

PV GPL AS 0001 012 11

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 DURING THE POLICY PERIOD 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 DIRECTORS, OFFICERS, GENERAL PARTNERSHIP AND CORPORATE 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, the **Insured(s)** and **Insurer** agree:

Section I. Insuring Agreements

- A.** The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which such **Insured Person** is not indemnified by the **Company** or a **Corporate General Partner** and which the **Insured Person** is legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**, **Securities Claim** or **Partnership Claim**) for a **Wrongful Act** first made against the **Insured Persons** during the **Policy Period** or the Discovery Period (if purchased) and reported pursuant to Section VII.
- B.** The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** or any **Corporate General Partner** grants indemnification to an **Insured Person** as permitted or required by law, common or statutory, or contract, or the charter, bylaws, partnership agreement or trust agreement of the **Company** or any **Corporate General Partner** duly effective under such law which determined and defines such rights of indemnity of an **Insured Person** and for which the **Insured Person** has become legally obligated to pay on account of a **Claim** (including an **Employment Practices Claim**, **Securities** or a **Partnership Claim**) for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or the Discovery Period and reported pursuant to Section VII.
- C.** The **Insurer** shall pay on behalf of the **Company** all **Loss** which 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 Discovery Period and reported pursuant to Section VII.

Section II. Definitions

A. Additional Partnership means:

- i. any limited partnership or other organization listed in an endorsement to this Policy as an **Additional Partnership**;
- ii. automatically any limited partnership: (a) whose assets total less than 15% of the consolidated assets of the Named Insured, **Company** and other **Additional Partnerships** and **Subsidiaries**, as reflected in the then most recent financial statement or tax returns of such organizations, (b) which first becomes affiliated with or sponsored by the Named Insured, **Company** or any **Subsidiary** or other **Additional Partnership** during the **Policy Period** by reason of an **Insured** becoming the sole general partner of such limited partnership and (c) whose partnership interests have not been sold in a public offering. The **Insured(s)** shall provide to the **Insurer** full particulars of such new **Additional Partnership** before the end of the **Policy Period** and

- iii. any limited partnership (other than a limited partnership described in paragraph (ii) above which first becomes affiliated with or sponsored by the Named Insured, **Company** or any **Subsidiary** or other **Additional Partnership** during the **Policy Period** by reason of an **Insured** becoming the sole general partner of such limited partnership; provided that (a) within 90 days of the date of first sponsorship or affiliation, the **Insured(s)** shall have provided the **Insurer** with full particulars of the new **Additional Partnership** and agreed to any amendment of the provisions of this **Policy** required by the **Insurer** relating to such new **Additional Partnership**, and (b) the **Insured(s)** shall have paid when due any additional premium required by the **Insurer** relating to such **Additional Partnership**.

In all events, coverage as if afforded under this **Policy** with respect to a **Claim** made against an **Additional Partnership** or any **Insured** thereof, shall only apply for **Wrongful Acts** taking place after the effective time that an **Insured** first becomes the sole general partner of the **Additional Partnership** or the effective time such **Additional Partnership** was otherwise first sponsored by or affiliated with the Named Insured, any **Subsidiary** or other **Additional Partnership** and prior to the effective time: (a) the **Additional Partnership** or any **Corporate General Partner** thereof consolidates with or merges into, or sells all or substantially all of its assets to any other person or entity or group of persons and or entities acting in concert; or (b) any person or entity or group of persons and or entities acting in concert acquires an amount of the outstanding securities or voting rights representing more than 50% of the voting power for the election of directors or general partners of such **Additional Partnership** or **Corporate General Partner** thereof; or (c) the **Additional Partnership** engages in a liquidation, "roll up" or "roll-over" or (d) the general partner(s) of the **Additional Partnership** are different than the **Additional Partnership** general partner(s) when it first become an **Additional Partnership**; provided that this subsection (d) shall not apply if the sole general partners of such **Additional Partnership** is and remains at all times either the Named Organization, a **Subsidiary** or another **Additional Partnership**.

B. "**Application**" shall mean each and every signed application submitted to the **Insurer** for consideration of 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.

C. "**Claim**" shall mean:

- i. a written demand for monetary or non-monetary relief made against any **Insured** (including any request to toll or waive any statute of limitations); or
- ii. a civil, administrative or arbitration proceeding, whether formal or informal, against any **Insured Person** or the **Company** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, or the receipt or the filing of a notice of charges or similar document, including any proceeding by or before the U.S. Equal Employment Opportunity Commission ("EEOC") or any similar federal, state or local governmental body;
- iii. Except with respect to an **Employment Practices Claim**, any civil, criminal, administrative or regulatory investigation of an **Insured Person**, once such **Insured Person** is identified in writing by such investigating authority;
- iv. a **Securities Claim**.
- v. An **Employment Practices Claim**
- vi. **Partnership Claim**

However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

D. "**Company**" shall mean the Named Insured in the Declarations or any **Subsidiary**, **Corporate General Partner**, **Additional Partnership** and any other entity specifically listed as such in an endorsement to this Policy including any such entity as debtor in possession.

E. "**Corporate General Partner**" means any entity that was, now is or shall become a duly elected, appointed or designated general partner of an **Additional Partnership**

F. “**Costs of Defense**” shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, 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**.

G. “**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**.

H. “**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** permanent employees.

I. “**Employed Lawyer**” shall mean any person who is an **Employee** of a **Company** in his or her capacity as legal counsel to the **Company**.

J. “**Employment Practices Claim**” shall mean any **Claim** brought by or on behalf of any **Employee** of the **Company** or **Outside Entity**, or any applicant for employment with the **Company** or **Outside Entity** alleging an **Employment Practices Wrongful Act**.

K. “**Employment Practices Wrongful Act**” shall mean:

- i. adverse or unfair reprimand of an **Employee**;
- ii. denial of interview or position;
- iii. denial of training to an **Employee**;
- iv. derogatory or disparaging remarks to an **Employee**;
- v. 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;
- vi. employment-related misrepresentations or omissions;
- vii. employment-related libel, slander, or defamation;
- viii. failure to grant tenure;
- ix. failure to provide an adequate employment policy or grievance procedure for **Employees**;
- x. failure to provide training, mentoring, or advancement opportunities to an **Employee**;
- xi. improper discipline of an **Employee**;
- xii. improper performance review of an **Employee**;
- xiii. improper transfer, change of position or change of work hours or shift of an **Employee**;
- xiv. improper treatment of an **Employee** for their actions as a whistleblower;
- xv. negligent evaluation of an **Employee**;
- xvi. negligent release of medical information of an **Employee**;
- xvii. **Retaliation** against an **Employee**;
- xviii. sexual or other workplace harassment of any kind;
- xix. wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- xx. wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- xxi. negligent hiring, discipline, supervision or retention;
- xxii. breach of any oral, written, or implied employment contract;
- xxiii. invasion of privacy;
- xxiv. false imprisonment;
- xxv. infliction of emotional distress;
- xxvi. failure or refusal to provide equal treatment or opportunities;
- xxvii. wrongful failure to promote, transfer or employ; or
- xxviii. violation of an **Employee’s** civil rights relating to any of the above.

- L.. **“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**.
- M. **“Insured(s)”** shall mean all Insured Persons and with respect to coverage provided under Insuring Agreement I. C., the **Company**
- N. **“Insured Person”** shall mean:
- i. any past, present or future duly elected or appointed director or officer, general counsel, risk manager, trustee, trust manager, managing member, general partner, partnership manager, joint venture manager or in the case of a limited liability company, member of the management board (or equivalent position) of the **Company**;
 - ii. **Employees** of the **Company**, but solely with respect to a **Securities Claim**, for whom the **Company** requests coverage at the time the **Claim** is made;
 - iii. those persons serving in a functionally equivalent role as above for the **Company** or any **Subsidiary** operating or incorporated outside the United States;
 - iv. 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**.
 - v. **Employed Lawyer**
- O. **“Insurer”** shall mean the insurance company identified on the Declarations Page.
- P. **“Loss”** shall mean compensatory damages (including back pay and front pay), statutory attorneys’ fees, pre- and post-judgment interest, and **Costs of Defense**, in excess of the Retention. **Loss** shall also include 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, front pay or bonus compensation; (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; or (8) matters which are uninsurable under the law pursuant to which this Policy shall be construed.
- Q. **“Management Control”** shall mean that the **Company** directly or indirectly has the power to control, manage, or direct through one or more of its **Subsidiaries** either by:
- i. an ownership of voting securities or voting rights in such entity; the right, pursuant to written contract or by-laws, charter, operating agreement or similar documents of an organization
 - ii. the right to elect, appoint or designate directors, officers, trustees, trust managers, managing members, general partners, partnership manager or joint venture managers of such entities
- R. **“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.
- S. **“Partnership Claim”** shall mean any **Claim** against a **Company** in its capacity as a trustee, trust manager, managing member, general partner, partnership manager, or joint venture manager of an **Additional Partnership or Subsidiary**
- T. **“Policy”** means collectively, the Declarations, the Application, this policy form and any attached endorsements
- U. **“Policy Period”** shall mean the policy period as set forth in the Declarations, or its earlier termination if applicable.

- V. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
- i. smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
 - ii. hazardous, toxic or radioactive matter or nuclear radiation;
 - iii. waste, which includes material to be recycled, reconditioned or reclaimed; or
 - iv. any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- W. "**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 or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- X. "**Related Wrongful Acts**" shall mean **Wrongful Acts** which are the same or continuous and which arise from a common nucleus of facts, 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**.
- Y. "**Retaliation**" shall mean a **Wrongful Act** relating to or alleged to be in response to any of the following activities:
- i. 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;
 - ii. 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;
 - iii. 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
 - iv. **Employee** strikes.
- Z. "**Securities Claim**" shall mean any **Claim for a Wrongful Act** including a civil lawsuit or criminal 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:
- i. 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
 - ii. 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**.
- AA. "**Subsidiary**" shall mean any corporation, trust, limited liability company, limited liability partnership, limited partnership, operating partnership, general partner or joint venture that Company on or before the inception date of this **Policy**, directly or indirectly has **Management Control** through:
- i. ownership of voting securities or voting rights in such entity
 - ii. right to elect or appoint directors, officers, trustees, trust managers, managing members, general partners, partnership managers or joint venture manager of such entities or
 - iii. rights and obligations pursuant to any contract relating to such entities.
 - iv. Any not for profit entity exclusively sponsored by the Company;
 - v. any entity listed as such in a written endorsement issued by the Insurer;
 - vi. subsequent to the inception date of this Policy by reason of being created or acquired by the Company after such date, provided that the created or acquired entity's total assets do not exceed twenty-five percent (25%) of the total consolidated assets of the Company as of the inception date of the Policy; or

- vii. subsequent to the inception date of this Policy by reason of being created or acquired by the Company other than as described in (vi) above, if the Company, within (90) days of such creation or acquisition, provides the Insurer with written notice thereof and agrees to any premium adjustment and or coverage revision that may be required by the Insurer

BB. "Wrongful Act" shall mean:

- i. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act** or **Third Party Discrimination** by any **Insured Person** in their capacity as such with the **Company**;
- ii. any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;
- iii. 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 request of the **Company**; or
- iv. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, 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:

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

- iv. Subject to all other Terms and Conditions of this Policy, Exclusion A. i) shall not apply to any **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.
- v. For the purpose of determining the applicability of Exclusion A. i.),ii.) and iii.), it is understood and agreed that:
 - (a) 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
 - (b) as respects coverage afforded under Section I. C., only the **Wrongful Act** of any past, present or future chief executive officer, 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 or 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 civil, criminal, administrative or investigative proceeding, or EEOC notice of charge, of any kind involving the **Company** and/or any **Insured Person** as of the PENDING AND PRIOR LITIGATION DATE stated in 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:
- i. bodily injury, sickness, disease, or death of any person;
 - ii. damage to or destruction of any property, including the loss of use thereof; or
 - iii. 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 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. alleging, arising out of, based upon, relating to, or attributable to 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 for services rendered (herein, "Earned Wages") (as opposed to tort-based or statutory back pay or front pay damages for discrimination), for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, 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, the **Company** or any **Insured Person**; provided however, this exclusion shall not apply to:
- i. any **Employment Practices Claim** brought by or on behalf of an **Insured Person**;
 - ii. 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;
 - iii. 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**;
 - iv. 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;
 - v. 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
 - vi. 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:
- i. prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
 - ii. 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
 - iii. 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 any public offering of securities by the **Company**, an **Outside Entity** or a **Subsidiary** or arising in connection with a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:
- i. any offering of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Company** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
 - ii. any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that 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;
 - iii. Any **Wrongful Act** occurring prior to the effective date of any initial public offering of the **Company's** securities in connection with documents distributed to, and presentations and representations made to lenders, prospective lenders, investors, prospective investors and analysts in conjunction with the initial public offering.
- M.** With the exception of **Costs of Defense**, 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 express written contract with or express written severance obligation of the **Company**; provided, however, this exclusion shall not apply if and to the extent that liability would have attached to the **Insured(s)** in the absence of the written contract or obligation of the **Company**;
- N.** 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 a **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming a **Subsidiary**, the **Company** 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 **Company** 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;
- O.** alleging, arising out of, based upon, relating to, or attributable to emotional distress, or injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy by the **Company**; provided, this exclusion shall not apply to any **Employment Practices Claim**; or

- 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**;

Except as expressly stated in Exclusion A , no conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above **Exclusions**.

- Q. with respect to Insuring Agreement C only:
- i. for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
 - ii. 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:
 - a. **Securities Claim**;
 - b. **Claim** against an **Insured Person** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured Person** in connection with the management or supervision of any division, **Subsidiary** or group of the **Company** offering any of the aforementioned services; or
 - c. **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;
 - iii. seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.
- R. alleging, based upon, arising out of, attributable to the actually or proposed payment by the **Company** of inadequate or excessive consideration in connection with any purchase by any **Insured** of securities issued by any entity. However, this exclusion shall not apply to **Defense Costs** and shall not apply to any **Claim** against a natural person **Insured Person** that is otherwise covered under **Insuring Agreement A** advanced.
- S. 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) **Employment Claim**;
 - ii) **Securities Claim**;
 - iii) **Claim** against an **Insured Person** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured Person** in connection with the management or supervision of any division, **Subsidiary** or group of the **Company** offering any of the aforementioned services; or
 - (iv) **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;
- T. to the extent such **Loss** constitutes the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation or common laws anywhere in the world.

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above Exclusions and only the **Wrongful Act** of a natural person general partner, Chairman of the Board, Chief Executive Officer or equivalent executive shall be imputed to the **Company**.

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 the RETENTION section of the Declarations, up to the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. Such **Costs of Defense** shall serve to reduce and may totally exhaust the Limit of Liability.
- C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** combined shall be the amount stated in the LIMITS OF INSURANCE section of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and **Discovery Period**, if applicable, regardless of the time of payment or the number of **Claims**.

Section V. Retention

- A. The applicable Retention specified in the RETENTION section 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 the RETENTION section of the Declarations shall apply as follows:
 - i. The Each **Claim** Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim**, **Securities Claim** or **Partnership Claim**.
 - ii. The Each **Employment Practices Claim** Retention is applicable to **Loss** resulting from an **Employment Practices Claim**.
 - iii. The Each **Securities Claim** or **Partnership Claim** Retention is applicable to **Loss** resulting from a **Securities Claim** or **Partnership Claim**.
 - iv. A Retention shall not apply to **Loss** under Insuring Agreement I A, including **Costs of Defense**.
- C. For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. 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** covered by Insuring Agreement I.B. 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.
- D. One Retention shall apply to each and every Claim. **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.
- E. 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.

- F. For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. 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** covered by Insuring Agreement I.B. 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.

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, or **Costs of Defense** incurred prior to the consent of the **Insurer**, shall not be covered hereunder.
- B. Notwithstanding Section VI.A. above, if all **Insured(s)** 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**.
- C. The **Insured**, and not the **Insurer**, shall have the duty to defend all **Claims**, provided that the **Insured** shall only retain counsel as is mutually agreed in writing with the **Insurer**. 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**, pursuant to Section VII.
- D. The **Insurer** shall at all times have the right, but not the duty, to 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**.
- E. 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 not able to come to some agreement regarding the amount of the allocation, then the **Insurer** shall pay one hundred percent (100%) of **Costs of Defense** incurred which will be allocated to covered **Loss**; and, as respects **Loss** other than **Costs of Defense** only those amounts, excess of the applicable Retention amount, which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and the above standards.

- F. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
- i. the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
 - ii. any amounts advanced 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;
 - iii. the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insured(s)**; provided, however, if no agreement, the **Insurer** shall pay **Costs of Defense** as specified in Section E above.
 - iv. in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.
- G. 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 Maximum Aggregate Limit of Liability for the Policy as set forth in the LIMITS OF INSURANCE section of the Declarations is exhausted by the payment of **Loss**, including **Costs of Defense**.

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 risk manager, general counsel or equivalent position 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** or during the Discovery Period the **Company** or an **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** identified in, and at the address set forth in the Notices to Insurer section of the Declarations.

Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Company** chooses to cancel or not renew this Policy, the **Company** shall have the right, upon payment of one hundred and fifty percent (150%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred and fifty percent (150%) 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 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 Limit of Liability stated in the LIMITS OF INSURANCE section 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 or Non-Renewal

- i. This Policy may be cancelled by the **Named Insured** at any time by written notice to the **Insurer**. Upon cancellation, the **Insurer** shall retain the customary short rate portion of the premium, unless this **Policy** is converted to Run-Off pursuant to Section IX.E. wherein the entire premium for this **Policy** shall be deemed earned.
- ii. This Policy may only be cancelled by the **Insurer** if the **Named Insured** does not pay the premium when due. If the **Insurer** elects not to renew this **Policy**, the **Insurer** shall provide the **Named Insured** with no less than sixty (60) days advance notice thereof.

B. Application

It is agreed by the **Company** and the **Insured Persons** 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 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**. It is understood and agreed that **Insurer** shall not be entitled under any circumstances to rescind Insuring I. A. of this **Policy**. Only knowledge of the chairman of the board, chief executive officer, chief financial officer, president, natural person general partners, general counsel or equivalent position 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 IC.

C. Separation of Interests

Except with respect to Limits of Liability and any rights and duties assigned in this **Policy** to the **Company**, this insurance applies as if each **Insured** were the only **Insured** and separately to each **Insured** against whom a **Claim** is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **Insured Person** shall not by itself affect coverage for another **Insured Person** under this Policy. However, this condition shall not apply to the **Company** or any **Insured Person** who is chief executive officer, general partner or chief financial officer of the **Company** which committed the misrepresentation, act or omission referenced above.

D. 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**.

E. Conversion to Run-Off Coverage

- A. If, during the **Policy Period**, the **Company**

- a. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes an **Additional Partnership** or **Subsidiary**; or,
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy**, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the Insurer agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired organization as reflected in the then most recent consolidated financial statements of the organization, exceed 15% of the total assets of the **Company**, the **Additional Partnerships** and the **Subsidiaries** as reflect in the then most recent financial statements of the **Company** as a condition precedent to coverage with respect to such **Insured(s)**, shall, prior to such acquisition or creation:

- i. give written notice of such acquisition or creation to the **Insurer** within 45 days of the date of first sponsorship pr affiliation;
- ii. pay any additional premium required by the **Insurer**; and
- iii. agree to any additional terms and conditions of this **Policy** as required by the **Insurer**

B. If, during the **Policy Period**, any of the following events occurs:

- i. The acquisition of the **Company** of all or substantially all of its assets, by another person or entity or affiliated group of persons or entities, or the merger or consolidation of the **Company** into or with another entity or group of entities such that the **Company** is not the surviving entity; or
- ii. The obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors or partners of the **Company**
- iii. A general partner of the **Company** withdraws, resigns or is terminated;

Then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to Claims for Wrongful Acts taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to Claims for Wrongful Acts taking place after such event.

C. If before or during the **Policy Period** an organization ceases to be an **Additional Partnership** or **Subsidiary**, coverage with respect to the **Additional Partnership** or **Subsidiary** and its **General Partners** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to Claims for **Wrongful Acts** taking place prior to the date such organization ceased to be an **Additional Partnership** or **Subsidiary**.

F. Outside Entity

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

G. 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.

H. Presumptive Indemnification

If with respect to any **Claim** the **Company** or a **Corporate General Partner** is permitted or required by common or statutory law to indemnify the **Insured Persons** for any **Loss**, or to advance **Defense Costs** on their behalf, and does not in fact do so other than for reasons of **Financial Insolvency**, then the applicable **Retention** for **Securities Claims** shown in the Declarations Page shall apply to such **Loss**. The resolutions of the board of directors or equivalent body of the **Company** and **Corporate General Partner** shall be deemed to provide indemnification for **Loss** to the full extent permitted by law.

I. Coverage Extensions

- i. 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**.
- ii. 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**.
- iii. 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.

J. Priority of Payments

- i. In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this **Policy**, then the **Insurer** shall in all events:
 - a. first pay **Loss** for which coverage is provided under Section I. A of this **Policy**; then
 - b. only after payment of **Loss** as been made pursuant to clause I. 1) above, with respect to whatever remaining amount of the **Limit of Liability** is available after such payment at the written request of the chief executive officer, general partner or equivalent of the **Company**, either pay or withhold payment of such **Loss** for which coverage is provided under Insuring Agreement I B, of this **Policy**; and then
 - c. only after payment of **Loss** has been pursuant to clause 1. 1) and clause I. 3) above, then the **Insurer** shall at such time and in such manner as shall be set forth in written instructions of the chief executive officer or natural person general partner of the **Company** remit such payment directly to or on behalf of the **Company** or **Insured Persons**. Such written notice shall be deemed consent from all Insured(s), including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this **Policy** with respect to such funds. 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 bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this policy pursuant to this clause I. 1)

J. 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 the **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 the **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.

K. 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.

L. 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**.

M. 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.

N. Company Represents Insureds

By acceptance of this Policy, 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 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.

O. Representative of the Insurer

American Safety Insurance Services, Inc., (100 Galleria Parkway, Suite 700, Atlanta, GA 30339) 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.

P. Bankruptcy

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

Q. Premiums

The Named Insured shown in the Declarations:

- i. Is responsible for the payment of all premiums; and
- ii. Will be the payee for any return premiums.

R. Headings

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

S. 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.

T. Dispute Resolution

In the event any dispute 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 binding mediation in which 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 binding mediation or such 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 costs and expenses of mediation, or arbitration, shall be split equally by the parties.