



POLICY DECLARATIONS

PRIVATE COMPANY MANAGEMENT LIABILITY INSURANCE POLICY INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS, INCLUDING JUDGMENTS OR SETTLEMENT AMOUNTS, MAY BE REDUCED BY AMOUNTS INCURRED FOR COSTS OF DEFENSE. FURTHER NOTE THAT AMOUNTS INCURRED FOR COSTS OF DEFENSE MAY BE APPLIED AGAINST THE APPLICABLE RETENTION AMOUNT.

PLEASE READ THIS POLICY CAREFULLY.

Item A

Policy Number:

Renewal of Policy Number:

Item B

Named Insured:

Broker Name:

Mailing Address:

Mailing Address:

Item C

Policy Period:

From _____ to _____ at 12:01 A.M. Standard Time at your mailing address shown above.

Item D

LIMITS OF LIABILITY*	Shared Limit	Separate Limit	Aggregate Limit
Aggregate Limit for all Loss under all Coverages combined:			
Limit for all Loss for all Claims other than Employment Practices Claims and/or Securities Claims			
Limit for all Loss for all Claims for Employment Practices Wrongful Acts			
Limit for all Loss for all Claims for Third Party Discrimination			
Limit of Liability for all Loss for all Securities Claims			
SUBLIMITS OF LIABILITY*			
Sublimit for all Loss for all Derivative Demand Investigation Costs			
Sublimit for all Loss for all Crisis Management Expenses			

**Includes Costs of Defense*

Item E

RETENTION*	
COVERAGE PART	RETENTION
Each Claim	
Each Claim alleging an Employment Practices Wrongful Act	
Each Claim alleging Third Party Discrimination	
Each Securities Claim	

*Applies to Costs of Defense

Item F

DISCOVERY PERIOD	
Term	Additional Premium
One Year	100%

Item G

PRIOR AND PENDING LITIGATION DATE	
COVERAGE PART	DATE
Securities Claims:	
Employment Practices Claims:	
All other Claims:	

Item H

Notices to:

Notice of Claim or Potential Claim:

Attn: Claims Department
 ANV Global Services, Inc.,
 101 Hudson Street, Suite 3606
 Jersey City, NJ 07302
 Email: MGAClaims@anv.us.com

All other notices

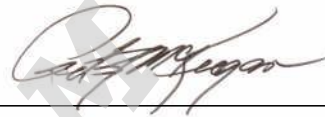
PL Underwriting Group
 ANV Global Services, Inc.
 101 Hudson Street, Suite 3606
 Jersey City, NJ 07302
PLUnderwriting@anv.us.com

Item I

Premium: _____

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY, WE AGREE TO PROVIDE THE INSURED WITH THE INSURANCE AS STATED IN THIS POLICY.

THESE DECLARATIONS, TOGETHER WITH THE COMPLETED AND SIGNED APPLICATION FOR THIS POLICY INCLUDING INFORMATION FURNISHED IN CONNECTION THEREWITH, AND THE COVERAGE FORM AND ANY ENDORSEMENTS ATTACHED HERETO, CONSTITUTE THE ABOVE NUMBERED INSURANCE POLICY.



(Date)

(Authorized Representative)



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THIS IS A CLAIMS MADE AND REPORTED POLICY WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY. COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AND REPORTED DURING THE POLICY PERIOD OR ANY DISCOVERY PERIOD, IF APPLICABLE. WORDS PRINTED IN BOLD FACE, OTHER THAN CAPTIONS, ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

**PRIVATE COMPANY MANAGEMENT LIABILITY INSURANCE POLICY
INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including those furnished in the **Application**, and subject to all terms, conditions and limitations of this Policy, it is agreed:

Section I. Insuring Agreements

- A.** The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** for which such **Insured Person** is not indemnified by the **Company** and which the **Insured Person** is legally obligated to pay as a result of a **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period**, or the applicable Discovery Period pursuant to Section VIII, and reported to the **Insurer** in compliance with Section VII.
- B.** The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to an **Insured Person**, and for which the **Insured Person** has become legally obligated to pay on account of a **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period**, or the applicable Discovery Period pursuant to Section VIII, and reported to the **Insurer** in compliance with Section VII.
- C.** The **Insurer** shall pay on behalf of the **Company** all **Loss** that the **Company** shall be legally obligated to pay as a result of a **Claim** for a **Wrongful Act** first made against the **Company** during the **Policy Period**, or the applicable Discovery Period pursuant to Section VIII, and reported to the **Insurer** in compliance with Section VII.
- D.** The **Insurer** shall pay on behalf of the **Company** all **Derivative Demand Investigation Costs** incurred with the **Insurer's** prior written consent that the **Company** shall become legally obligated to pay as a result of a **Derivative Demand** first received by the **Company** during the **Policy Period**, or the applicable Discovery Period pursuant to Section VIII, for a **Wrongful Act** taking place before or during the **Policy Period**, and reported to the **Insurer** in compliance with Section VII.

Coverage for all **Derivative Demand Investigation Costs** shall not exceed the **Derivative Demand Investigation Costs** Sublimit of Liability set forth in Item D. of the Declarations.

Such Sublimit of Liability shall be the maximum amount that the Insurer shall pay under this Insuring Agreement for all **Derivative Demand Investigation Costs** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Aggregate Limit of this Policy set forth in the Declarations. No Retention shall apply to this Insuring Agreement D.

- E. The **Insurer** shall pay on behalf of the **Company** all **Crisis Management Expenses** incurred with the **Insurer's** written consent, which the **Company** shall become legally obligated to pay as a result of a **Crisis Event** first occurring during the **Policy Period** and reported to the **Insurer** in compliance with Section VII. This Insuring Agreement E. shall be subject to the Sublimit for **Crisis Management Expenses** set forth in the Declarations. The Sublimit for **Crisis Management Expenses** shall be the maximum amount that the **Insurer** shall pay under this Insuring Agreement for all **Crisis Management Expenses** from all **Crisis Events** covered under this Insuring Agreement. Such Sublimit shall be subject to, part of, and not in addition to, the Aggregate Limit of this Policy set forth in the Declarations. No Retention shall apply to this Insuring Agreement E.

Section II. Definitions

- A. "**Affiliate**" shall mean (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, an **Insured**; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to an **Insured**.
- B. "**Application**" shall mean each and every application submitted to the **Insurer** for consideration of this insurance together with any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy. **Application** shall also mean any warranties submitted over the last three (3) years relating to any coverage for which this Policy is a renewal or replacement.
- C. "**Claim**" shall mean
- 1) a written demand for monetary or other legal relief made against any **Insured** (including any request to toll or waive any statute of limitations);
 - 2) a civil, administrative, regulatory or arbitration proceeding, against any **Insured Person** or the **Company** seeking monetary or non-monetary relief, including any proceeding or investigation by or before the U.S. Equal Employment Opportunity Commission ("EEOC") or any other federal, state or local governmental body, commenced by: a) the service of a complaint or similar pleading; or b) the filing of a notice of charges, investigative order or similar document;
 - 3) a criminal investigation or proceeding initiated against any **Insured Person**, in their capacity as such, commenced by the return of an indictment, information or similar pleading in a criminal proceeding against such **Insured Person**;
 - 4) except with respect to an **Employment Practices Claim**, any civil, criminal, administrative or regulatory investigation of an **Insured Person**,
 - a) once such **Insured Person** is identified in writing by such investigating authority as the subject of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding;
 - b) in the case of an investigation by the Securities and Exchange Commission or other federal, state or foreign government authority, after the service of a subpoena or written "Wells" or other notice

from the Securities and Exchange Commission or other federal, state or foreign government authority;

- 5) solely with respect to Insuring Agreement A, and solely with respect to **Costs of Defense**, any written request or subpoena to interview or depose an **Insured Person** in his or her capacity as such or to produce documents by an **Insured Person**, provided such request or subpoena is not part of a regular examination, audit or inspection or part of a general oversight or compliance activity of the **Insured**;
- 6) solely for purposes of coverage afforded under Insuring Clause I. D, a **Derivative Demand**; or
- 7) a **Securities Claim**.

However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement, any government or regulatory audits or inspections or other routine compliance activities.

A **Claim** shall be deemed "made" at the time it is received by an **Insured**.

- D. "**Company**" shall mean the entity or organization identified as the Named Insured in the Declarations and any **Subsidiary**, and in the event of a bankruptcy, shall include the **Company** and any **Subsidiary** as a debtor in possession, if any, as such term is used in Chapter 11 of the United States Bankruptcy Code.
- E. "**Costs of Defense**" shall mean reasonable and necessary legal fees, costs and expenses incurred subject to Section VI, resulting solely from the investigation, defense or appeal of any **Claim** against an **Insured**, (including the costs of an appeal bond, attachment bond or similar bond but will not include the obligation to apply for or furnish such bonds). **Costs of Defense** shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**. **Costs of Defense** shall not include any fees, costs or expenses incurred prior to the date that a **Claim** is first reported to the **Insurer**. **Costs of Defense** will, however, include legal fees necessary to respond to a potential **Claim** identified under Section VII. B. if incurred at the **Insurer's** request and direction.
- F. "**Crisis Event**" shall mean one of the following events which, in the good faith opinion of the Chief Financial Officer of the **Company**, did cause or is reasonably likely to cause damage to the public confidence in the **Company**:
 - 1) *Negative earnings or sales announcement*
The public announcement of the **Company's** past or future earnings or sales, which is substantially less favorable than any of the following: (i) the **Company's** prior year's earnings or sales for the same period, (ii) the **Company's** prior public statements or projections regarding earnings or sales for such period, or (iii) an outside securities analyst's published estimate of the **Company's** earnings or sales.
 - 2) *Loss of a patent, trade mark or copyright or major customer or contract*
The public announcement of an unforeseen loss of: (i) the **Company's** intellectual property rights for a patent, trademark or copyright, other than by expiration; (ii) a major customer or client of the **Company**; or (iii) a major contract with the **Company**.
 - 3) *Product recall or delay*

The public announcement of the recall of a major product of the **Company** or the unforeseen delay in the production of a major product of the **Company**.

4) *Mass tort*

The public announcement or accusation that the **Company** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof. However, the term **Crisis Event** shall not include any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any event relating to the hazardous properties of nuclear materials.

5) *Employee layoffs or loss of key executive officer(s)*

The public announcement of employee layoffs, or the death or resignation of one or more key executive officer(s) of the **Company**.

6) *Elimination or suspension of dividend*

The public announcement of the elimination or suspension of a regularly scheduled dividend previously being paid by the **Company**.

7) *Write-off of assets*

The public announcement that the **Company** intends to write off a material amount of its assets.

8) *Debt restructuring or default*

The public announcement that the **Company** has defaulted or intends to default on its debt or intends to engage in a debt restructuring.

9) *Bankruptcy*

The public announcement that the **Company** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Company**; or the imminence of bankruptcy proceedings, whether voluntary or involuntary.

10) *Governmental or regulatory litigation*

The public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against the **Company**.

11) *Other*

Any other event specifically scheduled by written endorsement to the Policy.

It is a condition for coverage to apply to such **Crisis Event** that such specific event, circumstances or **Wrongful Act** has led, or in the absence of the incurring of **Crisis Management Expenses** might reasonably be expected to lead, to the publication of materially unfavorable information in a newspaper, magazine, or other written media of general circulation, or in a radio or television broadcast specifically regarding the **Company**.

A **Crisis Event** shall first commence when the **Company** or any of its **Executive Officers** shall first become aware of such **Crisis Event**. A **Crisis Event** shall conclude once a **Crisis Management Firm** advises the **Company** that such **Crisis Event** no longer exists or when the Sublimit for **Crisis Management Expenses** set forth in Item D. of the Declarations has been exhausted.

- G. "Crisis Management Expenses"** shall mean the following reasonable and necessary expenses first incurred by the **Company** with the **Insurer's** consent during a **Crisis Event**, or within sixty (60) days prior to and in anticipation of adverse publication relating to the **Crisis Event**, but in no event later than 12 months after the **Crisis Event** first begins:
- 1) the fees and expenses of a **Crisis Management Firm** to advise the **Company** on minimizing potential financial damage to the **Company** arising out of the actual or anticipated **Crisis Event**, including, but not limited to, maintaining and restoring public confidence in the **Company**; and
 - 2) those costs incurred pursuant to the instructions of a **Crisis Management Firm** for printing, advertising (including television, print or other media) and mailing of materials specifically intended to inform or educate the general public about the **Crisis Event**.
- H. "Crisis Management Firm"** shall mean any public relations firm, crisis management firm or law firm listed in the Crisis Management Firm Panel List attached to this Policy or approved by the **Insurer**, to advise the **Company** on minimizing the potential financial damage to the **Company** arising out of the actual or anticipated **Crisis Event**.
- I. "Derivative Demand"** means a written demand by any security holder of the **Company**, in their capacity as such, upon the Board of Directors of the **Company** to investigate or bring a civil proceeding on behalf of, or in the name or the right of, the **Company** in a court of law against any of the **Directors and Officers** for a **Wrongful Act**, but only if such demand is made without the assistance, participation or solicitation of any **Executive Officer**.
- J. "Derivative Demand Investigation Costs"** shall mean reasonable and necessary costs, fees and expenses (other than regular or overtime wages, salaries, fees, or benefits of the directors, officers or employees of the **Company** or the **Company's** overhead expenses) incurred by the **Company** (including its Board of Directors or any committee of its Board of Directors) solely with respect to an evaluation required to determine whether it is in the best interest of the **Company** to prosecute the claims alleged in a **Derivative Demand** and prior to any **Claim** first made in connection with such **Derivative Demand**. In no event shall **Derivative Demand Investigation Costs** include any costs, fees or expenses incurred in a **Claim**.
- K. "Directors and Officers"** shall mean all persons who were, now are, or shall be duly elected or appointed directors, officers, trustees or members of the board of managers of the **Company** and all persons serving in a functionally equivalent role for the **Company** if serving in such a position outside the United States.
- L. "Domestic Partner"** shall mean 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 **Company**.
- M. "Employee"** shall mean any past, present or future employee of the **Company** including any part-time, seasonal or temporary employee or any applicant for employment, solely in his or her capacity as such. Any person leased to the **Company** and any person hired by written contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** employees.

N. "Employment Practices Claim" shall mean any **Claim** brought by or on behalf of any **Employee** alleging an **Employment Practices Wrongful Act** or, if coverage is purchased as stated in Item D of the Declarations, any **Claim** alleging **Third Party Discrimination**.

O. "Employment Practices Wrongful Act" shall mean:

- 1) wrongful, excessive or unfair discipline of an **Employee**;
- 2) wrongful failure or refusal to hire or promote or wrongful demotion;
- 3) abusive or hostile work environment;
- 4) violation of any federal, state or local law concerning discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992; the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto;
- 5) employment-related misrepresentations or omissions;
- 6) employment-related libel, slander, or defamation;
- 7) wrongful failure to grant tenure;
- 8) wrongful failure to provide an adequate employment policy or grievance procedure for **Employees**;
- 9) wrongful failure to provide training, mentoring, or advancement opportunities to an **Employee**;
- 10) negligent evaluation of an **Employee**;
- 11) **Retaliation** against an **Employee**;
- 12) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age or national origin-based harassment;
- 13) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- 14) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- 15) negligent hiring, discipline, supervision or retention;
- 16) breach of any implied employment contract of an **Employee** who is not an **Executive Officer**;
- 17) wrongful infliction of emotional distress, mental anguish or humiliation;
- 18) wrongful failure or refusal to provide equal treatment or opportunities;
- 19) wrongful failure to promote, transfer or employ or wrongful demotion;
- 20) violation of the Uniformed Services Employment and Reemployment Rights Act;
- 21) violation of an **Employee's** civil rights relating to any of the above;

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

- P.** “**Executive Officer**” shall mean any director of the **Company** as well as the chief executive officer, chief financial officer, general counsel or director of human resources, or equivalent position of any of the foregoing.
- Q.** “**Financial Insolvency**” shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**. **Financial Insolvency** shall also mean the filing of a bankruptcy petition by or against the **Company** under the bankruptcy laws of the United States of America or any equivalent event outside the United States.
- R.** “**Insured**” shall mean any **Insured Person** and the **Company**.
- S.** “**Insured Person**” shall mean:
- 1) **Directors** and **Officers**;
 - 2) **Employees** of the **Company**, other than those identified in S. 1) above, for whom the **Company** requests coverage at the time the **Claim** is made;
 - 3) any managing member or manager of any **Company** organized as a limited liability company;
 - 4) those persons serving in a functionally equivalent role as above for the **Company** or any **Subsidiary** operating or incorporated outside the United States;
 - 5) any individual identified above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor, or in an equivalent executive position, of an **Outside Entity** in their capacity as such.
 - 6) any individual identified in S. 1), 3) or 4) above who, at the specific written request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager, regardless of the name or title by which such position is designated, of a **Joint Venture**.
- T.** “**Insurer**” shall refer to the Underwriters providing this insurance.
- U.** “**Joint Venture**” means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, at any time during which the **Company**, either directly or through one or more **Subsidiary(s)**:
- 1) owns or controls at least thirty three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
 - 2) has the right, by contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty three (33%) of those persons described in U.1) above.

- V. "**Loss**" shall mean compensatory damages, statutory attorneys' fees, pre- and post-judgment interest, **Derivative Demand Investigation Costs** and **Costs of Defense**, in excess of the Retention. **Loss** shall also include, subject to the other terms, conditions and exclusions of this Policy, punitive or exemplary damages and the multiple portions of any multiplied damage award, judgments or settlements to the extent insurable under the law of any applicable jurisdiction most favorable to insurability.

Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (4) employment-related benefits of any kind, including, but not limited to, stock, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay or front pay; (5) any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; (6) any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities or other ownership interest; (7) contractually owed amounts; (8) any disgorgement or restitution of ill-gotten gain or recessionary damages; or (9) matters which are uninsurable under the law pursuant to which this Policy shall be construed.

- W. "**Management Control**" shall mean that the **Company** has either:

- 1) an ownership interest of more than fifty percent (50%) that entitles the **Company**; or
- 2) the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization

to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a **Joint Venture** or partnership or the management board of a limited liability company.

- X. "**Outside Entity**" shall mean any not-for-profit entity classified as such by the Internal Revenue Code or any for-profit entity, but only if such for-profit entity is specifically added by written endorsement to this Policy.

- Y. "**Policy Period**" shall mean the policy period as set forth in the Declarations, or its earlier termination if applicable.

- Z. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:

- 1) smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
- 2) hazardous, toxic or radioactive matter or nuclear radiation;
- 3) waste, which includes material to be recycled, reconditioned or reclaimed; or
- 4) any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.

- AA. "Pollution"** shall mean the actual, alleged or threatened discharge, release, migration, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction request, demand, order, or state regulatory requirement that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- BB. "Related Wrongful Acts"** shall mean **Wrongful Acts** that arise from a common nucleus of facts, circumstances, situations, events or transactions, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claim(s)** under this Policy or any other policy in effect prior to the inception of this **Policy Period**.
- CC. "Retaliation"** shall mean a **Wrongful Act** relating to or alleged to be in response to any of the following activities:
- 1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
 - 2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act, Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the Occupational Safety and Health Act, or any other law relating to employee rights;
 - 3) the filing of any claim under the Federal False Claims Act, the Sarbanes-Oxley Act of 2002 or any other federal, state, local or foreign "whistleblower" law; or
 - 4) **Employee** strikes.
- DD. "Securities Claim"** shall mean any **Claim** made against an **Insured**, including a civil lawsuit or proceeding brought by the Securities and Exchange Commission, or by any similar state or foreign governmental or securities regulatory entity, alleging a violation of any law, regulation or rule, whether statutory or common law, which is:
- 1) brought by any person or entity alleging, arising out of, based upon or attributable to the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**; or
 - 2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action or derivatively on behalf of the **Company**.
- EE. "Subsidiary"** shall mean:
- 1) any for-profit organization under the **Management Control** of the **Company**, either directly or indirectly, on or before the inception of the **Policy Period**;
 - 2) automatically, any for-profit organization that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that (1) the organization is not publicly traded, (2) the number of employees of the organization is less than 25% of those of the **Company** (3) the assets of the organization are less than 25% of those

of the **Company** and (4) the **Company** provides the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**;

- 3) any for-profit organization, other than those described in paragraph (2) above, that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that the **Company** provides the **Insurer** with the full particulars of the new **Subsidiary** within 90 days of it becoming a **Subsidiary** and the **Company** pays such additional premium and accepts such policy amendments as the **Insurer** may reasonably require.

An organization shall become a **Subsidiary** only when the **Company** has acquired **Management Control**, either directly or indirectly, and shall cease to be a **Subsidiary** when the **Company** ceases to have **Management Control**. In all events, coverage as may be afforded under this Policy with respect to any **Subsidiary** or any **Insured Person**, in their capacity as such with a **Subsidiary**, shall only apply for **Wrongful Acts** that occur while the organization is a **Subsidiary**.

FF. "Third Party Discrimination" shall mean any actual or alleged discrimination, including harassment, or civil rights violation by an **Insured** against any non-**Employee**. However, **Third Party Discrimination** shall not include any actual or alleged price discrimination or violation of any anti-trust law or any similar law designed to protect competition or prevent unfair trade practices.

GG. "Wrongful Act" shall mean:

- 1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect, or breach of duty, by any **Insured Person** in their capacity as such with the **Company**, including, if coverage is purchased as stated in the Declarations, any **Employment Practices Wrongful Act** or **Third Party Discrimination**;
- 2) any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;
- 3) any matter claimed against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the specific request or direction of the **Company**; or
- 4) solely with respect to Insuring Agreement C., any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or, if coverage is purchased as stated in the Declarations, any **Employment Practices Wrongful Act** and or **Third Party Discrimination**; by the **Company**.

Section III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon, relating to, or attributable to:

- 1) an **Insured** gaining any profit, advantage, remuneration or financial advantage to which they were not legally entitled; provided however, this exclusion shall only apply if it is finally adjudicated that such conduct occurred or such **Insured**

agrees to repay to the **Company** any such profit, remuneration or financial advantage;

- 2) any deliberate fraudulent or dishonest act or any willful violation of any statute, rule or law, or deliberate criminal acts of an **Insured**; provided however, this exclusion shall only apply if it is finally adjudicated that such conduct occurred; or
- 3) any profits in fact made from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provision of any similar state or foreign statutory law; provided, however, this exclusion shall only apply if a final adjudication establishes that such Section 16(b) violation occurred.

Provided, however,

- a) Subject to all other Terms and Conditions of this Policy, Exclusion A. 1) shall not apply in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations.
- b) For the purpose of determining the applicability of Exclusion A. 1), 2) and 3), it is understood and agreed that:
 - (i) as respects coverage afforded under Sections I. A. and B, the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
 - (ii) as respects coverage afforded under Section I. C., only the **Wrongful Act** of any past, present or future chief executive officer, chief operating officer, chairman, president or chief financial officer of the **Company** shall be imputed to the **Company**.
- B. alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any **Claim** or notice of circumstance reported under any other policy of which this Policy is a renewal, replacement, or which this Policy may succeed in time.
- C. alleging, arising out of, based upon, relating to, or attributable to any pending or prior written demand for monetary relief, civil, criminal, or administrative or investigative proceeding, or notice of charge of any kind, including any EEOC Charge, involving the **Company** and/or any **Insured Person** as of the Prior and Pending Litigation Date stated in Item G. of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge.
- D. for any actual or alleged:
 - 1) bodily injury, sickness, disease, or death of any person;
 - 2) damage to or destruction of any property, including the loss of use thereof; or
 - 3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander, however, this subsection D.3) does not apply to an **Employment Practices Claim**.

- E. for any alleged violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, and any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation** or an alleged violation of the Equal Pay Act.
- F. for any alleged violation of any federal, state or local wage and hour law, including but not limited to: the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (herein, "Earned Wages") (as opposed to tort-based or statutory back pay or front pay damages for discrimination), failure to provide or enforce legally required meal or rest break periods, for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, the failure to pay minimum wage or other underpayment of wages, any unfair business practice claim or any tort arising out of the failure to pay Earned Wages, or any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt".
- G. alleging, arising out of, based upon, relating to, or attributable to a **Wrongful Act** of any **Insured Person** serving in any capacity for any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy.
- H. for any **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**.
- I. which is brought by or on behalf of the **Company** or by any **Insured Person**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of any **Insured Person**; provided however, this exclusion shall not apply to:
 - 1) any **Employment Practices Claim** brought by or on behalf of an **Insured Person**;
 - 2) any **Claim** brought by an **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
 - 3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;
 - 4) any **Claim** brought by any past director or officer of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of, or consultant for, the **Company** for at least three (3) years prior to such **Claim** being first made;
 - 5) any **Claim** brought by a director or officer (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction against such **Company** or any director or officer thereof, provided that such **Claim** is brought by the

supervisory or any such similar board of a parent company chartered in such foreign jurisdiction; or

- 6) any **Claim** brought against an **Insured Person** for **Retaliation**.
- J.** alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors; provided, however, this exclusion shall not apply to **Securities Claims** otherwise covered under Section I. A. of this Policy.
- K.** for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** first occurring:
- 1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
 - 2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
 - 3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**.
- L.** alleging, arising out of, based upon, relating to, or attributable to alleged liability under the Securities Act of 1933, the Securities Exchange Act of 1934 or any other or similar federal or state law, including but not limited to any **Claim** alleging, arising out of, based upon, relating to, or attributable to any public listing or offering of securities by the **Company**, an **Outside Entity** or an **Affiliate** or arising in connection with a purchase or sale of such securities subsequent to such public offering, including any ongoing reporting requirements under the Securities Exchange Act of 1934 or foreign equivalent; provided, this exclusion will not apply to:
- 1) any offering of securities exempted pursuant to section 3(b)(1) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, for this exception to apply, the **Company** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b)(1), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
 - 2) any offering of securities exempted pursuant to section 4 of the Securities Act of 1933, including any offering pursuant to section 302(a) of the provisions of the Jumpstart Our Business Startups Act of 2012 ("Crowdfunding"), however, for this exception to apply, within 30 days prior to the effective time of such public offering: (i) the **Company** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Company** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Company** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
 - 3) any public offering of securities (other than a public offering described in

paragraph 1) or 2) above), as well as any purchase or sale of such securities subsequent to such public offering, however, for this exception to apply, within 30 days prior to the effective time of such public offering: (i) the **Company** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Company** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Company** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;

- 4) any **Claim** for **Loss** alleging a **Wrongful Act** which relates only to the **Insured's** preparations to commence an initial public offering ("IPO"), including any presentations made by the **Insured** and its **Executive Officers** via any medium in connection with such offering, if such public offering does not occur.
- M.** alleging, arising out of, based upon, relating to, or attributable to the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or a **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming an **Affiliate** or a **Subsidiary**, the **Named Insured** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to the transaction. Further, coverage shall be conditioned upon the **Named Insured** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;
- N.** alleging, arising out of, based upon, relating to, or attributable to emotional distress, mental anguish, or injury from libel, slander, defamation, or disparagement, or for injury from a violation of a person's right of privacy by the **Company**; provided, however, this exclusion shall not apply to injuries arising from an **Employment Practices Claim** brought by an **Employee**.
- O.** alleging, arising out of, based upon, or attributable to any:
- 1) payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time domestic or foreign government or any armed services official, agent, representative, employee or any member of their family or any entity with which they are affiliated; or
 - 2) payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time official, director, agent, partner, representative, principal shareholder, or owner or employee, or "affiliate" (as that term is defined in The Securities Exchange Act of 1934, including any officer, director, agent, owner, partner, representative, principal shareholder or employee of such affiliate) of any customer of the **Company** or any member of their family or any entity with which they are affiliated; or
 - 3) political contribution, whether domestic or foreign.
- P.** alleging, arising out of, based upon, relating to, or attributable to, or directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, medical benefits, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law, including any medical or insurance

benefits to which an **Employee** allegedly was entitled or would have been entitled had the **Company** provided the **Employee** with a continuation or conversion of insurance, provided however, this exclusion shall not apply to a **Claim** for **Retaliation**.

Q. Solely with respect to Insuring Agreement C:

- 1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
- 2) for the rendering or failure to render any service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any:
 - (i) **Claim** alleging **Third Party Discrimination**;
 - (ii) **Claim** for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this **Policy** by written endorsement attached hereto;
- 3) based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving amounts actually or allegedly owed under any written or express contract with the **Company**, including any severance obligation of the **Company**; provided, however, this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of a contract or obligation of the **Company**;
- 4) alleging, arising out of, based upon, or attributable to any price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;
- 5) based upon, arising out of or in any way involving the actual or alleged malfunction, defect or failure of any goods or products manufactured, distributed, sold, installed, marketed, developed or processed by the **Company**; provided this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**;
- 6) for any fines, penalties or other legal relief or any taxes owed; or
- 7) alleging, arising out of, based upon or attributable to the ownership, management, maintenance or control by the **Company** of any captive insurance company or entity, or self insured program, including, but not limited, to any **Claim** alleging the insolvency or bankruptcy of the **Company** as a result of such ownership, operation, management or control or the failure to procure any insurance coverage.

Section IV. Limit of Liability

- A.** The **Insurer** shall be liable to pay **Loss** resulting from a covered **Claim** in excess of the applicable Retention amount stated in Item E. of the Declarations, up to the applicable Limit of Liability stated in Item D. of the Declarations. The **Insurer's** maximum liability for all **Loss** on account of all **Claims** combined, including **Costs of Defense**, shall be the Aggregate Limit set forth in the Declarations. Under no

circumstances shall the **Insurer** be responsible to pay any **Loss**, including **Costs of Defense**, in excess of the Aggregate Limit.

- B.** If Separate Limits of Liability or Sublimits are stated in the Declarations, then each such Separate Limit or Sublimit shall be the maximum amount of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the Policy Period, or the Discovery Period (if applicable), with respect to the type of **Loss** to which the Separate Limit or Sublimit applies. Each Separate Limit or Sublimit shall be part of, and not in addition to, the Aggregate Limit for all **Loss** under this Policy and shall in no way serve to increase the Aggregate Limit for all **Loss**.

If Shared Limits are stated in the Declarations, then each such Shared Limit shall be the maximum amount of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period**, or the Discovery Period if applicable, with respect to all **Loss** to which such Shared Limit of Liability applies. Each Shared Limit shall be part of, and not in addition to, the Aggregate Limit.

If a single **Claim** is covered in whole or in part under more than one Shared Limit, Separate Limit or Sublimit, the maximum amount of the **Insurer's** liability for all **Loss**, combined, on account of such **Claim** shall not exceed the larger(est) of such applicable Shared Limit, Separate Limit or Sublimit, subject to reduction through any prior payments of **Loss** under such applicable Limit or Sublimit. Under no circumstance shall the **Insurer** be responsible to pay any **Loss**, including **Costs of Defense**, in excess of the Aggregate Limit.

All **Related Wrongful Acts** that, pursuant to Section VII of this Policy, are considered made or received during the Policy Period or Discovery Period (if applicable), shall also be subject to the applicable Limits of Liability set forth in this Policy. Each of the Limits of Liability for the Discovery Period (if applicable) shall be part of, and not in addition to, each of the corresponding Limits of Liability for the **Policy Period**.

- C.** **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item D. of the Declarations, including but not limited to the Limits of Liability described as Shared, Separate or Sublimits. Such **Costs of Defense** shall serve to reduce and may totally exhaust the Limit of Liability. If the applicable Limit of Liability is exhausted by payment of **Loss**, the **Insurer's** obligations, including without limitation any duty to defend, shall be completely fulfilled and extinguished.

Section V. Retention

- A.** The applicable Retention specified in Item E. of the Declarations shall be a condition precedent, and must be paid by the **Company**, before the **Insurer** has any payment obligation, and shall apply to all covered **Loss**, including **Costs of Defense**.
- B.** The Retention specified in Item E. of the Declarations shall apply as follows:
- 1) The Each **Claim** Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim** or a **Securities Claim**.
 - 2) The Each **Claim** alleging an **Employment Practices Wrongful Act** Retention is applicable to **Loss** resulting from each **Claim** for **Employment Practices Wrongful Act**.

- 3) The Each **Claim** alleging **Third Party Discrimination** Retention is applicable to **Loss** resulting from each **Claim** alleging **Third Party Discrimination**.
 - 4) The Each **Securities Claim** Retention is applicable to **Loss** resulting from a **Securities Claim**.
 - 5) Except as provided hereinafter, no Retention shall apply to **Loss**, including **Costs of Defense**, under Insuring Agreements I A, D or E.
 - 6) In the event a **Claim** triggers more than one Retention specified in Item E. of the Declarations, the applicable Retention to such **Claim** shall be the single highest Retention applicable to such **Loss**.
- C.** One Retention shall apply to **Loss** arising from each **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Company** shall be responsible for any amount within the Retention.
- D.** More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention and one Limit of Liability shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which the notice of circumstance involving any such **Wrongful Act** or **Related Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.
- E.** For the purposes of the application of the Retention, the Retention applicable to Insuring Agreement 1.B shall apply to **Loss** applicable to Insuring Agreement I.A. with respect to any **Claim** for which indemnification is legally permissible under the broadest interpretation of the applicable law and the **Company's** bylaws. The certificate of incorporation, charter or other organization documents of the **Company**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** of an **Insured Person** to the fullest extent permitted by law. Notwithstanding the foregoing, in the event the **Company** is unable to indemnify an **Insured Person** solely by reason of its **Financial Insolvency**, the **Insurer** shall, pursuant to the terms and conditions of Section VI.F., advance **Costs of Defense** incurred by an **Insured Person** without first requiring payment of the Retention applicable to **Claims** for which the Retention of Insuring Agreement I.B applies. In the event the **Company** is otherwise permitted or required to indemnify an **Insured Person**, the **Insurer** may in its sole discretion, but is not required to, advance **Costs of Defense**, pursuant to the terms and conditions of Section VI.F, incurred by an **Insured Person** without first requiring payment of the Retention applicable to **Claims** for which the Retention applicable to Insuring Agreement I.B applies.

Section VI. Costs of Defense and Settlements

- A.** The **Insured** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information, documents, reports and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, default judgment, or **Costs of Defense** incurred without the consent of the **Insurer**, shall not be covered hereunder.

- B.** Notwithstanding Section VI.A. above, if all **Insureds** are able to settle all **Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**, provided, however, nothing in this paragraph shall relieve any **Insured** of its obligation to report a **Claim** in compliance with Section VII.
- C.** The **Insured**, and not the **Insurer**, shall have the duty to defend all **Claims**, provided that the **Insured** shall only retain **Defense Counsel** as is mutually agreed in writing with the **Insurer**. **Costs of Defense** will only be paid if the written consent of the **Insurer** is obtained prior to the **Company** incurring such **Costs of Defense**.

“**Defense Counsel**” shall mean an attorney approved by the **Insurer** in writing from the jurisdiction in which the **Claim** is brought, or alternatively, counsel, who will be paid at rates regularly paid by the **Insurer** to attorneys retained by it in the ordinary course of business in the jurisdiction where the **Claim** is being defended. If the **Insured** does not obtain the written consent of the **Insurer** as to its selected counsel, then the fees incurred will be at the **Company’s** expense.

With the express prior written consent of the **Insurer**, an **Insured** may select (in the case of the **Insured** defending the **Claim**), or cause the **Insurer** to select (in the case of the **Insurer** defending the **Claim**), **Defense Counsel** different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest or is otherwise reasonable and necessary.

- D.** The **Company** may at its option tender to the **Insurer** the defense of a **Claim**; however in no event shall such tender of the defense relieve the **Company** of its obligation to pay the applicable Retention in connection with the **Claim**. Upon such a tender of the defense of a **Claim**, the **Insurer** shall assume the duty to defend. Such a tender of the defense of a **Claim** may not be made more than 30 days following notice of the **Claim**, or if greater than 30 days, solely at the discretion of the **Insurer**.
- E.** The **Insurer** shall advance covered **Costs of Defense** on a current basis. Any advancement of **Costs of Defense** shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled under the terms and conditions of this Policy for such **Costs of Defense**. Any payment shall be on the condition that:
- 1) the appropriate Retention has been satisfied by covered **Loss** under the Policy, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
 - 2) any amounts paid by the **Insurer** shall serve to reduce the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations to the extent they are not in fact repaid;
 - 3) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if no agreement, the **Insurer** shall pay **Costs of Defense** as specified in Section VI. G.
- F.** The **Insurer** shall at all times have the right, but not the duty, to fully and effectively associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Claim**. In

addition, the **Insured** shall not take any action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this Policy.

- G.** If a **Claim** made against an **Insured** includes both covered and uncovered matters, or is made against an **Insured** and others not insured, the **Insured** and the **Insurer** recognize that there must be an allocation between covered and uncovered **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered **Loss**, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insured** and the **Insurer** are unable to agree on the amount of the allocation, then the **Insurer** shall pay only those amounts (excess of the Retention amount) which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the terms of this Policy and the above stated standards.
- H.** The **Insurer** will have no obligation to pay **Loss**, including **Costs of Defense**, or to defend or continue to defend any **Claim** under any Insuring Agreement or endorsement after the applicable Limit or the Aggregate Limit set forth in Item D. of the Declarations is exhausted by the payment of **Loss**, including **Costs of Defense**.

It is understood and agreed that the **Company** shall be entitled to payment under Section I. D for reimbursement of its covered **Derivative Demand Investigation Costs** ninety (90) days after: (i) the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Directors and Officers**, and (ii) such decision has been communicated to the shareholders who made the **Derivative Demand** upon the **Company**. However, such payment shall be subject to an written undertaking by the **Company**, in a form acceptable to the **Insurer**, that the **Company** shall return to the **Insurer** such payment in the event any **Company** or any shareholder of the **Company** brings a **Claim** alleging, arising out of, based upon or attributable to any **Wrongful Acts** which were the subject of the **Derivative Demand**.

Section VII. Notice of Claim

- A.** The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery Period. Such notice shall be given as soon as practicable upon knowledge of the chief executive officer, chief financial officer, general counsel, director of human resources, risk manager, or equivalent position of any of the foregoing, but in no event later than 1) sixty (60) days after the end of the **Policy Period** or 2) the expiration date of the Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B.** If during the **Policy Period** the **Company** or any **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at

the time notice of such circumstances was given. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable.

- C. In addition to furnishing the notice as provided in Section VII, the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Section VII shall be given to the **Insurer's** representative identified in, and at the address set forth in Item H. of the Declarations, Notices to Insurer.

Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Company** refuses to renew this Policy, the **Company** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.
- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy, including any additional premiums for changes or additions to the Policy, must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**, at which time the premium shall be deemed fully earned.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Aggregate Limit of Liability stated in Item D of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

Section IX. General Conditions

A. Cancellation

- 1) This Policy may be cancelled by the **Company** at any time by written notice to the **Insurer**. Upon cancellation by the **Company**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D. wherein the entire premium for this Policy shall be deemed earned.
- 2) This Policy may only be cancelled by the **Insurer** if the **Company** does not pay the premium when due.

B. Application

It is agreed by the **Company** and the **Directors and Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are true, accurate and complete and that such particulars and statements are the basis of this Policy and are to be considered as

incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Person(s)** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application** shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**, against whom this Policy shall not be rescinded. Only knowledge of the chairman of the board, chief executive officer, chief operating officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of a misstatement or omission in the **Application** shall be imputed to the **Company** for purposes of determining coverage under this Policy as respects Section I. C.

C. Action Against the Insurer

- 1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- 2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

D. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Company** identified as the Named Insured in the Declarations through the ownership of more than fifty percent (50%) of the voting stock of the **Company**, or the **Company** merges into another entity or consolidates with another entity such that the **Company** is not the surviving entity, then:

- 1) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- 2) this Policy shall be non-cancellable except for non-payment of premium, and
- 3) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

E. Outside Entity and Joint Venture Provision

In the event a **Claim** is made against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity** or **Joint Venture**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** or **Joint Venture** and any insurance provided to the **Outside Entity** or **Joint Venture** which covers its directors, officers, trustees or governors.

F. Other Insurance

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

G. Coverage Extensions

1) Lawful Spouse or **Domestic Partner** Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors and Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

3) Estates and Legal Representatives

a) The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

b) In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Agreements I. B. and C.

H. Priority of Payments

1) In the event of **Loss** arising from one or more covered **Claims, Derivative Demands or Crisis Events** for which payment is due under this Policy, the **Insurer** shall:

a) first pay such **Loss** for which coverage is provided under Section I. A of this Policy; then

b) with respect to whatever remaining amount of the Limit of Liability is available after payment of Section I.A. above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.

2) Subject to the provisions of paragraph 1) above, the **Insurer** shall, at the request of the **Company**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.A. until such time as the **Company** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Company** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Person(s)**, to release such payment and the **Insurer** shall have no further obligation under this Policy with respect to such funds.

I. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Company's** and any other **Insured's** rights of recovery thereof, and the **Company** and the **Insured** shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer**

to effectively bring suit in the name of the **Company** or any other **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this Policy unless a final adjudication or binding arbitration adverse to the **Insured Person** in the underlying proceeding establishes that such **Insured Person** committed a deliberate criminal or deliberate fraudulent act, or such **Insured Person** has been determined, upon a final adjudication or binding arbitration adverse to the **Insured Person**, to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.

J. Choice of Law

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York notwithstanding New York's conflicts of law rules.

K. Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

L. Company Represents Insureds

By acceptance of this Policy, the **Insureds** agree that the **Company** identified as the Named Insured in the Declarations shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the election or failure to elect a Discovery Period, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

M. Representative of the Insurer

ANV Global Services, Inc., (101 Hudson Street , Suite 3606, Jersey City, NJ 07302) shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

N. Bankruptcy

Bankruptcy or insolvency of the **Company**, or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

O. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

P. Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Q. Entire Agreement

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

R. Dispute Resolution

In the event any dispute between the **Insured** and the **Insurer** arises in connection with this Policy that cannot be resolved by agreement, prior to commencing a judicial proceeding or arbitration, the **Insured** may submit the dispute to non-binding mediation. The parties shall select a mediator from the JAMS Panel of Neutrals, unless otherwise agreed upon. The **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. In the event the **Insured** does not elect to engage in non-binding mediation or such non-binding mediation does not result in a settlement of the subject dispute or difference, either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration under the then-prevailing AAA Commercial Arbitration Rules, to resolve such dispute no earlier than sixty (60) days after such mediation concludes unsuccessfully. The **Company** shall act on behalf of each and every **Insured** in deciding whether to proceed with either a judicial proceeding or binding arbitration. The costs and expenses of mediation, or arbitration, shall be split equally by the parties.

S. Service of Suit

The **Insurer's** representatives designated in Section IX, (M) are authorized and directed to accept service of process on behalf of the **Insurer** in any suit on the Policy against the **Insurer**. The service of process in any **Claim** or suit on the Policy against the **Insurer** may also be made upon the highest one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the Policy is issued. The one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the Policy is issued is hereby authorized and directed to accept service of process on our behalf in any such **Claim** or suit. Said officer is authorized to mail such process or a true copy thereof to the **Insurer's** representatives designated in Section IX (M).

Insured Education Document

Representative of the Insurer

ANV Global Services, Inc., (101 Hudson Street , Suite 3606, Jersey City, NJ 07302) shall act on behalf of the Insurer for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of Claims shall be given pursuant to Section VII of the Policy.

Insurer

This Policy is underwritten by Lloyd's Syndicate ANV 1861 (ANV) whose registered office is at 47 Mark Lane, London, EC3R 7QQ, United Kingdom.

Law

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York notwithstanding New York's conflicts of law rules.

Queries

Any query or question about this Policy or any claim under it should be addressed in the first instance to your broker.

Complaints

ANV aims to provide a professional service to its customers. Should you have any questions or concerns about your Policy or the handling of a Claim you should, in the first instance, contact your broker.

In the event that you remain dissatisfied and wish to make a complaint, it may be possible in certain circumstances for you to refer the matter to the Policyholder and Market Assistance team at Lloyd's.

Their address is:

Policyholder & Market Assistance
Market Services
Lloyd's
One Lime Street
London EC3M 7HA
Tel No: 00 44 207 327 5693
Fax No: 00 44 207 327 5225
E-mail: complaints@lloyds.com

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint - How We Can Help" available at www.lloyds.com/complaints and are also available from the above address. If you remain dissatisfied after Lloyd's has considered your complaint, you may have the right to refer your complaint to to the United Kingdom Financial Ombudsman Service.