



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

Territory

1. Coverage shall extend anywhere in the world.
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Terms and Conditions

2. Except for these General Terms and Conditions or as specifically provided in any Coverage Section of this Policy, the terms and conditions of each Coverage Section shall apply only to that Coverage Section. If any provision in these 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. Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under that Coverage Section, have the meaning set forth in that Coverage Section.
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Definitions

3. When used in this Policy, unless stated to the contrary in any Coverage Section of this Policy:

Affiliate means any entity other than a **Subsidiary**, during such time as the **Organization** has the authority to direct the financial or managerial decision making of such entity, whether by operation of law, pursuant to contract or agreement, by means of stock ownership or membership, or pursuant to such entity's charter, articles of incorporation, or by-law provisions.

Anniversary Date means that date and time exactly one (1) year after the date and time set forth in Item 2(A) of the Declarations of these General Terms and Conditions, and each succeeding date and time exactly one (1) year after the previous **Anniversary Date**.

Application means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insureds** to the Company for this Policy or for any policy of which this Policy is a direct or indirect renewal or replacement. **Application** shall also include all other information or materials provided by the **Insureds** to the Company in connection with the underwriting or issuance of this Policy, including quarterly and annual reports, financial statements, and all other filings or submissions to or with any government or regulatory agency, whether provided to the Company directly or indirectly through the use of public databases or similar sources. All such applications, attachments, materials and other information are deemed attached to, incorporated into and made a part of this Policy.

Claim shall have the meaning set forth in the applicable **Liability Coverage Section**.

Coverage Event means the event or loss which must occur or be sustained or discovered in order to invoke coverage under the applicable **Non-Liability Coverage Section**.

Defense Costs shall have the meaning set forth in the applicable Coverage Section.



Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

Employment Claim shall have the meaning set forth in the applicable Coverage Section.

Financial Impairment means the status of an **Organization** resulting from:

- (a) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (b) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

Insured shall have the meaning set forth in the applicable Coverage Section.

Insured Capacity means the position or capacity of an **Insured Person** that causes him or her to meet the definition of **Insured Person** set forth in the applicable Coverage Section. **Insured Capacity** does not include any position or capacity held by an **Insured Person** in any organization other than the **Organization**, even if the **Organization** directed or requested the **Insured Person** to serve in such position or capacity in such other organization.

Insured Person shall have the meaning set forth in the applicable Coverage Section.

Loss shall have the meaning set forth in the applicable Coverage Section.

Liability Coverage Section means the Directors & Officers Liability and Entity Liability, Employment Practices Liability, and Fiduciary Liability Coverage Sections of this Policy, if purchased as set forth in Item 4 of the Declarations of these General Terms and Conditions.

Manager means any natural person who has been, now is or shall be appointed a manager, member of the Board of Managers or equivalent executive of an **Organization** that is a limited liability company.

Non-Liability Coverage Section means the Crime and Kidnap/Ransom and Extortion Coverage Sections of this Policy, if purchased as set forth in Item 4 of the Declarations of these General Terms and Conditions.

Organization means, collectively, those organizations designated in Item 1 of the Declarations of these General Terms and Conditions except as otherwise provided in any Coverage Section, including any such organization in its capacity as a debtor in possession under the United States bankruptcy law or in an equivalent status under the law of any other country.

Policy Period means the period of time set forth in Item 2 of the Declarations of these General Terms and Conditions, subject to any prior termination in accordance with Subsection 17 of these General Terms and Conditions.

Policy Year means the period, within the **Policy Period**, from the date and time set forth in Item 2(A) of the Declarations of these General Terms and Conditions to the first **Anniversary Date**, or the period, within the **Policy Period**, from an **Anniversary Date** to its next succeeding **Anniversary Date**, subject to any prior termination in accordance with Subsection 17 of these General Terms and Conditions.



Pollutants means:

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

Potential Employment Claim shall have the meaning set forth in the applicable Coverage Section.

Potential Third Party Claim shall have the meaning set forth in the applicable Coverage Section.

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

Subsidiary means, subject to the provisions of Subsections 9, 10 and 11 of these General Terms and Conditions:

- (a) any not-for-profit entity during any time in which the **Organization** owns or controls, directly or through one or more **Subsidiaries**, the present right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees; or
- (b) any not-for-profit limited liability company during any time in which the **Organization** owns or controls, directly or through one or more **Subsidiaries**, the present right to elect, appoint or designate more than fifty percent (50%) of such entity's **Managers**.

Third Party Claim shall have the meaning set forth in the applicable Coverage Section.

Wrongful Act shall have the meaning set forth in each applicable **Liability Coverage Section**.

Extended Reporting Period

- 4. (a) If any **Liability Coverage Section** is either terminated or not renewed for any reason other than nonpayment of premium, any **Insured** shall have the right to purchase an Extended Reporting Period for the period set forth in Item 5(A) of the Declarations of these General Terms and Conditions. This right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase the Extended Reporting Period, together with payment of the additional applicable premium due as set forth in Item 5(B) of the Declarations of these General Terms and Conditions, is received by the Company within thirty (30) days after the end of the **Policy Period**.
- (b) If the Extended Reporting Period is purchased, then coverage otherwise afforded by such **Liability Coverage Section** will be extended to apply to **Loss** from **Claims** first made during such Extended Reporting Period but only for **Wrongful Acts** committed or allegedly committed before the end of the **Policy Period** or the date of any conversion of coverage described in Subsection 9, 10 or 11 of these General Terms and Conditions, whichever is earlier. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period. The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the applicable Limits of Liability for the **Policy Year** immediately preceding the expiration of the **Policy Period**.



Limits of Liability

5. (a) Solely with respect to all **Liability Coverage Sections**:
- (i) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is elected, as set forth in Item 3 of the Declarations of these General Terms and Conditions, such amount shall be the maximum aggregate liability of the Company for all **Loss** from all **Claims** first made during each **Policy Year** under all **Liability Coverage Sections** combined, regardless of the number of **Claims**; provided that the maximum aggregate liability of the Company for all **Loss** from all **Claims** first made during each **Policy Year** under each **Liability Coverage Section** shall not exceed the respective Limit of Liability as set forth in Item 2 of the Declarations of each applicable **Liability Coverage Section**. If the Limit(s) of Liability of any **Liability Coverage Section**, as set forth in Item 2 of the Declarations for such **Liability Coverage Section**, is less than the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** as set forth in Item 3 of the Declarations of these General Terms and Conditions, such lesser limit shall be a sublimit and such amount shall be part of, and not in addition to, the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** as set forth in Item 3 of the Declarations of these General Terms and Conditions.
 - (ii) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is not elected, the maximum aggregate liability of the Company for all **Loss** from all **Claims** first made during each **Policy Year** under each **Liability Coverage Section** shall be the respective Limit of Liability as set forth in Item 2 of the Declarations for such **Liability Coverage Section**, regardless of the number of **Claims**.
 - (iii) Except as otherwise expressly provided in any **Liability Coverage Section**, **Defense Costs** are part of and not in addition to the applicable Limits of Liability set forth in Item 2 of the Declarations of the applicable **Liability Coverage Section**, and the payment by the Company of **Defense Costs** shall reduce and may exhaust such applicable Limits of Liability.
- (b) Solely with respect to each **Non-Liability Coverage Section**, the Company's maximum liability shall be the respective Limit(s) of Liability set forth in the Declarations of such **Non-Liability Coverage Section**.
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Reporting and Notice

6. (a) The **Insureds** shall, as a condition precedent to exercising any right to coverage under any **Liability Coverage Section**, give to the Company written notice of any **Claim** as soon as practicable, but:
- (i) if such **Liability Coverage Section** expires (or is otherwise terminated) without being renewed and if no Extended Reporting Period is purchased with respect to such **Liability Coverage Section**, no later than the sixtieth (60th) day after the effective date of expiration or termination; or
 - (ii) if an Extended Reporting Period is purchased with respect to such **Liability Coverage Section**, no later than the last day of the Extended Reporting Period.



- (b) Solely with respect to the Directors & Officers Liability and Entity Liability Coverage Section and the Fiduciary Liability Coverage Section, if:
- (i) an **Insured** becomes aware of circumstances during the **Policy Period** which could give rise to a **Claim** and gives written notice of such circumstances to the Company as soon as practicable during the **Policy Period**, or
 - (ii) an **Insured** receives during the **Policy Period** a written request to toll or waive a statute of limitations applicable to **Wrongful Acts** committed, attempted, or allegedly committed or attempted before or during the **Policy Period** and gives written notice of such request and of such alleged **Wrongful Acts** to the Company as soon as practicable during the **Policy Period**,

then any **Claim** subsequently arising from such circumstances referred to in (i) above, or from the **Wrongful Acts** referred to in (ii) above shall be deemed to have been first made against the **Insured** during the **Policy Year** in which the written notice described in (i) or (ii) above was first given by an **Insured** to the Company, provided any such subsequent **Claim** is reported to the Company as set forth in Subsection 6(a) above. With respect to any such subsequent **Claim**, no coverage under the Directors & Officers Liability and Entity Liability Coverage Section or the Fiduciary Liability Coverage Section shall apply to loss incurred prior to the date such subsequent **Claim** is actually made.

- (c) Solely with respect to the Employment Practices Liability Coverage Section, if during the **Policy Period** any **Insured**:
- (i) becomes aware of a **Potential Employment Claim** or **Potential Third Party Claim** and gives written notice of such **Potential Employment Claim** or **Potential Third Party Claim** to the Company as soon as practicable during the **Policy Period**; and
 - (ii) requests coverage under the Employment Practices Liability Coverage Section for any **Employment Claim** or **Third Party Claim** subsequently resulting from such **Potential Employment Claim** or **Potential Third Party Claim**;

then any **Employment Claim** or **Third Party Claim** subsequently arising from such **Potential Employment Claim** or **Potential Third Party Claim** referred to in (i) above shall be deemed to have been first made against the **Insured** during the **Policy Year** in which the written notice described in (i) and (ii) above was first given by an **Insured** to the Company, provided any such subsequent **Employment Claim** or **Third Party Claim** is reported to the Company as set forth in Subsection 6(a) above. With respect to any such **Employment Claim** or **Third Party Claim**, no coverage under the Employment Practices Liability Coverage Section shall apply to loss incurred prior to the date such subsequent **Employment Claim** or **Third Party Claim** is actually made.

- (d) Solely with respect to any **Non-Liability Coverage Section**, the **Insureds** shall give notice of a **Coverage Event** in accordance with the applicable Proof of Loss and Legal Proceedings Subsection of such Coverage Section.
- (e) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this Policy, give to the Company such information, assistance, and cooperation as the Company may reasonably require, and shall include in any notice under Subsection 6(a), (b) or (c) above a description of the **Claim**, **Potential Employment Claim**, **Potential Third Party Claim** or circumstances, the nature of any alleged **Wrongful Acts**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which such **Insured** first became aware of the **Claim**, **Potential Employment Claim**, **Potential Third Party Claim** or circumstances.



Spouses, Estates and Legal Representatives

7. Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of the applicable **Liability Coverage Section**, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
- (a) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
 - (b) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse's or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse's or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

All provisions of these General Terms and Conditions and of the applicable **Liability Coverage Section**, including without limitation the Retention, that are applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by the estate, heirs, legal representatives, assigns, spouse and/or **Domestic Partner** of such **Insured Person**. The coverage provided by this Subsection 7 shall not apply with respect to any loss arising from an act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

Notice

8. Any notice to the Company with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section(s) so designated.

Notice to the Company of a **Claim**, **Potential Employment Claim** or **Potential Third Party Claim** or of circumstances which could give rise to a **Claim** under any **Liability Coverage Section** or of a **Coverage Event** under any **Non-Liability Coverage Section**, shall be given in writing addressed to:

Attn: Claims Department
Chubb Group of Insurance Companies
15 Mountain View Road
Warren, New Jersey 07059

All other notices to the Company shall be given in writing addressed to:

Attn: Chubb Specialty Insurance Underwriting
Chubb Group of Insurance Companies
15 Mountain View Road
Warren, New Jersey 07059

Any such notice shall be effective on the date of receipt by the Company at such address.

Changes in Exposure

9. Acquisition /Creation of Another Organization
- (a) If before or during the **Policy Period** any **Organization**:



- (i) acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- (ii) acquires another organization by merger into or consolidation with the **Organization** such that the **Organization** is the surviving entity,

then coverage shall be provided for such other organization, and its **Insureds**, with respect to any:

- (1) **Liability Coverage Section:** solely for **Wrongful Acts** committed, attempted, or allegedly committed or attempted after the effective date of such acquisition or creation unless the Company agrees, after presentation of a complete application and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such **Insureds** before such acquisition or creation; or
- (2) **Non-Liability Coverage Section:** after the effective date of such event, pursuant to the Liability for Prior Losses Subsection of such **Non-Liability Coverage Section**.

(b) If, at the time of an acquisition or creation described in paragraph 9(a) above,

- (i) the total assets of any such acquired or created organization exceed twenty-five percent (25%) of the total assets of the **Organization** (as reflected in the most recent audited consolidated financial statements of such organization and the **Organization**, respectively, as of the date of such acquisition or creation); or
- (ii) solely with respect to the Employment Practices Liability Coverage Section, if purchased as set forth in Item 4 of the Declarations of these General Terms and Conditions, the total number of employees of the acquired or created organization exceeds twenty-five percent (25%) of the total number of employees of the **Organization** immediately prior to the acquisition or creation,

then the **Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such other information as the Company may require and shall pay any reasonable additional premium required by the Company. If the **Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Company, coverage for such acquired or created organization and its **Insured Persons** shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for its **Insureds**, shall be subject to such additional or different terms, conditions and limitations of coverage as the Company in its sole discretion may require.

10. Acquisition by Another Organization

If:

- (a) the **Organization** merges into or consolidates with another organization and the **Organization** is not the surviving entity; or
- (b) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities or



voting rights representing the present right to vote for the election of or to appoint directors or **Managers** of the **Organization**,

then coverage under this Policy with respect to:

- (i) any **Liability Coverage Section**: shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insureds** before such merger, consolidation or acquisition;
- (ii) the Crime Coverage Section: shall terminate subject to Subsection 19, Exclusions, of such Coverage Section; or
- (iii) the Kidnap/Ransom and Extortion Coverage Section: shall terminate subject to Subsection 7(h), Exclusions, of such Coverage Section.

Upon the occurrence of any event described in paragraph 10(a) or (b) above, the entire premium for this Policy shall be deemed fully earned. The **Organization** shall give written notice of such merger, consolidation or acquisition to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such merger, consolidation or acquisition, together with such other information as the Company may require. Upon receipt of such notice and information and at the request of the **Organization**, the Company shall provide to the **Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Company and the **Organization**) with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by the **Insureds** before such merger, consolidation or acquisition. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage, and payment of such additional premium, as the Company in its sole discretion may require.

11. Cessation of Subsidiary

In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then with respect to any:

- (a) **Liability Coverage Section**: coverage with respect to such former **Subsidiary** and its **Insureds** shall continue until termination of such Coverage Section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted while such organization was a **Subsidiary**; or
- (b) **Non-Liability Coverage Section**: such former **Subsidiary** and its **Insureds** shall cease to be **Insureds** as of the effective date of such cessation, and coverage under such **Non-Liability Coverage Section** shall thereafter apply only as provided in such **Non-Liability Coverage Section**.

Valuation and Foreign Currency

- 12. All premiums, limits, retentions, loss and other amounts under this Policy are expressed and payable in the currency of the United States of America. Except as otherwise provided in any Coverage Section, if a judgment is rendered, a settlement is denominated or any element of loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in United States of America dollars at the rate of exchange published in The Wall Street Journal on the date the judgment becomes final, the amount of the settlement is agreed upon or any element of loss is due, respectively.



Subrogation

13. In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and such **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured**.
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Action Against the Company

14. No action may be taken against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy. No person or entity shall have any right under this Policy to join the Company as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the Company be impleaded by such **Insured** or legal representatives of such **Insured**.
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Organization Rights and Obligations

15. By acceptance of this Policy, the **Organization** first named in Item 1 of the Declarations of these General Terms and Conditions ("First Named **Organization**") agrees that it shall be considered the sole agent of, and shall act on behalf of, each **Insured** with respect to: the payment of premiums and the receiving of any return premiums that may become due under this Policy; the negotiation, agreement to and acceptance of endorsements; the giving or receiving of any notice provided for in this Policy (except the giving of notice to apply for an Extended Reporting Period); the adjustment of loss amounts; and the receipt or enforcement of payment of **Loss** (and the First Named **Organization** further agrees that it shall be responsible for application of any such payment as provided in this Policy). Each **Insured** agrees that the First Named **Organization** shall act on its behalf with respect to all such matters.
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Alteration and Assignment

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

17. This Policy or any Coverage Section shall terminate at the earliest of the following times:
 - (a) upon expiration of the **Policy Period** as set forth in Item 2(B) of the Declarations of these General Terms and Conditions;
 - (b) twenty (20) days after receipt by the **Organization** of a written notice of termination from the Company based upon non-payment of premium, unless the premium is paid within such twenty (20) day period; or
 - (c) at such other time as may be agreed upon by the Company and the **Organization**.



The Company shall refund the unearned premium computed pro rata. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of a notice of termination, but such payment shall be made as soon as practicable thereafter.

Termination of Prior Bonds or Policies

18. Any bonds or policies issued by the Company or its affiliates and set forth in Item 6 of the Declarations of these General Terms and Conditions shall terminate, if not already terminated, as of the inception of this Policy.
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Representations and Severability

19. (a) In granting coverage to the **Insureds** under this Policy, the Company has relied upon the declarations and statements in the **Application**. Such declarations and statements are the basis of the coverage granted in this Policy and shall be considered as incorporated in and constituting part of this Policy.
- (b) Solely with respect to any **Liability Coverage Section**, the **Application** shall be construed as a separate application for coverage by each **Insured Person**, and no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available.
- (c) The statements and representations in the **Application** will be deemed to have been made by all **Organizations**. For the purpose of determining if coverage is available, facts pertaining to and knowledge possessed by:
- (i) the Chief Financial Officer, President, Executive Director, Chief Executive Officer or Chairperson of an **Organization** shall be imputed only to that **Organization** and its **Subsidiaries** and their respective **Plans**; and
 - (ii) any individual signing the **Application** shall be imputed to all **Organizations**, **Subsidiaries**, **Affiliates** and **Plans**.
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Bankruptcy

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

21. The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.
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Compliance With Applicable Trade Sanction Laws

22. This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.
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In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

Insuring Clauses

Individual Non-Indemnified Liability Coverage Insuring Clause 1

1. The Company shall pay, on behalf of each of the **Insured Persons**, **Loss** for which the **Insured Person** is not indemnified by the **Organization** and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against the **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions.

Individual Indemnified Liability Coverage Insuring Clause 2

2. The Company shall pay, on behalf of the **Organization**, **Loss** for which the **Organization** grants indemnification to an **Insured Person**, as permitted or required by law, and which the **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against the **Insured Person**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by such **Insured Person** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions.

Entity Liability Coverage Insuring Clause 3

3. The Company shall pay, on behalf of the **Organization**, **Loss** which the **Organization** becomes legally obligated to pay on account of any **Claim** first made against the **Organization** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted by the **Organization** or the **Insured Persons** before or during the **Policy Period**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions.

Definitions

4. When used in this Coverage Section:

Claim means:

- (1) when used in reference to the coverage provided by Insuring Clause 1 or 2:
 - (a) a written demand for monetary damages or non-monetary relief;



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- (b) a civil proceeding commenced by the service of a complaint or similar pleading;
- (c) a criminal proceeding commenced by the return of an indictment; or
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document,

against an **Insured Person** for a **Wrongful Act**, including any appeal therefrom; or

(2) when used in reference to the coverage provided by Insuring Clause 3:

- (a) a written demand for monetary damages or non-monetary relief;
- (b) a civil proceeding commenced by the service of a complaint or similar pleading;
- (c) a criminal proceeding commenced by the return of an indictment; or
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document, but only while such proceeding is also pending against an **Insured Person**,

against an **Organization** for a **Wrongful Act**, including any appeal therefrom.

Except as may otherwise be provided in Subsection 8(e) of this Coverage Section, or Subsection 4 or Subsection 6(b) of the General Terms and Conditions, a **Claim** will be deemed to have first been made when such **Claim** is commenced as set forth in this definition (or, in the case of a written demand, when such demand is first received by an **Insured**).

Defense Costs means reasonable costs, charges, 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 directors, officers, trustees or any duly constituted committee member or **Employees** of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service is engaged by and directed by the **Organization**, including any part-time, seasonal, leased or temporary employees or volunteers. **Employee** shall not include any **Independent Contractor**.

Excess Benefit Transaction Excise Tax means any excise tax imposed by the Internal Revenue Service on an **Insured Person** who is an **Organization Manager** as a result of such **Insured Person's** participation in an **Excess Benefit Transaction**.

Excess Benefit Transaction means an "excess benefit transaction" as that term is defined in Section 4958(c) of the Internal Revenue Code, 26 U.S.C. § 4958(c).

Executive means any natural person who was, now is or shall become:

- (a) a duly elected or appointed director, officer, **Manager**, in-house general counsel, or duly constituted committee member of any **Organization** chartered in the United States of America; or



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- (b) a holder of a position equivalent to any position described in (a) above in any **Organization** that is chartered in any jurisdiction other than the United States of America.

Insured means the **Organization** and any **Insured Person**.

Insured Person means any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, duly constituted committee member or **Employee** of any **Organization**.

Loss means the amount that any **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to:

- (i) damages (including punitive or exemplary damages, if and to the extent that such punitive or exemplary damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the relevant **Insureds**, to the Company, or to the **Claim** giving rise to the damages);
- (ii) judgments;
- (iii) settlements;
- (iv) pre-judgment and post-judgment interest;
- (v) **Excess Benefit Transaction Excise Taxes** in an amount not to exceed the sublimit set forth in Item 2(B) of the Declarations for this Coverage Section, but only if and to the extent that indemnification by the **Organization** for **Excess Benefit Transaction Excise Taxes** is not expressly prohibited in the bylaws, certificate of incorporation or other organizational documents of the **Organization**; and
- (vi) **Defense Costs**.

Loss does not include:

- (a) any amount not indemnified by the **Organization** for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
- (b) any costs incurred by the **Organization** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (c) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding or demand subsequently gives rise to a **Claim**;
- (d) taxes, fines or penalties, or the multiple portion of any multiplied damage award, except as provided above with respect to punitive or exemplary damages and **Excess Benefit Transaction Excise Taxes**;
- (e) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages;
- (f) any amount allocated to non-covered loss pursuant to Subsection 11, Allocation, of this Coverage Section, or



- (g) any amount that represents or is substantially equivalent to an increase in the consideration paid (or proposed to be paid) by an **Organization** in connection with its purchase of any securities or assets.

Organization Manager means an “organization manager” as that term is defined in Section 4958(f) of the Internal Revenue Code, 26 U.S.C. § 4958(f).

Outside Capacity means service by an **Insured Person** in the position of director, officer, trustee, regent, or governor (or any equivalent executive position) of an **Outside Entity**, but only during the time that such service is with the knowledge and consent or at the request of the **Organization**.

Outside Capacity Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Outside Capacity**.

Outside Entity means:

- (1) any non-profit corporation, community chest, fund or foundation that is not included in the definition of **Organization** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) any other entity organized for a religious or charitable purpose under any non-profit organization act or statute; and
- (3) if specifically added as an **Outside Entity** by written endorsement attached to this Policy, any other non-profit or any for-profit entity,

but does not include any **Subsidiary** or **Affiliate**.

Personal Injury Wrongful Act means any:

- (1) false arrest, wrongful detention or imprisonment or malicious prosecution;
- (2) libel, slander, defamation of character, or publication of material in violation of a person’s right of privacy; or
- (3) wrongful entry or eviction or other invasion of the right of privacy.

Publisher Wrongful Act means any:

- (1) infringement of copyright or trademark or unauthorized use of title; or
- (2) plagiarism or misappropriation of ideas.

Securities Laws means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, any state “blue sky” securities law, or any other federal, state or local securities law or any amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer to sell or purchase, or the sale or purchase, of securities.



Wrongful Act means:

- (a) any error, misstatement, misleading statement, act, omission, neglect, breach of duty, **Personal Injury Wrongful Act** or **Publisher Wrongful Act** committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Insured Capacity** or, for purposes of coverage under Insuring Clause 3, by the **Organization**;
- (b) any other matter claimed against an **Insured Person** solely by reason of his or her serving in an **Insured Capacity**; or
- (c) any **Outside Capacity Wrongful Act**.

Exclusions

Applicable To All Insuring Clauses

5. The Company shall not be liable for **Loss** on account of any **Claim**:
- (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (b) based upon, arising from, or in consequence of any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 - (c) brought or maintained by or on behalf of any **Insured** in any capacity; provided that this Exclusion 5(c) shall not apply to:
 - (i) a **Claim** brought or maintained derivatively on behalf of the **Organization** by one or more securityholders of the **Organization** or persons who are not **Insured Persons**, provided such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by, any **Executive**;
 - (ii) a **Claim** brought or maintained by an **Insured Person** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this Coverage Section;
 - (iii) a **Claim** brought by an **Executive** who has not served as an **Executive** of the **Organization** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without any active assistance or participation of, or solicitation by, the **Organization** or any other **Executive** who is serving or has served as an **Executive** within such four (4) year period; or
 - (iv) a **Claim** brought or maintained by **Employees** who are not past or present **Executives** of an **Organization** if such **Claim** is brought and maintained without any active assistance or participation of, or solicitation by, any such **Executives**;



- (d) based upon, arising from, or in consequence of:
- (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- including but not limited to any **Claim** for financial loss to the **Organization**, to any member, securityholder or creditor of the **Organization**, to any **Outside Entity**, or to any member, securityholder or creditor of an **Outside Entity** based upon, arising from, or in consequence of any matter described in clause (i) or (ii) of this Exclusion 5(d);
- (e) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
- (f) for an actual or alleged violation of the responsibilities, obligations or duties imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto, or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
- (g) brought or maintained by or on behalf of any **Outside Entity** or any director, officer, trustee, governor or equivalent executive of an **Outside Entity** in any capacity; provided that this Exclusion 5(g) shall not apply to:
- (i) a **Claim** brought or maintained derivatively on behalf of an **Outside Entity** by one or more securityholders or members of the **Outside Entity** who are not **Insured Persons** and are not directors, officers, trustees, governors or equivalent executives of the **Outside Entity** and who bring and maintain such **Claim** without the solicitation, assistance or participation of any **Insured Person** or of any director, officer, trustee, governor or equivalent executive of the **Outside Entity**; or
 - (ii) a **Claim** brought or maintained by a director, officer, trustee, governor or equivalent executive of an **Outside Entity** for contribution or indemnification, if such **Claim** directly results from another **Claim** covered under this Coverage Section;
- (h) for **Wrongful Acts** of an **Insured Person** in his or her capacity as a director, officer, manager, trustee, regent, governor or employee of any entity other than the **Organization**, even if the **Insured Person's** service in such capacity is with the knowledge and consent or at the request of the **Organization**, provided, however, that this Exclusion 5(h) shall not apply to service in an **Outside Capacity**;
- (i) made against a **Subsidiary** or **Affiliate** or an **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary** or **Affiliate**;



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- (j) made against any **Insured** based upon, arising from, or in consequence of:
 - (i) the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured** as evidenced by a final and non-appealable judgment or adjudication, or by any plea of guilty, nolo contendere or no contest, or by an *Alford* plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970); or
 - (ii) such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;
- (k) based upon, arising from, or in consequence of the actual or alleged violation of any **Securities Laws**; provided that this Exclusion 5(k) shall not apply to the extent that such **Claim** is based upon, arises from or is in consequence of the **Organization's** offer or sale of debt securities of the **Organization** in a transaction that is (or in a series of transactions that are) exempt from registration under the Securities Act of 1933, as amended, and under the rules and regulations promulgated thereunder;
- (l) for any employment-related **Wrongful Act**; or
- (m) based upon, arising from, or in consequence of any actual or alleged discrimination against or sexual harassment of any person or entity that is not an **Insured**.

Applicable to Insuring Clause 3 Only

- 6. (a) The Company shall not be liable under Insuring Clause 3 for **Loss**, other than **Defense Costs**, on account of any **Claim** based upon, arising from, or in consequence of any actual or alleged liability of an **Organization** under any written or oral contract or agreement, provided that this Exclusion 6(a) shall not apply to the extent that the **Organization** would have been liable in the absence of such contract or agreement.
- (b) The Company shall not be liable under Insuring Clause 3 for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any actual or alleged infringement of patent or misappropriation of intellectual property, ideas or trade secrets, provided that this Exclusion 6(b) shall not apply to any **Publisher Wrongful Act**.

Severability of Exclusions

- 7. (a) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of applying Exclusion 5(j) of this Coverage Section.
 - (b) Only facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house general counsel, president, chief executive officer, executive director, trustee, duly constituted committee member or chairperson of an **Organization** shall be imputed to such **Organization** for the purpose of applying Exclusion 5(j) of this Coverage Section.
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Limit of Liability and Retention

8. (a) The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during each **Policy Year**, whether covered under one or more Insuring Clauses, shall be the Limit of Liability for each **Policy Year** set forth in Item 2(A) of the Declarations for this Coverage Section.
- (b) Solely in the event that the Defense Outside the Limits of Liability Option is purchased as set forth in Item 5 of the Declarations of this Coverage Section, **Defense Costs** shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of **Defense Costs** by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of **Loss** other than **Defense Costs**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as set forth in Item 5 of the Declarations of this Coverage Section, **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of **Defense Costs** by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of **Defense Costs** or other **Loss**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

- (c) The Company's liability under Insuring Clause 2 or 3 shall apply only to that part of covered **Loss** (as determined by any applicable provision in Subsection 11, Allocation, of this Coverage Section) on account of each **Claim** which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be depleted only by **Loss** otherwise covered under this Coverage Section, and shall be borne by the **Insureds** uninsured and at their own risk.
- (d) If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (e) All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Subsection 6 of the General Terms and Conditions, regardless of whether such date is before or during the **Policy Period**.
- (f) The limit of liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Year**.

Presumptive Indemnification

9. If the **Organization** fails or refuses, other than for reason of **Financial Impairment**, to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on behalf of an **Insured Person**, to the fullest extent permitted by statutory or common law, then, notwithstanding any other conditions, provisions or terms of this Coverage Section to the contrary, any payment by the Company of such **Defense Costs** or other **Loss** shall be subject to the applicable Insuring Clause 2 Retention set forth in Item 3 of the Declarations for this Coverage Section.



Defense and Settlement

10. (a) The Company shall have the right and duty to defend any **Claim** covered by this Coverage Section, even if any of the allegations in such **Claim** are groundless, false or fraudulent. Defense counsel shall be selected by the Company. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (b) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as set forth in Item 5 of the Declarations of this Coverage Section, if an **Insured** in any **Claim** withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a "Proposed Settlement"), the **Insureds** will thereafter be responsible for defending such **Claim** at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for **Loss** with respect to any such **Claim** will not exceed the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as set forth in Item 5 of the Declarations of this Coverage Section, in the event an **Insured** in any **Claim** withholds consent to a Proposed Settlement, the Company's liability with respect to such **Claim** shall not exceed:

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- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement; plus
- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limits of Liability for such **Claim**. The remaining thirty percent (30%) of **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insureds** uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection 11(a) Allocation.
- (c) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent. The Company shall not be liable for any element of **Loss** incurred, for any obligation assumed, or for any admission made, by any **Insured** without the Company's prior written consent.
- (d) The Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the maximum Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.
- (e) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions, then the Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Combined Maximum Aggregate Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's



Combined Maximum Aggregate Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.

- (f) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

Allocation

11. (a) If both **Loss** covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such **Claim** shall apply as follows:
- (i) **Defense Costs:** One hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss**; and
 - (ii) Loss other than **Defense Costs:** All remaining loss incurred by the **Insured** on account of such **Claim** shall be allocated by the Company between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insureds** from such settlement.
- (b) If the **Insureds** and the Company cannot agree on an allocation of loss:
- (i) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
 - (ii) the Company, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

Other Insurance

12. (a) If any **Loss** under this Coverage Section is insured under any other valid and collectible insurance policy(ies) (including General Liability Insurance), then this Coverage Section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the applicable retention (or deductible) and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Coverage Section. Any payment by **Insureds** of a retention or deductible under such other insurance shall reduce, by the amount of such payment which would otherwise have been covered under this Coverage Section, the applicable Retention under this Coverage Section.



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- (b) Any coverage for **Claims** for **Outside Capacity Wrongful Acts** will be specifically excess of any insurance provided by or indemnification available from the **Outside Entity** or any other source, other than the **Organization**, for the benefit of the **Insured Person** serving in such **Outside Capacity**. Payment by the Company or any affiliate of the Company under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Capacity** shall reduce, by the amount of such payment, the Company's Limit of Liability under this Coverage Section with respect to such **Claim**.
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Payment of Loss

13. In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available Limit of Liability for this Coverage Section, the Company shall:
- (a) first pay such **Loss** for which coverage is provided under Insuring Clause 1 of this Coverage Section; then
 - (b) to the extent of any remaining amount of the Limit of Liability available after payment under (a) above, pay such **Loss** for which coverage is provided under any other Insuring Clause of this Coverage Section.

Except as otherwise provided in this Subsection 13, the Company may pay covered **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

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In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

Insuring Clauses

Employment Practices Liability Coverage

1. The Company shall pay, on behalf of the **Insureds, Loss** on account of any **Employment Claim** first made against such **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for **Employment Practices Wrongful Acts**, but only if such **Employment Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions Section of this Policy.
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Third Party Liability Coverage (if purchased)

2. If Third Party Liability Coverage is purchased as set forth in Item 5 of the Declarations for this Coverage Section, the Company shall pay, on behalf of the **Insureds, Loss** on account of any **Third Party Claim** first made against such **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for **Third Party Wrongful Acts**, but only if such **Third Party Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions Section of this Policy.
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Definitions

3. When used in this Coverage Section:

Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

Breach of Employment Contract means any breach of any oral, written or implied employment contract or employment contractual obligation, including but not limited to any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

Claim means any **Employment Claim** and any **Third Party Claim**.

Defense Costs means reasonable costs, charges, 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 directors, officers, trustees, faculty or any duly constituted committee member or employees of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.



Employment Claim means:

- (1) any of the following:
 - (a) a written demand for monetary relief or a written demand for reinstatement, re-employment or re-engagement;
 - (b) a civil proceeding commenced by the service of a complaint, summons, notice of application, writ, claim form or similar pleading in any jurisdiction in the world;
 - (c) an arbitration proceeding pursuant to an employment contract, policy or practice of the **Organization** commenced by receipt of a demand for arbitration or similar document;
 - (d) a criminal proceeding outside the United States of America commenced by a return of an indictment or information or similar document; or
 - (e) a formal administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document, including but not limited to any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any other similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; provided that in the context of an audit conducted by the Office of Federal Contract Compliance Programs, **Employment Claim** shall be limited to a Notice of Violation or Order to Show Cause or written demand for monetary damages or injunctive relief, which is brought and maintained by or on behalf of any past, present or prospective employee, volunteer or **Independent Contractor** of the **Organization** against any **Insured** for any **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding), including any appeal therefrom; or
- (2) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in paragraph (1) above;

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

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive termination, dismissal, or discharge of employment, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote an employee or applicant for employment, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world.

Employment Harassment means:

- (a) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with or used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within, the **Organization**; or



- (b) workplace harassment, including work related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization**.

Employment Practices Wrongful Act means any actual or alleged:

- (a) **Breach of Employment Contract;**
- (b) **Employment Discrimination;**
- (c) **Employment Harassment;**
- (d) **Retaliation;**
- (e) **Workplace Tort;**
- (f) **Wrongful Employment Decision;** or
- (g) **Wrongful Termination,**

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her capacity as such.

Independent Contractor means any natural person working for the **Organization** in the capacity of an independent contractor pursuant to an **Independent Contractor Services Agreement**.

Independent Contractor Services Agreement means any express contract or agreement between an **Independent Contractor** and the **Organization**.

Insured(s) means the **Organization** and any **Insured Person**.

Insured Person means any natural person who was, now is or shall become:

- (a) a full-time, part-time, temporary, leased or seasonal employee or volunteer of the **Organization** but only while acting in his or her capacity as such;
- (b) a duly elected or appointed natural person director, officer, trustee or duly constituted committee member of any **Organization** but only while acting in his or her capacity as such; or
- (c) an **Independent Contractor** working for the **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees in writing, prior to or no later than thirty (30) days after the **Claim** is made, to indemnify the **Independent Contractor** for liability arising out of such **Claim**.

Interrelated Wrongful Acts means any causally connected **Wrongful Acts**.

Loss means the amount which an **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to damages (including punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, or the multiple portion of any multiplied damage award, if and to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the relevant **Insureds**, the Company, this Policy or the **Claim** giving rise to the damages), back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company at the time of or after a



final settlement), judgments, settlements, pre-judgment interest, post-judgment interest, and **Defense Costs**.

Loss does not include:

- (a) any amount not indemnified by the **Organization** for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (b) the future salary, wages, commissions or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;
- (c) taxes, fines, or penalties, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (d) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (e) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (f) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding or demand subsequently gives rise to a **Claim**; or
- (g) any amount allocated to non-covered loss pursuant to Subsection 10 of this Coverage Section.

Potential Employment Claim means a complaint or allegation of an **Employment Practices Wrongful Act** by or on behalf of a potential claimant if such complaint or allegation (a) does not constitute an **Employment Claim** but may subsequently give rise to an **Employment Claim**, and (b) is lodged with the **Organization's** human resources department or other comparable department.

Potential Third Party Claim means a complaint or allegation of a **Third Party Wrongful Act** if such complaint or allegation (a) does not constitute a **Third Party Claim** but may subsequently give rise to a **Third Party Claim**, (b) is brought by or on behalf of a **Third Party**, and (c) is lodged with the **Organization's** legal department or with an individual responsible to receive such complaints or allegations.

Retaliation means retaliatory treatment against an employee, volunteer or **Independent Contractor** of the **Organization** on account of such individual:

- (a) exercising his or her rights under law;
- (b) refusing to violate any law;
- (c) opposing any unlawful practice;
- (d) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
- (e) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the **Insured**.



Third Party means any natural person who is a customer, vendor, service provider or other business invitee of the **Organization**.

Third Party Claim means:

- (1) any of the following:
 - (a) a written demand for monetary relief or non-monetary relief;
 - (b) a civil proceeding commenced by the service of a complaint, summons, notice of application, writ, claim form or similar pleading in any jurisdiction in the world;
 - (c) an arbitration proceeding commenced by receipt of a demand for arbitration or similar document; or
 - (d) an administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of a **Third Party** against any **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or

- (2) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in paragraph (1) above.

Third Party Services Agreement means any express contract between a **Third Party** and the **Organization**.

Third Party Wrongful Act means:

- (a) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world; or
- (b) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third Party**,

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her capacity as such.

Workplace Tort means:

- (a) any employment-related: defamation (including libel and slander), invasion of privacy, negligent evaluation, or wrongful discipline; or
- (b) any of the following:
 - (i) employment-related negligent retention;
 - (ii) employment-related negligent supervision;
 - (iii) employment-related negligent hiring;
 - (iv) employment-related negligent training;



- (v) employment-related negligent or intentional misrepresentation;
- (vi) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or
- (vii) failure to provide or consistently enforce employment-related corporate policies and procedures;

but only when alleged as part of an **Employment Claim** for any actual or alleged **Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination, Wrongful Employment Decision** or act set forth in paragraph (a) above.

Wrongful Act means an **Employment Practices Wrongful Act** and, if Third Party Liability Coverage is purchased, a **Third Party Wrongful Act**.

Wrongful Employment Decision means any wrongful demotion, denial of tenure or failure or refusal to promote.

Wrongful Termination means any wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

Exclusions

4. The Company shall not be liable for **Loss** on account of any **Claim**:
- (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A) of the Declarations for the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (b) based upon, arising from, or in consequence of:
 - (i) any:
 - (A) written demand seeking monetary relief;
 - (B) written demand alleging an **Employment Practices Wrongful Act** and seeking reinstatement, re-employment or re-engagement;
 - (C) written demand alleging a **Third Party Wrongful Act** and seeking non-monetary relief;
 - (D) civil proceeding seeking monetary or non-monetary relief;
 - (E) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge or complaint of discrimination by the Equal Employment Opportunity Commission or any other federal, state or local governmental agency authorized to investigate or adjudicate an actual or alleged **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;



(F) Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs; or

(G) arbitration proceeding;

which was pending against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying or alleged therein, including but not limited to any such **Claim** which is brought by or on behalf of the original claimant in any matter set forth in subparagraphs (A)-(G) above or any other claimant; or

(ii) any order, decree or judgment which was entered for or against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying any such order, decree or judgment;

(c) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Employee Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985) or amendments to or regulations promulgated under any such law that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**) ("Employee Benefits Program Laws"), including but not limited to any:

(i) retirement income or pension benefit program;

(ii) employee stock purchase or employee stock ownership plan;

(iii) profit sharing plan;

(iv) deferred compensation plan;

(v) vacation, maternity leave, personal leave, or parental leave;

(vi) severance pay arrangement;

(vii) supplementary unemployment compensation plan;

(viii) apprenticeship program;

(ix) pre-paid legal service plan or scholarship plan;

(x) life insurance plan;

(xi) health, sickness, medical, dental, disability or dependant care plan;

(xii) welfare plan; or

(xiii) similar arrangement, program, plan or scheme;

provided that this Exclusion 4(c) shall not apply to any **Employment Claim** for **Retaliation**;



- (d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Occupational Safety and Health Act) or amendments to or regulations promulgated under any such law that governs workplace safety and health ("Occupational Safety and Health Laws"), including but not limited to any obligation to maintain a place of employment free from hazards likely to cause physical harm, injury or death; provided that this Exclusion 4(d) shall not apply to any **Employment Claim for Retaliation**;
- (e) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act ("Wage and Hour Laws"), including but not limited to:
- (i) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
 - (ii) the classification of any organization or person for wage and hour purposes;
 - (iii) garnishments, withholdings or other deductions from wages;
 - (iv) child labor;
 - (v) pay equity or comparable worth; or
 - (vi) any similar policies or practices;
- provided that this Exclusion 4(e) shall not apply to any **Employment Claim for Retaliation**;
- (f) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Worker Adjustment and Retraining Notification Act) or amendments to or regulations promulgated under any such law that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, or mass layoff, or any similar obligation ("Workforce Notification Laws"); provided that this Exclusion 4(f) shall not apply to any **Employment Claim for Retaliation**;
- (g) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:
- (i) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including but not limited to union organizing, union elections and other union activities;
 - (ii) the duty or obligation of an employer to meet, discuss, notify or bargain with any employee or employee representative, collectively or otherwise;
 - (iii) the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
 - (iv) strikes, work stoppages, boycotts, picketing and lockouts; or
 - (v) any similar rights or duties ("Labor Management Relations Laws");



- (h) for bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion 4(h) shall not apply to mental anguish, emotional distress or humiliation resulting from any **Wrongful Act**;
- (i) based upon, arising from, or in consequence of any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world; provided that this Exclusion 4(i) shall not apply to any **Employment Claim** for **Retaliation**;
- (j) based upon, arising from, or in consequence of:
 - (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,including but not limited to any **Claim** for financial loss to the **Organization**, its members or its creditors based upon, arising from, or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 4(j); provided that this Exclusion 4(j) shall not apply to any **Employment Claim** for **Retaliation**;
- (k) based upon, arising from, or in consequence of the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided that this Exclusion 4(k) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (l) made against a **Subsidiary** or **Affiliate** or an **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary** or **Affiliate**;
- (m) for any actual or alleged breach of any **Independent Contractor Services Agreement** or **Third Party Services Agreement**;
- (n) based upon, arising from, or in consequence of any federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Celler-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, or amendments to or regulations promulgated under any such law, that governs competition, monopolistic practices, or price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment); or
- (o) for any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 et seq., or the Federal False Claims Act or any similar federal, state, or local statutory law or common law anywhere in the world.



5. The Company shall not be liable for that part of **Loss**, other than **Defense Costs**:
 - (a) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion 5(a) shall not apply to any **Employment Claim** for **Wrongful Termination**;
 - (b) which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law; or
 - (c) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
6. The Company shall not be liable for **Loss**, other than **Defense Costs**, resulting from any **Claim** based upon, arising from, or in consequence of any actual or alleged breach of any written employment contract; provided that this Exclusion 6 shall not apply to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract.

Coordination of Coverage

7. Any **Loss** otherwise covered by both this Coverage Section and any fiduciary liability coverage section or policy issued by the Company or by any affiliate of the Company first shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to, this Coverage Section.

Limit of Liability and Retention

8. (a) The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during each **Policy Year**, whether covered under one or more Insuring Clauses, shall be the Limit of Liability set forth in Item 2(A) of the Declarations for this Coverage Section. If Third Party Liability Coverage is purchased, the Company's maximum aggregate liability for all **Loss** on account of all **Third Party Claims** first made during each **Policy Year** shall be the Sublimit set forth in Item 2(B) of the Declarations for this Coverage Section, which amount shall be part of and not in addition to the Company's maximum aggregate Limit of Liability for all **Claims** first made during that **Policy Year** as set forth in Item 2(A) of the Declarations for this Coverage Section.
- (b) Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, **Defense Costs** shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of **Defense Costs** by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of **Loss** other than **Defense Costs**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of **Defense Costs** by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of **Defense Costs** or other **Loss**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.



- (c) The Company's liability under this Coverage Section shall apply only to that part of covered **Loss** (as determined by any applicable provision in Subsection 10 of this Coverage Section) on account of each **Claim** which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be depleted only by **Loss** otherwise covered under this Coverage Section and shall be borne by the **Insureds** uninsured and at their own risk. In the event that any **Insured** is unwilling or unable to bear the Retention it shall be the obligation of the **Organization** to bear such Retention uninsured and at its own risk.
- (d) All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of any **Insured** shall be deemed one **Claim**, regardless of the number of **Claims** made, claimants, or **Insureds** against whom such **Claims** are made. Such **Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Claims** was first made, or on the date the earliest of such **Claims** is treated as having been made in accordance with Subsection 6 of the General Terms and Conditions, regardless of whether such date is before or during the **Policy Period**.
- (e) The limit of liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Year**.

Defense and Settlement

- 9. (a) Except as provided in this Subsection 9, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Section, even if any of the allegations in such **Claim** are groundless, false or fraudulent. Defense counsel shall be selected by the Company from the Company's list of approved employment defense firms. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (b) Notwithstanding the foregoing, it shall be the duty of the **Insureds** and not the duty of the Company to defend any **Claim** which is in part excluded from coverage pursuant to Exclusion 4(e) of this Coverage Section. For such portion of such **Claim** that is otherwise covered under this Coverage Section, the **Insureds** shall select as defense counsel for such **Claim** a law firm included in the Company's then current list of approved employment defense firms for the jurisdiction in which such **Claim** is pending.
- (c) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, if an **Insured** in any **Claim** withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a "Proposed Settlement"), the **Insureds** will thereafter be responsible for defending such **Claim** at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for **Loss** with respect to any such **Claim** will not exceed the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, in the event an **Insured** in any **Claim** withholds consent to a Proposed Settlement, the Company's liability with respect to such **Claim** shall not exceed:

- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement; plus



- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limits of Liability for such **Claim**. The remaining thirty percent (30%) of **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insureds** uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection 10(a) Allocation.
- (d) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent, which consent shall not be unreasonably withheld. The Company shall not be liable for any element of **Loss** incurred, for any obligation assumed, or for any admission made, by any **Insured** without the Company's prior written consent.
- (e) The Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the maximum Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any **Policy Year** is exhausted, the premium applicable to such **Policy Year** will be fully earned.
- (f) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions, then the Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Combined Maximum Aggregate Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.
- (g) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requires and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

Allocation

- 10. If both **Loss** covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such **Claim** shall apply as follows:
 - (a) **Defense Costs**: Except as provided in (c) below, one hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss**; and
 - (b) Loss other than **Defense Costs**: All remaining loss incurred by the **Insured** on account of such **Claim** shall be allocated by the Company between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insureds** from such settlement.
 - (c) Defense costs incurred by the **Insured** on account of a **Claim** which is in part excluded from coverage pursuant to Exclusion 4(e) of this Coverage Section shall be allocated between covered **Defense Costs** and non-covered defense costs based on the relative legal and financial exposures of the parties to covered and non-covered matters.



Arbitration

11. Any dispute between any **Insured** and the Company based upon, arising from, or in any way involving any actual or alleged coverage under this Coverage Section, or the validity, termination or breach of this Coverage Section, including but not limited to any dispute sounding in contract or tort, shall be submitted to binding arbitration.

The **Organization**, however, shall first have the option to resolve the dispute by non-binding mediation pursuant to such rules and procedures, and using such mediator, as the parties may agree. If the parties cannot so agree, the mediation shall be administered by the American Arbitration Association pursuant to its then prevailing commercial mediation rules.

If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

Other Insurance

12. Unless specifically stated otherwise, the coverage afforded under this Coverage Section:
- (a) for **Employment Claims**, shall be primary; provided that with respect to that portion of an **Employment Claim** made against any leased employee, temporary employee or **Independent Contractor, Loss and Defense Costs**, payable on behalf of such leased employee, temporary employee or **Independent Contractor** under this Coverage Section will be specifically excess of and will not contribute with other valid insurance, including but not limited to any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically stated to be in excess of this Coverage Section.
 - (b) for **Third Party Claims**, will be specifically excess of and will not contribute with other valid insurance, including but not limited to general liability insurance or any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is: (i) specifically stated to be in excess of this Coverage Section; or (ii) subject to Subsection 7 of this Coverage Section.



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

Insuring Clauses

Fiduciary Liability Coverage Insuring Clause 1

1. The Company shall pay, on behalf of the **Insureds**, **Loss** on account of any **Fiduciary Claim** first made against the **Insureds** during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted or allegedly committed or attempted before or during the **Policy Period** by such **Insureds**, or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions.
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Voluntary Settlement Program Coverage Insuring Clause 2

2. The Company shall pay, on behalf of the **Insureds**, **Settlement Fees** and **Defense Costs** with respect to a **Settlement Program Notice** first given to the Company during the **Policy Period**, or, if exercised, during the Extended Reporting Period, provided (i) the **Settlement Fees** and **Defense Costs** are incurred after such **Settlement Program Notice** is first given to the Company, and (ii) the Company's maximum liability for all **Settlement Fees** and **Defense Costs** with respect to all such **Settlement Program Notices** first given to the Company during each **Policy Year** shall be the Sublimit set forth in Item 2(B) of the Declarations for this Coverage Section. Such amount shall be part of, and not in addition to, the Limit of Liability otherwise applicable to this Coverage Section.
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Definitions

3. When used in this Coverage Section:

Administration means:

- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
- (2) providing interpretations to **Employees**, participants or beneficiaries with respect to any **Plan**;
or
- (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under any **Plan**.

Claim means for the purposes of coverage under:

- (1) Insuring Clause 1: any **Fiduciary Claim**; or
- (2) Insuring Clause 2: any **Settlement Program Notice**.

Defense Costs means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees or benefits of the **Employees** of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.



Employee means any natural person whose labor or service is engaged by and directed by the **Organization** or any **Plan**, including any part-time, seasonal, leased or temporary employees or volunteers. **Employee** shall not include any **Independent Contractor**.

ERISA means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, all as amended, any similar common or statutory law anywhere in the world, and any rules or regulations promulgated under any such Acts or law.

Executive means any natural person who was, now is or shall become:

- (a) a duly elected or appointed director, officer, **Manager** or in-house general counsel of any **Plan** or any **Organization** chartered in the United States of America; or
- (b) a holder of a position equivalent to any position described in (a) above in any **Organization** that is chartered in any jurisdiction other than the United States of America.

Fiduciary Claim means:

- (a) a written demand for monetary damages or non-monetary relief;
- (b) a civil proceeding commenced by the service of a complaint or similar pleading;
- (c) a criminal proceeding commenced by a return of an indictment or information;
- (d) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document or by the entry of a formal investigative order or similar document; or
- (e) a written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services, the United Kingdom Occupational Pensions Regulatory Authority,

against any **Insured** for a **Wrongful Act**, including any appeal therefrom.

Except as may otherwise be provided in Subsection 8(e) of this Coverage Section, or Subsection 4 or Subsection 6(b) of the General Terms and Conditions, a **Fiduciary Claim** will be deemed to have first been made when such **Fiduciary Claim** is commenced as set forth in this definition (or, in the case of a written demand or notice, when such demand or notice is first received by an **Insured**).

Insured means the **Organization**, any **Plan** and any **Insured Person**.

Insured Person means any past, present or future **Executive**, **Employee** or natural person trustee of the **Organization** or of the **Sponsored Plan**.

Loss means the amount that any **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to damages (including punitive or exemplary damages, or the multiple portion of any multiplied damage award, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the relevant **Insureds**, to the Company, or to the **Claim** giving rise to the damages), judgments, settlements, pre-judgment and post-judgment interest, **Defense Costs** and, solely with respect to Insuring Clause 2, **Settlement Fees**.



Loss does not include:

- (a) any amount not indemnified by the **Organization** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (b) any costs incurred by an **Organization** or **Plan** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (c) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, investigation or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**;
- (d) taxes, fines or penalties, except:
 - (i) as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damages;
 - (ii) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
 - (iii) any civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section;
 - (iv) solely with respect to Insuring Clause 2, **Settlement Fees**; or
 - (v) any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the Company's maximum aggregate liability for all such civil money penalties on account of all **Claims** first made during each **Policy Year** shall be twenty-five thousand dollars (\$25,000), which is a sublimit that further limits and does not increase the Company's maximum liability under this Coverage Section;
- (e) any amount allocated to non-covered loss pursuant to Subsection 10 of this Coverage Section; or
- (f) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive or exemplary damages or the multiple portion of any multiplied damages.

Plan means:

- (a) any **Sponsored Plan**; and
- (b) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for **Employees**.



Settlement Fees means any fees, fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Settlement Fees** shall not include (a) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (b) any fees, fines, penalties or sanctions relating to a **Plan** which, as of the earlier of the inception of this Coverage Section or the inception of the first policy in an uninterrupted series of policies issued by the Company of which this Coverage Section is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Settlement Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service or the U.S. Department of Labor, including but not limited to, the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, or any similar program administered by a governmental authority located outside the United States.

Settlement Program Notice means prior written notice to the Company by the **Insured** of the **Insured's** intent to enter into a **Settlement Program**.

Sponsored Plan means:

- (a) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each are defined in **ERISA**, which is operated solely by the **Organization** or jointly by the **Organization** and a labor organization solely for the benefit of the **Employees** or **Executives** of the **Organization** located anywhere in the world and which existed on or before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions or which is created or acquired after such inception date; provided that any coverage with respect to any such Plan created or acquired during the **Policy Period** shall apply only for **Wrongful Acts** committed, attempted, or allegedly committed or attempted after the effective date of such creation or acquisition and shall be subject to Subsection 9, Changes in Exposure, of the General Terms and Conditions;
- (b) any other employee benefit plan or program not subject to **ERISA** which is sponsored solely by the **Organization** for the benefit of the **Employees** or **Executives**, including any fringe benefit or excess benefit plan;
- (c) any other plan or program otherwise described in paragraphs (a) or (b) above while such plan or program is being actively developed, formed or proposed by the **Organization** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this Coverage Section for any **Claim** against an **Insured** in a **settler** or similar uninsured capacity with respect to any plan or program; and
- (d) any other plan, fund, or program specifically included as a **Sponsored Plan** by endorsement to this Coverage Section.

Sponsored Plan shall not include any employee stock ownership plan or any multi-employer plan.

Wrongful Act means with respect to any **Plan**:

- (a) any breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of the **Sponsored Plan** in their capacity as such fiduciaries;



- (b) any negligent act, error or omission in the **Administration** of any **Plan** committed, attempted, or allegedly committed or attempted by an **Insured** in the **Insured's** capacity as such; or
- (c) any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Sponsored Plan**.

Exclusions

- 4. The Company shall not be liable for **Loss** on account of any **Claim** against an **Insured**:
 - (a) based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (b) based upon, arising from or in consequence of any demand, suit, or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 - (c) based upon, arising from or in consequence of:
 - (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,including but not limited to any **Claim** for financial loss to any **Organization** or **Plan** or creditors based upon, arising from or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 4(c); provided that this Exclusion 4(c) shall not apply to (A) any **Claim** by or on behalf of a beneficiary of or participant in any **Sponsored Plan** based upon, arising from or in consequence of the diminution in value of any securities owned by the **Sponsored Plan** in any organization other than the **Organization**, if such diminution in value is allegedly as a result of the matters described above in this Exclusion 4(c), or (B) **Loss** (other than fees and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing **Pollutants**) incurred by an **Insured Person** for which the **Organization** is not permitted by common or statutory law to indemnify or for which the **Organization** is not able to indemnify by reason of **Financial Impairment**;
 - (d) for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
 - (e) based upon, arising from or in consequence of the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided that this Exclusion 4(e) shall not apply to the extent that:
 - (i) an **Insured** would have been liable in the absence of the contract or agreement; or



- (ii) the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established;
 - (f) for the failure of the **Insured** to comply with any workers' compensation, unemployment insurance, social security or disability benefits law or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, except (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (ii) the Health Insurance Portability and Accountability Act of 1996, or (iii) any amendments to or any rules or regulations promulgated under such Acts;
 - (g) made against a **Subsidiary** or **Affiliate** or an **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary** or **Affiliate**;
 - (h) based upon, arising from, or in consequence of:
 - (i) the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured** as evidenced by a final and non-appealable judgment or adjudication, or by any plea of guilty, nolo contendere or no contest, or by an *Alford* plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970); or
 - (ii) such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled;
 - (i) based upon, arising from or in consequence of any employee stock ownership plan or any multi-employer plan created before or during the **Policy Period**.
5. The Company shall not be liable for **Loss** other than **Defense Costs**:
- (a) which constitutes the return or reversion to an employer of any contribution or asset of a **Plan**;
 - (b) which constitutes (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:
 - (A) an **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
 - (B) recovery for the benefits is based upon a covered **Wrongful Act**; or
 - (c) which is based upon, arising from or in consequence of the failure to collect an employer's contributions owed to a **Plan** unless the failure is because of the negligence of any **Insured**.

Severability of Exclusions

- 6. (a) No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of applying Exclusion 4(h) of this Coverage Section.
 - (b) Only facts pertaining to and knowledge possessed by any **Executive** shall be imputed to such **Organization** or **Plan** for the purpose of applying Exclusion 4(h) of this Coverage Section.
-



Coordination with Employment Practices Liability Coverage Section

7. Any **Loss** otherwise covered by both (i) this Coverage Section and (ii) any employment practices liability coverage section or policy issued by the Company or by any affiliate of the Company (an "Employment Practices Liability Coverage"), first shall be covered as provided in, and shall be subject to the limit of liability and retention applicable to the Employment Practices Liability Coverage. Any remaining **Loss** otherwise covered by this Coverage Section which is not paid under the Employment Practices Liability Coverage shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to this Coverage Section; provided the Retention applicable to such **Loss** under this Coverage Section shall be reduced by the amount of **Loss** otherwise covered by this Coverage Section which is paid by the **Insureds** as the retention under such Employment Practices Liability Coverage.

Limit of Liability and Retention

8. (a) The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during each **Policy Year**, whether covered under one or more Insuring Clauses, shall be the Limit of Liability for each **Policy Year** set forth in Item 2(A) of the Declarations for this Coverage Section. The Company's maximum liability for all **Defense Costs** and **Settlement Fees** with respect to each **Settlement Program Notice** for which coverage is provided under Insuring Clause 2, and the Company's maximum aggregate liability for all **Defense Costs** and **Settlement Fees** with respect to all such **Settlement Program Notices** first given to the Company during each **Policy Year**, shall be the Sublimit set forth in Item 2(B) of the Declarations for this Coverage Section, which amount is part of and not in addition to the Limit of Liability set forth in Item 2(A) of the Declarations for this Coverage Section.
- (b) Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 5 of the Declarations of this Coverage Section, **Defense Costs** shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of **Defense Costs** by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of **Loss** other than **Defense Costs**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 5 of the Declarations of this Coverage Section, **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of **Defense Costs** by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of **Defense Costs** or other **Loss**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

- (c) No Retention shall apply to any **Loss** under this Coverage Section incurred by an **Insured Person** if such **Loss** cannot be indemnified by an **Organization** or **Plan** because such **Organization** or **Plan** is either not legally permitted or required to indemnify, or is unable to indemnify, such **Insured Person** by reason of **Financial Impairment**. The Company's liability for all other covered **Loss** (as determined by Subsection 10 of this Coverage Section, if applicable) shall apply only to **Loss** on account of each **Claim** which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be reduced only by **Loss** otherwise covered under this Coverage Section and shall be borne by the **Insureds** uninsured and at their own risk.



- (d) If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (e) All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made, or on the date the earliest of such **Related Claims** is treated as having been made in accordance with Subsection 6(b) of the General Terms and Conditions, regardless of whether such date is before or during the **Policy Period**.
- (f) The limit of liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Year**.

Defense and Settlement

- 9. (a) The Company shall have the right and duty to defend any **Claim** covered by this Coverage Section, even if any of the allegations in such **Claim** are groundless, false or fraudulent. Defense counsel shall be selected by the Company. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (b) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 5 of the Declarations of this Coverage Section, if an **Insured** in any **Claim** withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a "Proposed Settlement"), the **Insureds** will thereafter be responsible for defending such **Claim** at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for **Loss** with respect to any such **Claim** will not exceed the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 5 of the Declarations of this Coverage Section, in the event an **Insured** in any **Claim** withholds consent to a Proposed Settlement, the Company's liability with respect to such **Claim** shall not exceed:

- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement; plus
- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limits of Liability for such **Claim**. The remaining thirty percent (30%) of **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insureds** uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection 10(a) Allocation.
- (c) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent, which shall not be unreasonably withheld. The Company shall not be liable for any element of **Loss** incurred, for any obligation assumed, or for any admission made, by any **Insured** without the Company's prior written consent.



- (d) The Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the maximum Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.
- (e) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions, then the Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Combined Maximum Aggregate Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.
- (f) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requires and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

Allocation

- 10. (a) If both **Loss** covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such **Claim** shall apply as follows:
 - (i) **Defense Costs**: One hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss**; and
 - (ii) **Loss other than Defense Costs**: All remaining loss incurred by the **Insured** on account of such **Claim** shall be allocated by the Company between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insureds** from such settlement.
- (b) If the **Insureds** and the Company cannot agree on an allocation of loss:
 - (i) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
 - (ii) the Company, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.



Other Insurance

11. If any **Loss** under this Coverage Section is insured under any other valid insurance policy(ies), then this Coverage Section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the applicable retention (or deductible) and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Coverage Section. Any payment by **Insureds** of a retention or deductible under such other insurance shall deplete, by the amount of such payment which would otherwise be covered under this Coverage Section, the applicable Retention under this Coverage Section.
-

Termination of Plan

12. If an **Organization** terminates a **Plan** before or after the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, coverage under this Coverage Section with respect to such terminated **Plan** and its **Insureds** shall continue until termination of this Coverage Section for those who were **Insureds** prior to or at the time of such **Plan** termination or who would have been **Insureds** at the time of such termination if this Coverage Section had then been in effect. Such continuation of coverage shall apply with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to or after the date the **Plan** was terminated.
-

SPECIMEN



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

Insuring Clauses

Kidnapping and Extortion Coverage Insuring Clause 1

1. The Company shall reimburse the **Organization** for direct loss of property or other consideration surrendered as payment by or on behalf of an **Organization** resulting from **Kidnapping, Extortion Threat or Cyber Extortion**.
-

Custody Coverage Insuring Clause 2

2. The Company shall reimburse the **Organization** for direct loss caused by the actual destruction, disappearance, confiscation or unlawful taking of property or other consideration, which is intended as payment for a covered **Kidnapping, Extortion Threat or Cyber Extortion**, while being held or conveyed by a person authorized by an **Organization**.
-

Expense Coverage Insuring Clause 3

3. The Company shall reimburse the **Organization** for **Expenses** paid by an **Organization** resulting directly from a covered **Kidnapping, Extortion Threat or Cyber Extortion**, or resulting directly from a **Hijacking, Political Threat or Wrongful Detention**.
-

Accidental Loss Coverage Insuring Clause 4

4. The Company shall pay the Benefit Amount for **Accidental Loss** resulting directly from a covered **Kidnapping** or resulting directly from a **Hijacking or Wrongful Detention**.
-

Legal Liability Costs Coverage Insuring Clause 5

5. The Company shall reimburse the **Organization** for **Legal Liability Costs**.
-

Definitions

6. For the purposes of this Coverage Section:

Accidental Loss means **Loss of Life, Loss of Use, Loss of Sight, Loss of Speech and/or Hearing or Mutilation** of an **Insured Person** when such **Accidental Loss**:

- (a) is sudden, unforeseen, unexpected and independent of any illness, disease or other bodily malfunction of such **Insured Person**; and
- (b) happens by chance and arises from a source external to such **Insured Person**.



Computer System means a computer and all input, output, processing, storage, off-line media library and communication facilities which are connected to such computer, provided that such computer and facilities are owned and operated or leased and operated by an **Organization**.

Consequential Personal Financial Loss means pecuniary loss incurred by an **Insured Person**, including pecuniary loss resulting directly from the failure to renew insurance contracts, the failure to exercise stock options or the failure to respond to margin or loan calls by financial institutions.

Contaminate means to introduce a foreign material or substance, which would render any tangible property unfit for use or sale.

Cyber-attack means a set of unauthorized **Instructions** that are designed to alter, damage or destroy information within a **Computer System** without the authorization of an **Organization**, including those **Instructions** that are self-replicating or self-propagating and are designed to contaminate computer programs or computer data, consume computer resources or in some fashion usurp the normal operation of a **Computer System**.

Cyber Extortion means a threat or threats made directly against an **Organization** to:

- (a) alter, damage, destroy or render unusable any **Data** owned by such **Organization** or for which such **Organization** is legally liable; or
- (b) disseminate, divulge or utilize a **Record**,

by the fraudulent input of **Data** by means of a **Cyber-attack** into a **Computer System** by a person or group, whether acting alone or in collusion with others, where such person or group has fraudulently accessed or alleges to have fraudulently accessed such **Computer System** and is demanding payment or a series of payments, in exchange for the mitigation or removal of such threats. However, such threat shall not constitute a **Cyber Extortion** unless, prior to surrendering property or other consideration as payment by or on behalf of an **Organization**, such **Organization** conducts a reasonable investigation and reasonably determines that such threat is technologically credible.

All such threats:

- (i) related by a common committed, attempted or threatened act; or
- (ii) made contemporaneously against the same **Organization** or involving the same **Data**, **Record** or **Cyber-attack**,

will be deemed to constitute a single **Cyber Extortion**.

Data means information, knowledge, facts, concepts or instructions which are processed and stored in a **Computer System**.

Employee means any:

- (a) natural person while in the regular service of an **Organization** in the ordinary course of such **Organization's** business, whom such **Organization** compensates by **Salary** and has the right to govern and direct in the performance of such service, including any part-time, seasonal, leased or temporary employee;
- (b) natural person volunteer while in the regular service of an **Organization** in the ordinary course of such **Organization's** business, whom such **Organization** has the right to govern and direct in the performance of such service; or
- (c) **Executive** while performing acts within the scope of the usual duties of an **Employee**.



Employee shall not mean any agent, broker, factor, commission merchant, consignee, contractor, independent contractor, subcontractor or other similar representative.

Event Benefit Amount means that amount set forth in Item 2(D)(ii) of the Declarations for this Coverage Section.

Executive means any natural person who was, now is or shall become a duly elected or appointed director, officer, trustee, in-house general counsel or duly constituted committee member of any **Organization** chartered in the United States of America.

Expenses means:

- (a) solely in connection with a **Kidnapping, Extortion Threat, Political Threat, Hijacking or Wrongful Detention**, only the reasonable fees and expenses for or cost of:
 - (i) an independent negotiator or consultant;
 - (ii) an independent public relations consultant;
 - (iii) travel and accommodations of an **Insured Person**;
 - (iv) independent legal advice (other than **Legal Liability Costs**);
 - (v) independent security guard services for up to fifteen (15) days; provided that, with respect to such services incurred in connection with any **Political Threat**, the **Organization** shall bear uninsured and at its own risk twenty-five percent (25%) of such services, and the Company's liability shall apply only to the remaining seventy-five percent (75%) of such services;
 - (vi) advertising, communications and recording equipment;
 - (vii) an independent forensic analyst;
 - (viii) assessment of such **Extortion Threat** or **Political Threat** by an independent security consultant;
 - (ix) interest for a loan taken by an **Organization** for property or other consideration surrendered as payment under Insuring Clause 1;
 - (x) a reward paid by an **Organization** to a natural person who provides information not otherwise available leading to the arrest and conviction of the person(s) responsible for such **Kidnapping, Extortion Threat, Wrongful Detention or Hijacking**;
 - (xi) the **Salary** which an **Organization** continues to pay an **Employee** following such **Kidnapping, Wrongful Detention or Hijacking** of such **Employee**. Such coverage shall apply to the **Salary** of such **Employee** in effect at the time of such **Kidnapping, Wrongful Detention or Hijacking** and will end thirty (30) days after such **Employee** is released or suffers **Loss of Life**, or sixty (60) months after such **Kidnapping, Wrongful Detention or Hijacking** began, whichever is more recent;
 - (xii) the salary or wages which an **Organization** pays a newly hired natural person to conduct the duties of an **Employee** following such **Kidnapping, Wrongful Detention, or Hijacking** of such **Employee**. Such coverage shall apply up to the **Salary** of such **Employee** in effect at the time of such **Kidnapping, Wrongful Detention, or Hijacking** and will end thirty (30) days after such **Employee** is released or suffers **Loss of Life**, or



sixty (60) months after such **Kidnapping, Wrongful Detention** or **Hijacking** began, whichever is more recent;

- (xiii) **Consequential Personal Financial Loss** which an **Insured Person** suffers as the result of such **Insured Person's** inability to attend to personal financial matters;
- (xiv) reasonable medical, cosmetic, psychiatric and dental expenses incurred following an **Insured Person's** release;
- (xv) reasonable expenses of rest and rehabilitation, including meals and recreation, for up to thirty (30) days, when such expenses are incurred within twelve (12) months following an **Insured Person's** release;
- (b) solely in connection with an **Extortion Threat to Contaminate Merchandise, Recall Expenses**;
- (c) solely in connection with a **Cyber Extortion**, only the reasonable fees and expenses for or cost of:
 - (i) an independent negotiator;
 - (ii) assessment of such **Cyber Extortion** by an independent network security consultant;
 - (iii) an independent public relations consultant;
 - (iv) travel and accommodations of an **Insured Person**;
 - (v) independent legal advice (other than defense costs);
 - (vi) interest for a loan taken by an **Organization** for property or other consideration surrendered as payment under Insuring Clause 1;
 - (vii) a reward paid by an **Organization** to a natural person who provides information not otherwise available leading to the arrest and conviction of the person(s) responsible for such **Cyber Extortion**;
- (d) other reasonable expenses incurred by an **Organization**, subject to the Company's prior written approval.

Extortion Threat means a threat or threats made solely and directly against an **Organization** to:

- (a) commit a **Kidnapping** of, do bodily harm to, or wrongfully abduct or detain any **Insured Person**;
- (b) damage, destroy or **Contaminate** any **Property**;
- (c) disseminate, divulge or utilize any **Proprietary Information**; or
- (d) disseminate or make public negative information regarding **Merchandise** that has been the subject of a prior threat under (b) above,

by a person or group, whether acting alone or in collusion with others, demanding payment or a series of payments, in exchange for the mitigation or removal of such threats.



All such threats:

- (i) related by a common committed, attempted or threatened act; or
- (ii) made contemporaneously against the same **Organization** or involving the same **Insured Person, Property, Proprietary Information or Merchandise**,

will be deemed to constitute a single **Extortion Threat**.

Hijacking means the unlawful detention of an **Insured Person** (other than a **Kidnapping**) by violence or threat of violence by a person or group, where such unlawful detention:

- (a) occurs while traveling on or in an aircraft, watercraft or motor vehicle for a period in excess of four (4) hours; or
- (b) occurs while traveling on or in an aircraft or watercraft and results in such **Insured Person's Loss of Life**.

Instructions means an ordered set of **Data** representing coded information that, when executed by a **Computer System**, causes such **Computer System** to process **Data** or perform one or more operations.

Insured(s) means any **Organization** and any **Insured Person**.

Insured Person means:

- (a) any **Employee**;
- (b) any **Relative** of an **Employee**;
- (c) any natural person who is employed in the household of an **Employee** while in the home of such **Employee**;
- (d) any natural person who is a legal resident in the home of an **Employee** or a guest while in the home of an **Employee**;
- (e) any customer or guest of an **Organization** while on the **Premises** of such **Organization**;
- (f) any customer or guest of an **Organization** while traveling on or in an aircraft, watercraft or motor vehicle with an **Employee**; or
- (g) any natural person who is temporarily retained by an **Organization** to deliver a ransom or extortion payment.

Kidnapping means an actual or alleged wrongful abduction and holding under duress or by fraudulent means of an **Insured Person** by a person or a group, whether acting alone or in collusion with others, demanding payment or a series of payments by an **Organization**, in exchange for the release of such **Insured Person**.

Legal Liability Costs means the reasonable defense costs incurred by an **Organization** and damages which an **Organization** becomes legally obligated to pay as a result of a judgment or settlement in any suit brought by an **Insured Person** (or the estate, heirs or legal representatives of such **Insured Person**) against such **Organization** alleging negligence or incompetence:



- (a) in the hostage retrieval operations or negotiations in a covered **Kidnapping** or **Extortion Threat** (as described in subparagraph (a) of the definition of **Extortion Threat**) or in a **Hijacking** or **Wrongful Detention** of such **Insured Person**; or
- (b) in the prevention of a covered **Kidnapping** or **Extortion Threat** (as described in subparagraph (a) of the definition of **Extortion Threat**) or in a **Hijacking** or **Wrongful Detention** of such **Insured Person**;

provided that such **Organization** agrees as a condition precedent to coverage under Insuring Clause 5 to cooperate with the Company in conducting the defense or in negotiating the settlement of such suit.

Loss of Life means:

- (a) death, including clinical death, determined by a medical examiner or similar local governing medical authority; or
- (b) the absence of communication from an **Insured Person** or those responsible for the **Kidnapping, Hijacking** or **Wrongful Detention** of such **Insured Person** for a period of two (2) years following the later of:
 - (i) such **Kidnapping, Hijacking** or **Wrongful Detention**;
 - (ii) the last communication from such **Insured Person**; or
 - (iii) the last communication from those responsible for such **Kidnapping, Hijacking** or **Wrongful Detention**.

Loss of Life Benefit Amount means that amount set forth in Item 2(D)(i) of the Declarations for this Coverage Section.

Loss of Sight means the permanent loss of sight to the extent of legal blindness.

Loss of Speech and/or Hearing means the permanent total loss of the capability of speech and/or hearing.

Loss of Use means the permanent total loss of function of a foot, hand, or thumb and index finger.

Merchandise means an **Organization's** inventory, raw materials, work in progress or products manufactured or distributed by an **Organization**.

Mutilation means the permanent total loss of an entire finger, toe, ear, nose or genital organ.

Political Threat means a politically motivated threat or threats made solely and directly against an **Organization** to do bodily harm to an **Employee** or a **Relative** of an **Employee** by a person or group:

- (a) acting as an agent of or with tacit approval of any government or governmental entity; or
- (b) acting or purporting to act on behalf of any political terrorist or insurgent party, organization or group.

All such threats:

- (i) related by a common committed, attempted or threatened act; or
- (ii) made contemporaneously against the same **Employee** or **Relative** of an **Employee**,



will be deemed to constitute a single **Political Threat**.

Premises means buildings or facilities occupied by an **Organization** in conducting its business.

Property means:

- (a) all **Premises** and **Merchandise** of an **Organization**;
- (b) any other real or tangible personal property owned or leased by an **Organization**; and
- (c) any other tangible personal property for which an **Organization** is legally liable, provided that such tangible personal property is located on the **Premises** or on any land adjacent thereto occupied by such **Organization** in conducting its business.

Proprietary Information means any confidential, private or secret information of an **Organization** and unique to such **Organization's** business, contained in or on drawings, negatives, microfilm, tapes, transparencies, manuscripts, prints, computer discs or other records of a similar nature, provided that such information is protected by physical or electronic control or other reasonable efforts to maintain nondisclosure of such information.

Recall Expenses means:

- (a) reasonable expenses for transportation; and
- (b) other reasonable expenses, subject to the Company's prior written approval, incurred by an **Organization** in the withdrawal, physical inspection or destruction of **Merchandise**.

Record means information about a customer held by an **Organization** pertaining to that customer's relationship with such **Organization**, which is not publicly available and is stored in an electronic medium, provided that such information is protected by electronic control to maintain nondisclosure of such information.

Relative means spouses, **Domestic Partner**, siblings, ancestors, spouses' ancestors, lineal descendants or lineal descendants' spouses. Lineal descendants include adopted children, foster children and stepchildren. Ancestors include adoptive parents and stepparents.

Salary means compensation an **Organization** pays an **Employee**, including bonus, commission, incentive payments, and the cost of health, welfare and pension benefits.

Wrongful Detention means the wrongful involuntary confinement of an **Insured Person** (other than a **Kidnapping** or **Hijacking**) by a person or group, for a period of not less than twenty-four (24) hours.

Exclusions

- 7. No coverage will be available under this Coverage Section for:
 - (a) loss of property or other consideration due to any fraudulent, dishonest or criminal act of an identifiable **Employee**, whether acting alone or in collusion with others; provided that this Exclusion 7(a) shall not apply to the extent that coverage under this Coverage Section is excess of the amount available to an **Organization**, whether collectible or not, under any other bond, insurance or indemnity which would cover such loss in whole or in part;



- (b) loss resulting from fraud by an **Insured Person**, whether acting alone or in collusion with others, allegedly the subject of a **Kidnapping, Extortion Threat, Wrongful Detention, Political Threat or Hijacking** if an **Organization** had not, prior to any payment, made reasonable efforts to determine that such **Kidnapping, Extortion Threat, Wrongful Detention, Political Threat or Hijacking** was genuine;
 - (c) loss of property or other consideration surrendered or intended to be surrendered as payment by or on behalf of an **Insured Person** unless an **Organization** agrees that such payment is on behalf of such **Organization**;
 - (d) loss of income not realized as the result of a covered loss;
 - (e) **Recall Expenses** for or due to:
 - (i) refunds for, the value of or the cost of replacing any withdrawn, damaged or destroyed **Merchandise**; or
 - (ii) any loss, fees or expenses incurred for any known or suspected defect, deficiency or use of substandard or flawed materials necessitating the withdrawal, physical inspection or destruction of **Merchandise** in the absence of an **Extortion Threat** against such **Merchandise**;
 - (f) loss arising from **Wrongful Detention** or **Political Threat** due to:
 - (i) any violation of law of the host country by an **Insured**; or
 - (ii) failure of an **Insured** to procure or maintain proper immigration, work, residence or similar visas, permits or other documentation;
 - (g) loss sustained by one **Insured** to the advantage of any other **Insured**;
 - (h) loss unless the **Kidnapping, Extortion Threat, Cyber Extortion, Political Threat, Wrongful Detention or Hijacking** occurs prior to:
 - (i) termination of this Coverage Section as to any applicable **Insured** and is discovered and communicated in writing to the Company as soon as practicable, but in no event later than sixty (60) days following the effective date of such termination;
 - (ii) termination of any Insuring Clause or termination of any particular coverage offered under any Insuring Clause and is discovered and communicated in writing to the Company as soon as practicable, but in no event later than sixty (60) days following the effective date of such termination; or
 - (iii) termination of this Coverage Section in its entirety and is discovered and communicated in writing to the Company as soon as practicable, but in no event later than sixty (60) days following the effective date of such termination.
 - (i) loss resulting from fraud by an **Insured Person**, whether acting alone or in collusion with others, allegedly the subject of an **Accidental Loss**;
8. No coverage will be available under Insuring Clause 2, 3, 4 or 5 for loss of property or other consideration actually surrendered as a ransom or extortion payment covered under Insuring Clause 1.
9. No coverage will be available under Insuring Clause 1 for:



- (a) loss of property or other consideration surrendered away from the **Premises** in any face to face encounter involving the use or threat of force or violence unless surrendered by a person in possession of such property or other consideration at the time of such surrender for the sole purpose of conveying it to pay a previously communicated ransom or extortion demand and unless actually surrendered to those responsible for such demand or their designee; or
- (b) loss of property or other consideration surrendered on the **Premises** unless brought onto the **Premises** after receipt of the ransom or extortion demand for the sole purpose of paying such demand and unless actually surrendered to those responsible for such demand or their designee.

Beneficiary

- 10. The **Loss of Life Benefit Amount** will be paid to the **Insured Person's** designated beneficiary. The Benefit Amount for all other **Accidental Loss** will be paid to the **Insured Person**, unless otherwise directed by the **Insured Person**.

If an **Insured Person** suffers **Loss of Life** and has not designated a beneficiary, or if the designated beneficiary is not alive, the Company will pay covered loss in the following order:

- (a) to the spouse;
 - (b) in equal shares to the surviving children;
 - (c) in equal shares to the surviving parents;
 - (d) in equal shares to the surviving brothers and sisters; or
 - (e) to the estate,
- of such **Insured Person**.

Limits of Liability and Retention

- 11. The Company shall only be liable for a **Kidnapping, Extortion Threat, Cyber Extortion, Hijacking, Political Threat or Wrongful Detention** that first occurs during the **Policy Period**.

The Company's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss, as set forth in Item 2 in the Declarations for this Coverage Section, regardless of the number of **Insureds** sustaining such loss.

The Company's maximum liability shall not exceed the Limit of Liability:

- (a) Applicable to Insuring Clause 1 as set forth in Item 2(A) of the Declarations for this Coverage Section: for all loss of property and other consideration surrendered as ransom and extortion payments arising from one **Extortion Threat, Kidnapping or Cyber Extortion** and any related **Extortion Threat, Kidnapping or Cyber Extortion**, or a series of related **Extortion Threats, Kidnappings or Cyber Extortions**;
- (b) Applicable to Insuring Clause 2 as set forth in Item 2(B) of the Declarations for this Coverage Section: for all loss of property and other consideration intended as ransom and extortion payments arising from one **Extortion Threat, Kidnapping or Cyber Extortion** and any related **Extortion Threat, Kidnapping or Cyber Extortion**, or a series of related **Extortion Threats, Kidnappings or Cyber Extortions**;



- (c) Applicable to Insuring Clause 3 as set forth in Item 2(C) of the Declarations for this Coverage Section: for all **Expenses** arising from one **Extortion Threat, Kidnapping, Cyber Extortion, Hijacking, Political Threat or Wrongful Detention** and any related **Extortion Threat, Kidnapping, Cyber Extortion, Hijacking, Political Threat or Wrongful Detention**, or a series of related **Extortion Threats, Kidnappings, Cyber Extortions, Hijackings, Political Threats or Wrongful Detentions**;
- (d) Applicable to Insuring Clause 4:
- (i) If an **Insured Person** suffers a covered **Mutilation**, the Company's maximum liability for such **Mutilation** shall be the amount equal to the percentage, set forth in Item 2(D)(iii) of the Declarations for this Coverage Section, of the **Loss of Life Benefit Amount**;
 - (ii) If an **Insured Person** suffers a covered **Accidental Loss** (other than **Mutilation** or **Loss of Life**), the Company's maximum liability for such **Accidental Loss** shall be the amount equal to the percentage, set forth in Item 2(D)(iv) of the Declarations for this Coverage Section, of the **Loss of Life Benefit Amount**;
 - (iii) If an **Insured Person** suffers a covered **Loss of Life**, the Company's maximum liability for such **Loss of Life** shall be the **Loss of Life Benefit Amount**;
 - (iv) If an **Insured Person** suffers more than one covered **Accidental Loss**, the Company's maximum liability for all such **Accidental Loss** shall be calculated based on (i), (ii) and (iii) above; provided that in no event shall the Company's maximum liability for all such **Accidental Loss** exceed the **Loss of Life Benefit Amount**; or
 - (v) If more than one **Insured Person** suffers covered **Accidental Loss** resulting from the same **Kidnapping, Wrongful Detention, Extortion Threat, Political Threat or Hijacking**, the Company's maximum liability for all such **Accidental Loss** shall be calculated based on (i), (ii), (iii) and (iv) above; provided that in no event shall the Company's maximum liability for all such **Accidental Loss** exceed the **Event Benefit Amount**, which shall be divided proportionately among such **Insured Persons**; or
- (e) Applicable to Insuring Clause 5 as set forth in Item 2(E) of the Declarations for this Coverage Section: for all **Legal Liability Costs** arising from one **Kidnapping, Hijacking, Wrongful Detention or Extortion Threat** (as described in subparagraph (a) of the definition of **Extortion Threat**) and any related **Kidnapping, Hijacking, Wrongful Detention, or Extortion Threat** (as described in subparagraph (a) of the definition of **Extortion Threat**), or a series of related **Kidnappings, Hijackings, Wrongful Detentions or Extortion Threats** (as described in subparagraph (a) of the definition of **Extortion Threat**).

The Company's maximum liability for all **Recall Expenses** shall be the Sublimit as set forth in Item 2(C)(i) of the Declarations for this Coverage Section. Such amount shall be part of, and not in addition to, the Limit of Liability as set forth in Item 2(C) of the Declarations for this Coverage Section.

The Company's maximum liability for all rest and rehabilitation expenses (as described in subparagraph (a)(xv) of the definition of **Expenses**) shall be the Sublimit as set forth in Item 2(C)(ii) of the Declarations for this Coverage Section. Such amount shall be part of, and not in addition to, the Limit of Liability as set forth in Item 2(C) of the Declarations for this Coverage Section.

The Company's liability under this Coverage Section shall apply only to that part of each loss which is in excess of the applicable Retention set forth in Item 4 of the Declarations for this Coverage Section.



Non-Accumulation of Liability

12. When there is more than one **Insured**, the maximum liability of the Company for loss sustained by any or all **Insureds** shall not exceed the amount for which the Company would be liable if all losses were sustained by any one **Insured**.

Regardless of the number of years this coverage remains in effect and the total premium amounts due or paid, whether under this Coverage Section, any prior bond or policy, or any renewal or replacement of this Coverage Section, the liability of the Company with respect to any loss shall not be cumulative from year to year or from policy period to policy period.

Loss Sustained

13. A loss shall be deemed to have been sustained under:
- (a) Insuring Clause 1, at the time of the surrender of the ransom or extortion payment;
 - (b) Insuring Clause 2, at the time of the actual destruction, disappearance, confiscation or unlawful taking of the property or other consideration;
 - (c) Insuring Clause 3, at the time of the payment of incurred **Expenses** by the **Organization**;
 - (d) Insuring Clause 4, at the time of the **Accidental Loss**; or
 - (e) Insuring Clause 5, at the time the **Organization** has made payment for any incurred expense, judgment or settlement.

Personal Assets

14. In the event of a ransom or extortion demand directed against an **Insured Person** rather than against an **Organization**, property or other consideration surrendered or intended to be surrendered by or on behalf of such **Insured Person** and the following **Expenses**: subparagraphs (a)(i) through (a)(x) and (a)(xiii) through (a)(xv) of the definition of **Expenses**; incurred by or on behalf of such **Insured Person** shall, at the option of such **Organization**, be considered property or other consideration surrendered or intended to be surrendered on behalf of such **Organization** and **Expenses** incurred by such **Organization**.

Proof of Loss and Legal Proceedings

15. Knowledge possessed by, or discovery by any **Executive** shall be deemed knowledge possessed by, or discovery by, all **Insureds**.

It is a condition precedent to coverage that at the earliest practicable moment after the occurrence of any loss hereunder the **Organization** shall give the Company written notice thereof and shall within four (4) months after such occurrence furnish to the Company affirmative proof of loss with full particulars.

No **Insured** shall institute legal proceedings against the Company for recovery of any loss under this Coverage Section after the expiration of a period of two (2) years, or any minimum period of time required by law, immediately following the time such loss was sustained.



Valuation and Foreign Currency

16. The Company shall pay:
- (a) the cost of blank books, pages or tapes or other blank materials to replace lost or damaged books of account or other records;
 - (b) the least of:
 - (i) the actual cash value of any other property or other consideration at the time of loss; or
 - (ii) the actual cost to repair or replace such other property or consideration with that of similar quality and value; or
 - (c) the United States of America dollar value of foreign currency based on the rate of exchange published in The Wall Street Journal on the day loss involving foreign currency is discovered.

Recoveries

17. Recoveries for any loss covered under this Coverage Section, whether effected by the Company or by an **Insured**, less the cost of recovery, shall be distributed as follows:
- (a) first, to an **Insured** for the amount of such loss, otherwise covered, in excess of the applicable Limits of Liability;
 - (b) second, to the Company for the amount of such loss paid to an **Insured** as covered loss;
 - (c) third, to an **Insured** for the Retention applicable to such loss;
 - (d) fourth, to an **Insured** for the amount of such loss not covered under this Coverage Section.

Recovery from reinsurance or indemnity of the Company shall not be deemed a recovery hereunder.

Other Insurance

18. If any loss covered by this Coverage Section is insured under any other insurance policy(ies), prior or current, then this Coverage Section shall cover such loss, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such loss is in excess of the amount of the applicable retention (or deductible) and limit of liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Coverage Section.

The Company's liability under this Coverage Section for any loss of personal assets under Subsection 14 Personal Assets, other than a loss sustained by an **Employee**, shall be reduced by any amount paid or payable on account of such loss under other insurance issued by the Company or any of its subsidiaries or affiliated companies.