

- O. loss resulting directly or indirectly from trading whether or not in the name of any **Insured Company** and whether or not in a genuine or fictitious account, unless covered under Insuring Agreement A.1, A.2. and A.3.;
- P. loss resulting directly or indirectly from fire, except:
1. loss of or damage to **Money** or **Securities**; or
 2. damage to any safe or vault caused by the application of fire thereto in connection with any actual attempted **Safe Burglary** when covered under Insuring Agreement B.;
- Q. loss resulting directly or indirectly from the giving or surrendering of **Money, Securities** or **Other Property** in any exchange or purchase, whether or not fraudulent, with any other party not in collusion with an **Employee**, except when covered under Insuring Agreement E.;
- R. loss of **Money, Securities** or **Other Property** while in custody of any bank, trust company, or similarly recognized place of safe deposit or armored motor vehicle company unless the loss is in excess of the amount recovered or received by you under your contract, if any, with, or insurance carried by, any of the aforementioned;
- S. loss of **Money, Securities** or **Other Property** held by an armored motor vehicle company for you and which is stored by such company overnight inside buildings used in the conduct of its business;
- T. loss resulting directly or indirectly from nuclear reaction, nuclear radiation, radioactive contamination, biological or chemical contamination or to any related act or incident;
- U. loss of **Money, Securities** or **Other Property** resulting directly or indirectly from kidnap, extortion or ransom payments (other than **Robbery**) surrendered to any person as a result of a threat;
- V. loss resulting directly or indirectly from **Forgery** or alteration, except when covered under Insuring Agreements A.1., A.2., A.3., or C.;
- W. loss resulting directly or indirectly from **Computer Fraud**, except when covered under Insuring Agreements A.1., A.2., A.3., or F.;
- X. loss under Insuring Agreements B. or E. resulting directly or indirectly from:
1. an accounting or arithmetical error or omission;
 2. the loss of property from within any **Money** operated device, unless the amount of **Money** deposited in it is recorded by a continuous recording device;
 3. anyone, acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property;
 4. damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them; or
 5. damage to the **Premises** or its exterior or to containers of covered property by vandalism or malicious mischief;

- Y. loss resulting directly or indirectly from the diminution in value of **Money, Securities or Other Property**;
- Z. loss arising from any **Credit, Debit or Charge Card** if you, your **Employee or Management Person** has not fully complied with the provisions, conditions or other terms under which any card was issued;
- AA. loss sustained by any **Insured Company or Insured Plan**, occurring at any time during which such entity was not an **Insured Company or Insured Plan**; or
- BB. loss sustained by any **Insured Company** to the extent it results in a benefit, gain or transfer to any **Insured Company**, except to the extent that such loss is covered under Insuring Agreement A.2.

IV. OWNERSHIP

Our liability under this Coverage Section shall apply only to **Money, Securities** and other property owned by any **Insured Company** or for which any **Insured Company** is legally liable, or held by any **Insured Company** in any capacity, whether or not such **Insured Company** is liable, provided, however, that we shall not be liable for damage to the **Premises** unless the **Insured Company** is the owner or is liable for such damage.

V. EXTENDED DISCOVERY PERIOD

- A. We will pay for loss that the **Insured Company** sustains prior to the effective date of termination or cancellation of this policy, which is discovered by it no later than 1 year from the date of that termination or cancellation.
- B. However, this extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the **Insured Company** replacing in whole or in part the insurance afforded by this policy, whether or not such insurance provides coverage for loss sustained prior to its effective date.

VI. JOINT INSURED

Only the **Insured Company** shall have the right to claim, adjust, receive or enforce payment of any loss and shall be deemed to be the sole agent of the others for such purposes and for the giving and receiving of any notice or proof required to be given by the terms hereof and for the purpose of effecting or accepting amendments to or termination of this Coverage Section. Each and every other party claiming to be entitled to coverage under this Policy shall be conclusively deemed to have consented and agreed that none of them shall have any direct beneficiary interest herein or any right of action hereon shall not be assignable; but knowledge possessed or discovery made by any such party or by any partner or officer of the **Insured Company** shall constitute knowledge possessed or discovery made by such parties and persons for the purposes of this Coverage Section.

All losses and other payments, if any, payable by us, shall be payable to the **Insured Company**, without regard to such Insured Company's obligations to others, and we shall not be responsible for the proper application of any payment made. We shall not be liable for loss sustained by one party claiming entitlement to coverage to the disadvantage of any other party claiming entitlement to coverage. If we agree to and shall make payment to any party in interest other than the **Insured Company**, such payment shall be treated as though made to the **Insured Company**.

VII. OTHER INSURANCE

If the Insured Company or any other party at interest in any loss covered by this Coverage Section has any bond, indemnity or insurance which would cover such loss in whole or in part in the absence of this Coverage Section, then this Coverage Section shall be null and void to the extent of the amount of such other bond, indemnity or insurance, but this Coverage Section shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount of such other bond, indemnity or insurance.

VIII. LIABILITY FOR PRIOR LOSSES

Our liability for loss sustained prior to:

- A. the effective date of this Coverage Section; or
- B. the effective date any additional **Insured Company** or coverages are subsequently added, is subject to the following:
 - (1) any **Insured Company** or some predecessor in interest of such **Insured Company** who carried some other bond or policy (other than a fidelity bond or policy with respect to such loss under Insuring Agreement I.B. which, at the time such loss was sustained, afforded on or at the **Premises** at which the loss was sustained or on the person or persons (whether **Employee** of the **Insured Company** or not) causing the loss, some or all of the coverage of the Insuring Agreements of this Coverage Section applicable to the loss;
 - (2) such prior coverage and the right of claim for loss thereunder continued under the same or some superseding bond or policy without interruption from the time the loss was sustained until the date specified in 1. and 2. above; and
 - (3) the loss shall have been discovered after the expiration of the time for discovery of such loss under the last such bond or policy.

Our liability with respect to such loss shall not exceed the amount which would have been recoverable under the coverage in force at the time the loss was sustained, or the amount recoverable under the Insuring Agreement of this Coverage Section applicable to the loss, whichever is smaller.

IX. NON-ACCUMULATION OF LIABILITY

Regardless of the number of years this policy shall continue in force, and the number of premiums which shall be payable or paid or any other circumstances whatsoever, our liability under this **Policy** with respect to any loss or losses shall not be cumulative from year to year or from period to period. When there is more than one insured, our aggregate liability for all loss or losses sustained shall not exceed the amount for which we would be liable if all losses were sustained by any one of them.

X. NOTICE, PROOF, AND LEGAL PROCEEDINGS

Upon **Discovery** by a proprietor, partner, director or officer of the **Insured Company** of loss or of any occurrence which may become a loss, the **Insured Company** shall make reasonable efforts to determine which **Employee(s)** caused the loss or occurrence and written notice to us shall be given at the earliest practicable moment, and in no event later than sixty days after such **Discovery**. Within four months after such discovery, the **Insured Company** shall furnish to us a proof of loss with full particulars. Legal proceedings for recovery of any loss hereunder shall not be brought after the expiration of two years from the **Discovery** of such loss, except that any legal proceedings to recover hereunder on account of any judgment in such suit shall become final. Proof of loss under Insuring Agreement C. shall include the instrument which is the basis of claim for the loss; but if it shall be impossible to file the instrument, the affidavit of the **Insured Company** or the bank of deposit of the **Insured Company** setting forth the amount and cause of the loss shall be accepted instead. If any limitation embodied herein is prohibited by any law

controlling the construction thereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

At our request, your representatives shall submit to examination by us, under oath, if required, and produce for examination by us all pertinent records at such reasonable times and places as we shall designate, and shall cooperate with us in all matters pertaining to any loss or claim.

XI. VALUATION

In no event shall we be liable for more than:

- A. the actual market value of lost, damaged or destroyed **Securities** at the close of business on the business day immediately preceding the day on which the loss is discovered, or for more than the actual cost of replacing the **Securities**, whichever is less;
- B. the cost of blank books, pages, tapes or other blank materials to replace lost or damaged books of account or other records;
- C. the actual cash value at the time of other lost, damaged or destroyed property for more than the actual cost of repairing or replacing the property with property of similar quality and value, whichever is less; or
- D. the United States dollar value of a foreign currency based on the free rate of exchange in effect on the day any loss involving foreign currency is discovered.

XII. RECOVERIES

If the **Insured Company** shall sustain any loss covered by this Coverage Section, all recoveries (except from suretyship, insurance, reinsurance or indemnity taken by or for our benefit) made after the loss, less the actual cost of recovery, shall be distributed as follows:

- A. if the loss is not subject to a self-Insured Retention, the **Insured Company** shall be fully reimbursed from such recoveries for the amount of the loss which exceeds the amount of coverage provided by this Coverage Section and any balance shall be applied to the reimbursement of Underwriters; or
- B. if the loss is subject to a self-Insured Retention, the **Insured Company** shall be reimbursed from such recoveries for any loss which exceeds the amount of coverage provided by this Coverage Section less the self-Insured Retention amount any balance shall be applied to reimbursement of Underwriters to the extent of their loss and any remainder paid to the **Insured Company**. If there is no excess loss the total recoveries shall be distributed first in reimbursement to Underwriters to the extent of their loss and any remainder paid to the **Insured Company**.

XIII. KNOWLEDGE OF PRIOR THEFT

For the purposes of this Coverage Section and the exclusions contained in Section III., knowledge possessed by any of the **Insureds** means knowledge possessed by a partner, director or an officer who is aware of the employment of a person and that person's prior acts of **Theft**, fraud or dishonesty.

XIV. ADDITIONAL INSUREDS

At our sole discretion, coverage may be extended to any individual upon written application by the **Insured Company** and our written consent.

XV. TERMINATION PROVISIONS

A. Termination as to any Employee or as to any Unidentified Employee

This Coverage Section shall terminate as to any **Employee** or Unidentified **Employee**:

(1) immediately upon discovery by the **Insured Company**, any partner of the **Insured Company** or officer of the **Insured Company** (not in collusion with such **Employee**) of any act of **Theft** or other fraudulent or dishonest act by the **Employee**, without prejudice to the loss of any property then being conveyed by the **Employee** outside the **Premises**, or

(2) immediately upon discovery by the **Insured Company**, any partner of the **Insured Company** or officer of the **Insured Company** that an Unidentified **Employee** caused a loss by fraudulent or dishonest acts; or

(3) twenty days after the receipt by the **Insured Company** of a written notice of termination from us, whichever first occurs.

B. Termination of this Coverage Section or Insuring Agreements.

This Coverage Section shall terminate in its entirety:

(1) upon our receipt of a written notice of termination from the **Insured Company**;

(2) thirty days after the receipt by the **Insured Company** of a written notice of termination from us;

(3) at such other time as may be agreed upon by us and the **Insured Company**;

(4) upon the voluntary liquidation or dissolution of the **Insured Company**;

(5) upon the appointment of or court order appointing a receiver, receiver-manager, trustee appointed pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, or monitor appointed under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 or other fiduciary of the property of the **Insured Company**; or

(6) as to any party claiming entitlement to coverage other than the **Insured Company** upon the appointment of:

(a) a receiver, trustee or other fiduciary of the property of any such **Insured**, or

(b) a committee for the dissolution thereof;

whichever occurs first.

Any Insuring Agreement or coverage for any Insured Subsidiary or party claiming entitlement to coverage other than the **Insured Company** shall terminate thirty days after receipt by the **Insured Company** of a written notice of termination from us or upon the request of the **Insured Company**.

XVI. TERMINATION OF PRIOR BONDS OR POLICIES

Immediately upon this Coverage Section of this **Policy** taking effect, the rights of the **Insured Company**, if any, shall terminate, if not already terminated, in respect of any and all previous liability we may have to the **Insured Company** under any other bonds or policies. By reason of the issuance of this Coverage Section, the prior bonds or policies shall not cover any loss not discovered and notified to us prior to the effective date of this Coverage Section.