



PRIVATUS[®] PLUS+

A POLICY FOR PRIVATELY HELD BUSINESS ENTERPRISES

DECLARATIONS – GENERAL TERMS AND CONDITIONS

SOME COVERAGE PARTS OF THIS POLICY MAY PROVIDE COVERAGE ON A CLAIMS MADE OR A CLAIMS MADE AND REPORTED BASIS. UNDER ALL LIABILITY COVERAGE PARTS, THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

| Insurer: AXIS Insurance Company | Policy Number: | | | | | | | | | | | | | | |
|--|---|----------------------------------|--------------------------------------|--|------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|------------------------|--|
| Item 1. First Named Insured: Name: _____ Address: _____ _____ _____ | Item 2. Policy Period: (A) Inception Date: _____ (B) Expiration Date: _____ Both dates at 12:01 a.m. at the address listed in Item 1. | | | | | | | | | | | | | | |
| Item 3. Coverage Parts Purchased at Inception: <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>(A) Coverage Part(s)</u></th> <th style="text-align: left;"><u>Premium (\$)</u></th> </tr> </thead> <tbody> <tr> <td>Directors and Officers and Corporate Liability</td> <td><List Coverage Part Premium></td> </tr> <tr> <td>.....</td> <td></td> </tr> <tr> <td>.....</td> <td></td> </tr> <tr> <td>.....</td> <td></td> </tr> <tr> <td>.....</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;">Total Premium: \$_____</td> </tr> </tbody> </table> <p>(B) Are all Liability Coverage Parts subject to a single Combined Aggregate limit of liability? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, the Combined Aggregate limit of liability for all Loss from all Claims under all Liability Coverage Parts, is \$_____</p> | | <u>(A) Coverage Part(s)</u> | <u>Premium (\$)</u> | Directors and Officers and Corporate Liability | <List Coverage Part Premium> | | | | | | | | | Total Premium: \$_____ | |
| <u>(A) Coverage Part(s)</u> | <u>Premium (\$)</u> | | | | | | | | | | | | | | |
| Directors and Officers and Corporate Liability | <List Coverage Part Premium> | | | | | | | | | | | | | | |
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| Total Premium: \$_____ | | | | | | | | | | | | | | | |
| Item 4. Extended Reporting Period: <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Extended Reporting Period</u></th> <th style="text-align: left;"><u>Premium (% of annual premium)</u></th> </tr> </thead> <tbody> <tr> <td>One (1) Year</td> <td>_____%</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </tbody> </table> | | <u>Extended Reporting Period</u> | <u>Premium (% of annual premium)</u> | One (1) Year | _____% | | | | | | | | | | |
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| One (1) Year | _____% | | | | | | | | | | | | | | |
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Item 5. Notice

(A) Notice of **Claims**, Circumstances or Proof of Loss:
E-mail: USClaimNoticeBH@axiscapital.com

(B) All other notices:

Mail:
AXIS Insurance Company
Professional Lines Claims
300 Connell Drive
P.O. Box 357
Berkeley Heights, NJ 07922-0357

Mail:
AXIS Insurance Company
Professional Lines
300 Connell Drive
P.O. Box 357
Berkeley Heights, NJ 07922-0357

Fax: (908) 508-4301
Toll Free Phone: (866) 259-5435

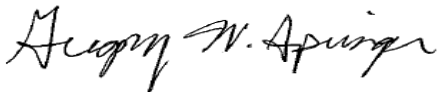
Toll Free Fax: (866) 770-5630
Toll Free Phone: (866) 259-5435

Item 6. Endorsements Effective at Inception:

The Insurer has caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Insurer.

Authorized Representative

Date



Gregory W. Springer
President



Andrew Weissert
Secretary



PRIVATUS[®] PLUS+

GENERAL TERMS AND CONDITIONS

In consideration of payment of the premium, and in reliance on all information provided to the Insurer and all statements made in the **Application**, all of which are made a part of this Policy and subject to the Declarations and all other provisions of this Policy, including any endorsements to this Policy, the Insurer and the **First Named Insured**, on behalf of all **Insureds**, agree as follows:

I. APPLICABILITY

Except as provided in a specific **Coverage Part**, the provisions in these General Terms and Conditions shall apply to all **Coverage Parts** of this Policy. The terms and conditions of a particular **Coverage Part** shall apply only to that **Coverage Part**. In the event of a conflict between these General Terms and Conditions and the terms and conditions of a particular **Coverage Part**, the terms and conditions of the individual **Coverage Part** shall control for purposes of that **Coverage Part**.

II. DEFINITIONS

Unless otherwise defined in a specific **Coverage Part**, and whether in the singular or the plural:

- A. **Application** shall have the meaning set forth in each **Coverage Part**.
- B. **Claim** shall have the meaning set forth in each **Coverage Part**.
- C. **Claims Made Coverage Part** means any **Coverage Part** designated as such in that **Coverage Part**.
- D. **Coverage Part** means those coverage parts purchased by the **Insureds** as set forth in Item 3 of the Declarations of the General Terms and Conditions.
- E. **Defense Costs** shall have the meaning set forth in each **Coverage Part**.
- F. **Executive Officer** shall have the meaning set forth in each **Coverage Part**.
- G. **Financial Impairment** means the status of an organization resulting from the appointment by any state or federal official, agency, or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator, or similar official to take control of, supervise, manage or liquidate the organization; or the organization becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- H. **First Inception Date** is the Inception Date of the earliest Policy the Insurer issued to the **First Named Insured** of which this Policy is a direct or indirect renewal or replacement, provided that there has been uninterrupted coverage by the Insurer for the **First Named Insured** from that earliest policy to this Policy.
- I. **First Named Insured** is the **Insured** listed first in Item 1 of the Declarations of the General Terms and Conditions.
- J. **Insured** shall have the meaning set forth in each **Coverage Part**.
- K. **Insured Individual** shall have the meaning set forth in each **Coverage Part**.
- L. **Insured Organization** means an entity listed in Item 1 of the Declarations of the General Terms and Conditions and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.
- M. **Interrelated Wrongful Acts** means any and all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of causally or logically connected facts, circumstances, situations, events, transactions, or causes.

- N. **Liability Coverage Part** means a **Claims Made Coverage Part** or an **Occurrence Coverage Part**.
- O. **Loss** shall have the meaning set forth in each **Coverage Part**.
- P. **Non-Liability Coverage Part** means any **Coverage Part** designated as such in that **Coverage Part**.
- Q. **Occurrence Coverage Part** means any **Coverage Part** designated as such in that **Coverage Part**.
- R. **Policy Period** means the period of time stated in Item 2 of the Declarations of the General Terms and Conditions, or any shorter period resulting from prior termination of the Policy.
- S. **Pollutant** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality, or locality counterpart thereof. **Pollutant** shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, or smoke, vapor, soot, fumes, acids, alkalis, silica, mold, mildew, spores, fungi, germs, mycotoxins, viruses, bacteria, microbes, chemicals, waste materials, and any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos-containing material, lead or lead-containing material, noise, and electric, magnetic or electromagnetic field.
- T. **Subsidiary** means any entity in which, and so long as, one or more **Insured Organizations**, directly or indirectly, in any combination (i) owns more than fifty percent (50%) of the issued and outstanding voting equity securities; or (ii) has the right, pursuant to a written contract with, or the by-laws, charter, operating agreement, or similar governance document of such entity, to elect or to appoint a majority of the directors or equivalent executives of such entity.
- U. **Wrongful Act** shall have the meaning set forth in each **Coverage Part**.

III. COVERAGE EXTENSIONS

A. Spouses and Domestic Partners

If a **Claim** made against an **Insured Individual** includes a claim against the **Insured Individual's** lawful spouse or domestic partner solely by reason of such spouse's or domestic partner's status as a spouse or domestic partner of the **Insured Individual**, or such spouse's or domestic partner's ownership interest in property from which the claimant seeks recovery for the **Wrongful Acts** of the **Insured Individual**, all loss which such spouse or domestic partner becomes legally obligated to pay on account of such claim shall be treated for purposes of this Policy as **Loss** which the **Insured Individual** is legally obligated to pay on account of the **Claim** made against the **Insured Individual**.

Such loss shall be covered under a **Coverage Part** only if and to the extent that such loss would be covered under such **Coverage Part** if incurred by the **Insured Individual**. The coverage afforded by this subsection does not apply to any **Loss** attributable to any actual or alleged act, error, or omission by the **Insured Individual's** spouse or domestic partner. Absent an actual conflict of interest under applicable law, a spouse or domestic partner seeking coverage under this subsection shall use the same counsel as the **Insured Individual**.

The term "spouse" as used in this section shall include a party to a civil union recognized by law or by the **Insured Organization**. The term "domestic partner" as used in this section shall mean any natural person recognized as a domestic partner by law or by the **Insured Organization**.

B. Estates and Legal Representatives

Coverage under this Policy shall extend to a **Claim** made against the estate, heirs, legal representatives, or assigns of an **Insured Individual** who is deceased, or the estates, legal representatives, or assigns of an **Insured Individual** who is incompetent, insolvent, or bankrupt, but only if the **Claim** arises out of their status as such, and only for the **Wrongful Acts** of the **Insured Individual**. The coverage afforded by this subsection does not apply to any **Loss** attributable to any actual or alleged act, error, or omission by the **Insured Individual's** estate, heirs, legal representatives, or assigns.

C. Extended Reporting Period

Solely with respect to **Claims Made Coverage Parts**:

1. If the **First Named Insured** cancels or nonrenews a **Claims Made Coverage Part**, or the Insurer nonrenews a **Claims Made Coverage Part**, then the **First Named Insured** shall have the right to purchase an Extended Reporting Period for the respective period set forth in Item 4 of the Declarations of the General Terms and Conditions immediately following termination of the **Policy Period** for such **Claims Made Coverage Part**. Such Extended Reporting Period options shall be available only with respect to the **Claims Made Coverage Part** that has been cancelled or nonrenewed. The right to purchase such Extended Reporting Period shall lapse unless the Insurer receives written notice of the period elected, together with payment of the additional premium required by the Insurer, within sixty (60) days following the effective date of such cancellation or nonrenewal. The extension of coverage during such Extended Reporting Period shall apply only to **Wrongful Acts** occurring prior to the effective date of cancellation or nonrenewal.
2. If an event described in Subsection VIII.A of the General Terms and Conditions occurs, then the **First Named Insured** may request an Extended Reporting Period for a period not to exceed six (6) years following the effective date of such event. The right to request such Extended Reporting Period shall lapse unless the Insurer receives written notice before the expiration of the **Policy Period** specifying the **Claims Made Coverage Part(s)** for which the **Insured** seeks an Extended Reporting Period. Any such notice shall specify the period requested. The Insurer may then, in its sole discretion, offer to the **First Named Insured** any Extended Reporting Period that the Insurer may choose, subject to any additional information or premium that the Insurer may require. The extension of coverage during such Extended Reporting Period shall apply only to **Wrongful Acts** occurring prior to the effective date of the relevant event.
3. The Extended Reporting Period shall apply only to **Claims** first made during the Extended Reporting Period, and any **Claim** first made during the Extended Reporting Period shall be deemed to have been made during the **Policy Period**.
4. The premium for the Extended Reporting Period shall be deemed fully earned at the inception of the Extended Reporting Period.
5. The **First Named Insured** shall not be entitled to purchase an Extended Reporting Period pursuant to paragraph 1 above if an Extended Reporting Period is purchased pursuant to paragraph 2 above.

IV. LIMITS OF LIABILITY AND RETENTIONS

A. Limits of Liability

1. All Liability Coverage Parts
 - a. If this Policy is subject to a single Combined Aggregate Limit of Liability, then the Insurer's maximum aggregate liability for all **Loss** under all **Liability Coverage Parts**, combined, shall be the amount set forth in Item 3(D) of the Declarations of the General Terms and Conditions.
 - b. **Defense Costs** are part of, and not in addition to the Limits of Liability, and payment by the Insurer of **Defense Costs** reduces and may totally exhaust such Limits of Liability.
 - c. If the maximum aggregate Limit of Liability set forth in Item 3 of the Declarations of a particular **Liability Coverage Part** is exhausted by payment of **Loss**, then the Insurer's obligations under such **Coverage Part** with respect to the payment of **Loss** shall be completely fulfilled and extinguished. If this Policy is subject to a single Combined Aggregate Limit of Liability for all coverage under this Policy under all **Coverage Parts**, and such Combined Aggregate Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under all **Liability Coverage Parts** of this Policy with respect to the payment of **Loss** shall be completely fulfilled and extinguished.

2. Claims Made Coverage Parts

- a. The Insurer's maximum aggregate liability for **Loss** arising from all **Claims** under each **Claims Made Coverage Part** shall be the applicable Aggregate Limit of Liability for such **Coverage Part** as set forth in Item 3 of the Declarations of that **Coverage Part**. The Insurer's maximum liability for **Loss** arising from any one **Claim** under each **Claims Made Coverage Part** shall be the applicable Each **Claim** Limit of Liability for such **Coverage Part** as set forth in Item 3 of the Declarations of that **Coverage Part**, which amount shall be part of and not in addition to the Insurer's Aggregate Limit of Liability for all **Claims** under such **Coverage Part**.
- b. In the event that coverage is afforded under multiple **Claims Made Coverage Parts** for any one **Claim**, the Limit of Liability for all **Loss** on account of that **Claim** shall be not greater than the largest of the applicable Each **Claim** Limit of Liability set forth in Item 3 of the Declarations of each such **Coverage Part**. Under no circumstances will separate Each **Claim** Limits of Liability under more than one **Coverage Part** of this Policy apply to any one **Claim**.
- c. If an Extended Reporting Period is purchased for a **Claims Made Coverage Part**, then the Limit of Liability for the Extended Reporting Period shall be the remaining portion, if any, of the applicable Limit of Liability for the relevant **Coverage Part** for the **Policy Period**. If this Policy is subject to a single Combined Aggregate Limit of Liability, then the Limit of Liability applicable to an Extended Reporting Period for an individual **Coverage Part** shall be part of and not in addition to the remaining portion, if any, of the Combined Aggregate Limit of Liability set forth in Item 3(B) of the Declarations of the General Terms and Conditions. The purchase of an Extended Reporting Period shall not increase or reinstate the applicable Limits of Liability for the **Policy Period**.

3. Occurrence Coverage Parts

The Insurer's maximum liability under each **Occurrence Coverage Part** shall be the Limits of Liability set forth in such **Occurrence Coverage Part**.

4. Non-Liability Coverage Parts

The Insurer's maximum liability under each **Non-Liability Coverage Part** shall be the Limits of Liability set forth in such **Non-Liability Coverage Part**.

B. Retentions

1. All Coverage Parts

The applicable Retention(s) for each purchased **Coverage Part** are set forth in Item 4 of the Declarations for such **Coverage Part**. The Insurer shall be liable only for **Loss** or, if applicable, covered loss, in excess of the applicable Retention.

2. Claims Made Coverage Parts

With respect to **Claims Made Coverage Parts**, the Insurer shall be liable for only that part of **Loss** arising from each **Claim** that is excess of the Retention applicable to that **Claim**, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. If different parts of **Loss** arising from a single **Claim** are subject to different Retentions under this Policy, then the Retention for such **Claim** shall not exceed the largest single applicable Retention.

3. Occurrence Coverage Parts

The Retention(s) applicable to any **Occurrence Coverage Part** shall be set forth in that **Coverage Part**.

4. Non-Liability Coverage Parts

The Retention(s) applicable to any **Non-Liability Coverage Part** shall be set forth in that **Coverage Part**.

V. DEFENSE, SETTLEMENT AND COOPERATION

A. Defense and Settlement

Solely with respect to **Liability Coverage Parts**:

1. The Insurer shall have the right and duty to select defense counsel and defend any **Claim** for a **Wrongful Act** under this Policy, even if the allegations are groundless, false, or fraudulent. The Insurer's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
2. The **Insureds** shall not settle or offer to settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment, or otherwise assume any contractual obligation with respect to a **Claim**, without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission, or stipulated judgment to which it has not consented, or for which the **Insureds** are not legally obligated to pay.
3. Subject to the relevant allocation provisions in the **Liability Coverage Parts**, the Insurer shall have the right to seek recovery from any **Insured** of any **Loss** incurred as a result of any portion of a **Claim** that is not covered by this Policy.

B. Cooperation

The **Insureds** shall provide the Insurer with all information, assistance, and cooperation that the Insurer reasonably requests, and shall do nothing that may prejudice the Insurer's potential or actual rights of recovery with respect to **Loss** paid under this Policy. The **Insureds** shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy.

VI. CIRCUMSTANCE REPORTING

Solely with respect to **Claims Made Coverage Parts**:

If during the **Policy Period** or the Extended Reporting Period, if applicable, any **Insured** becomes aware of circumstances that could give rise to a **Claim** under a **Claims Made Coverage Part** and the **Insured** gives written notice of such circumstances to the Insurer during the **Policy Period** or the Extended Reporting Period, if applicable, then any **Claim** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. As a condition precedent to coverage based upon such notice of circumstance, the **Insureds** shall include with the notice of circumstances a description of such circumstances or **Wrongful Act**, the nature and extent of the potential damages, the names of the potential claimants, the manner in which the **Insured** first became aware of such circumstances, and shall give the Insurer such additional information and cooperation as it may reasonably require. No coverage shall be provided for any loss, defense costs or other fees and expenses incurred prior to the time such circumstances result in a **Claim**.

VII. REPRESENTATIONS AND SEVERABILITY

- A. The **Insureds** represent and acknowledge that the statements made and information in the **Application** are accurate and complete, are the basis for the Insurer's issuance of this Policy, and are incorporated into and constitute a part of this Policy.
- B. If the **Application** contains any misrepresentation, and such misrepresentation either was made with the intent to deceive, or materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, then no coverage shall be available for any **Claim** or loss based upon or arising from such misrepresentation with respect to:
 1. any **Insured Individual** who knew, as of the date the **Application** was signed, of the misrepresentation, whether or not such **Insured Individual** knew the **Application** contained the misrepresentation, or any **Insured Organization** or other **Insured** that is not a natural person to the extent that the **Insured Organization** or such other **Insured** indemnifies such **Insured Individual**; or
 2. the **Insured Organization** or other **Insured** that is not a natural person if any **Executive Officer** of the **Insured Organization** or such other **Insured** knew, as of the date the **Application** was signed, of the

misrepresentation, whether or not such **Executive Officer** knew the **Application** contained the misrepresentation.

- C. For purposes of this section, the knowledge of one **Insured Individual** shall not be imputed to any other **Insured Individual**.
- D. This section shall be applied separately to each **Coverage Part**.

VIII. CHANGES TO INSUREDS

A. Merger, Consolidation, or Acquisition of First Named Insured

With respect to a **First Named Insured** that is an entity, if during the **Policy Period** any of the following events occur:

1. the merger or consolidation of the **First Named Insured** into or with another entity such that the **First Named Insured** is not the surviving entity; or
2. the acquisition by any person, entity or group of persons or entities of: (i) the right to elect, appoint, or designate at least fifty percent (50%) of the directors of the **First Named Insured**; (ii) securities which result in such person, entity or group owning more than fifty percent (50%) of the issued and outstanding voting securities of the **First Named Insured**; or (iii) all or substantially all of the assets of the **First Named Insured**;

then:

- a. solely with respect to **Liability Coverage Parts**, coverage shall continue under this Policy, but only with respect to **Wrongful Acts** occurring prior to such merger, consolidation, or acquisition;
- b. solely with respect to **Non-Liability Coverage Parts**, coverage shall be determined as set forth in that specific **Coverage Part**.

The **First Named Insured** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Acts** occurring after such event, regardless of when notice is given. The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator, or similar official to take control of, supervise, manage, or liquidate the **Insured**, or the **Insured** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall not be considered an acquisition within the meaning of this subsection.

B. Acquisition or Creation of New Entities

Solely with respect to **Liability Coverage Parts**, if before or during the **Policy Period** the **Insured Organization** creates or acquires an entity such that the entity becomes a **Subsidiary** or such that an **Insured Organization** is the surviving entity, coverage under this Policy automatically shall apply to such newly created or acquired entity and its **Insured Individuals**, but only for **Wrongful Acts** taking place after such creation or acquisition.

C. Cessation of a Subsidiary

Solely with respect to **Liability Coverage Parts**, if before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of the **Policy Period**, but only with respect to **Wrongful Acts** occurring prior to the date such organization ceased to be a **Subsidiary**.

IX. POLICY TERMINATION

A. Cancellation

1. The **First Named Insured** may cancel this Policy during the **Policy Period** by giving the Insurer advance written notice of cancellation stating when thereafter such cancellation will be effective. If the **First Named Insured** cancels, the return premium, if any, shall be calculated on the customary short rate basis. The return or tender of a return premium is not a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.
2. The Insurer may cancel this Policy only for nonpayment of premium by giving the **First Named Insured** written notice of cancellation, which shall be mailed or delivered at least twenty (20) days before the effective time of cancellation. Notice of cancellation shall state the effective time of cancellation. The **Policy Period** shall end at that time. If notice is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

B. Nonrenewal

If the Insurer decides to not renew this Policy, the Insurer shall mail or deliver written notice of nonrenewal, stating the reason(s) for nonrenewal, to the **First Named Insured**. The Insurer will mail or deliver the notice at least sixty (60) days before the expiration of the **Policy Period**. If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing. The offer of renewal terms, conditions, premiums or limits different from those in effect prior to renewal by the Insurer or any affiliate of the Insurer shall not constitute a nonrenewal.

X. GENERAL CONDITIONS

A. Notices

Except as otherwise provided in this Policy, all notices under any provision of this Policy must be made in writing and delivered by prepaid express courier, certified mail, fax, or electronic mail. Notices to the **Insureds** shall be given to the **First Named Insured** at the address in Item 1 of the Declarations of the General Terms and Conditions. Notices to the Insurer shall be given to the appropriate party at the address set forth in Item 5 of the Declarations of the General Terms and Conditions of this Policy. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notices are sent, whichever is earlier.

B. Other Insurance

If any **Loss** covered under this Policy is insured by any other valid and collectible policy of insurance, prior or current, then this Policy shall apply only in excess of the amount of any deductible, retention, and limits of liability under such other policy, whether such policy is stated to be primary, contributory, excess, contingent, or otherwise, unless such policy is written to be specifically excess of this Policy.

C. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, and to enable the Insurer effectively to bring suit in the name of the **Insureds**.

D. Bankruptcy

Bankruptcy or insolvency of an **Insured** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.



PRIVATUS[®] PLUS+

DECLARATIONS – DIRECTORS AND OFFICERS AND CORPORATE LIABILITY COVERAGE PART

THIS COVERAGE PART IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

| | |
|---|------------------------------|
| Insurer: AXIS Insurance Company | |
| Item 1. First Named Insured: <Name> | Item 2. Policy Number: _____ |
| Item 3. Limits of Liability: | |
| (A) Each Claim Limit of Liability under this Coverage Part: | \$ _____ |
| (B) Aggregate Limit of Liability for all Claims under this Coverage Part: | \$ _____ |
| (C) Investigation Cost Sublimit of Liability: | \$ _____ |
| (D) Side-A Excess Limit of Liability: Purchased ? <input type="checkbox"/> Yes <input type="checkbox"/> No | \$ _____ |
| Item 4. Retentions: | |
| (A) No Retention shall apply to any Claim under Section I. Insuring Agreement A. | |
| (B) Each Claim under Insuring Agreements B or C: | \$ _____ |
| (C) No Retention shall apply to Investigation Costs under Insuring Agreement D. | |
| Item 5. Pending or Prior Date: | |
| Item 6. Endorsements Effective at Inception: | |



PRIVATUS[®] PLUS+

DIRECTORS AND OFFICERS AND CORPORATE LIABILITY COVERAGE PART

THIS IS A CLAIMS MADE COVERAGE PART

In consideration of payment of the premium, and in reliance on all information provided to the Insurer and all statements made in the **Application**, all of which are made a part of this Policy and subject to the Declarations and all other provisions of this Policy, including any endorsements to this Policy, the Insurer and the **First Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Directors & Officers Liability

The Insurer shall pay on behalf of the **Insured Individuals** all **Loss** not indemnifiable by the **Insured Organization** that the **Insured Individual** has become legally obligated to pay on account of a **Claim** first made against such **Insured Individual** during the **Policy Period**, or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

B. Company Indemnification

The Insurer shall pay on behalf of the **Insured Organization** all **Loss** for which the **Insured Organization** is permitted or required by law to indemnify any **Insured Individual**, and that the **Insured Individual** has become legally obligated to pay on account of a **Claim** first made against such **Insured Individual** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

C. Company Liability

The Insurer shall pay on behalf of the **Insured Organization** all **Loss** that the **Insured Organization** has become legally obligated to pay on account of a **Claim** first made against the **Insured Organization** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

D. Derivative Demand Investigation

The Insurer shall pay on behalf of the **Insured Organization** all **Investigation Costs** arising from any **Securityholder Derivative Demand** first made against the **Insured Organization** during the **Policy Period** or the Extended Reporting Period, if applicable.

As a condition precedent to the coverage afforded by these Insuring Agreements, the **Insureds** shall give to the Insurer written notice of any **Claim** as soon as practicable after any of the **Insured Organization's Executive Officers** first becomes aware of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period**, or, if applicable, no later than the expiration of the Extended Reporting Period.

II. COVERAGE EXTENSIONS

A. Outside Position Liability

Subject to the terms and conditions of this **Coverage Part** and the General Terms and Conditions, Insuring Agreement A Directors & Officers Liability and Insuring Agreement B Company Indemnification shall provide coverage for an **Insured Individual** serving in an **Outside Position**. Such coverage shall be specifically excess of any indemnification and insurance available to the **Insured Individual** from the **Outside Entity**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against the **Insured Individual** for **Wrongful Acts** while serving in an **Outside Position** shall reduce the Limit of Liability of this **Coverage Section** applicable to such **Claim**.

B. Side-A Excess Limit of Liability

If purchased by the **Insured** as indicated in Item 3(D) of the Declarations of this **Coverage Part** and subject to the terms and conditions in Subsection VI.B. Retentions of this **Coverage Part**, an additional excess Limit of Liability applicable to **Insured Individuals** for **Loss** covered under Insuring Agreement A Directors & Officers Liability shall apply.

III. DEFINITIONS

For purposes of this **Coverage Part**, and whether singular or plural:

A. **Application** means:

1. any written application, including any attachments, and any other documents or information submitted to the Insurer in connection with the underwriting of this **Coverage Part**; and
2. all written representations or warranties submitted to the Insurer in the past three (3) years in connection with the underwriting of this **Coverage Part** and any other similar liability policy of which this **Coverage Part** is a renewal or replacement.

B. **Claim** means:

1. with respect to an **Insured Individual** under Insuring Agreement A. Directors & Officers Liability and Insuring Agreement B. Company Indemnification:
 - a. a written demand for monetary, non-monetary, or injunctive relief;
 - b. a civil proceeding commenced by the service of a complaint or similar pleading;
 - c. a criminal proceeding commenced by return of an indictment, information, arrest warrant or similar document, or a demand or request for extradition;
 - d. a written demand to engage in arbitration, or a written request to engage in mediation or to toll or waive a statute of limitations;
 - e. a formal administrative or regulatory proceeding commenced service of a complaint or similar pleading, the filing of a notice of charges, or a similar document; or
 - f. a civil, criminal, administrative, or regulatory investigation commenced by a written notice or a target letter from an administrative, regulatory, or other governmental authority identifying such **Insured Individual** by name as a person against whom a proceeding may be commenced;
2. solely with respect to Insuring Agreement A. Directors & Officers Liability, service of a subpoena or a similar written request on an **Insured Individual** in connection with a **Claim** against another **Insured** for a **Wrongful Act**, or a similar action against an **Outside Entity**; provided that such subpoena or request need not allege a **Wrongful Act** by the **Insured Individual**;
3. with respect to an **Insured Organization** under Insuring Agreement C. Company Liability:
 - a. a written demand for monetary, non-monetary, or injunctive relief;
 - b. a civil proceeding commenced by the service of a complaint or similar pleading;
 - c. a criminal proceeding commenced by return of an indictment, information, arrest warrant, or similar document;
 - d. a written demand to engage in arbitration, or a written request to engage in mediation or to toll or waive a statute of limitations; or
 - e. a formal administrative or regulatory proceeding commenced by service of a complaint or similar

pleading, the filing of a notice of charges, or a similar document, but only while the proceeding is simultaneously brought and maintained against an **Insured Individual**; and

4. solely with respect to Insuring Agreement D. Derivative Demand Investigation, only a **Securityholder Derivative Demand**;

including an appeal from any of the foregoing.

All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**, whether brought by one or multiple claimants, and such **Claim** shall be deemed to be first made on the earliest date on which the first of any such **Claims** is first made against the **Insured**, or deemed to be made pursuant to the terms of this Policy, whether such date is before or during the **Policy Period**.

- C. **Defense Costs** means reasonable and necessary fees, including attorney and expert fees, and expenses (other than regular or overtime wages, salaries, fees, or benefits of any **Insured**) incurred by or on behalf of the **Insureds** in defending, settling, or appealing **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds. **Defense Costs** also means reasonable and necessary fees, costs, and expenses incurred through legal counsel and consented to by the Insurer resulting from an **Insured Individual** lawfully opposing, challenging, resisting, or defending against any request for or any effort to obtain the extradition of that **Insured Individual**, or appealing any order or other grant of extradition of that **Insured Individual**.
- D. **Employee** means any one or more natural persons who was, now is, or shall become an individual whose labor or service is directed by the **Insured Organization**, whether such labor or service is on a part-time, temporary, seasonal, volunteer, or full-time basis, including a leased employee, but only while performing duties pursuant to a lease or other written contract to which the **Insured Organization** is a party.
- E. **Executive Officer** means any one or more natural persons who was, now is, or shall become chairperson of the board of directors, president, chief executive officer, chief financial officer, in-house general counsel, or risk manager of the **Insured Organization**, or the functional equivalent of any such positions.
- F. **Independent Director** means, with respect to any **Insured Organization**, a "Non-Employee Director," as that term is defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, provided that the term "issuer," as used in that Rule, shall be deemed to refer to the **Insured Organization**.
- G. **Insured** means an **Insured Individual** and the **Insured Organization**.
- H. **Insured Individual** means a natural person who was, now is, or shall become:
 1. a duly elected or appointed director, officer, trustee, advisory director, or member of a duly constituted committee or board of any **Insured Organization** that is a corporation;
 2. a manager, managing member, or member of the board of managers of any **Insured Organization** that is a limited liability company;
 3. a general partner, or managing partner, or trustee of any **Insured Organization** that is a partnership or joint venture, or management committee member of a joint venture;or the functional equivalent of any position listed above in any **Insured Organization** located in the United States or any other jurisdiction; or
 4. an **Employee**.
- I. **Investigation Costs** means reasonable and necessary fees and expenses (other than regular or overtime wages, salaries, fees, benefits or overhead expenses of any **Insured**) incurred by the **Insured Organization** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Securityholder Derivative Demand**.
- J. **Loss** means compensatory damages, punitive and exemplary damages, and the multiple portion of any multiplied damage award, judgments, any award of pre-judgment or post-judgment interest, settlement

amounts, costs and fees awarded pursuant to judgments, **Defense Costs**, and solely with respect to Insuring Agreement D. Derivative Demand Investigation, **Investigation Costs**.

Loss does not include:

1. any amount for which the **Insureds** are legally or financially absolved from payment;
2. taxes (including loss of tax benefits), other than taxes imposed on an **Insured Organization** for which an **Insured Individual** is legally liable solely by reason of the bankruptcy, receivership, conservatorship, or liquidation of the **Insured Organization**, where such amounts are insurable under the law applicable to this **Coverage Part**;
3. fines or penalties imposed by law on any **Insured**, other than civil money penalties imposed on an **Insured Individual** for an unintentional or non-willful violation of the law, including, without limitation, civil penalties assessed pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B) where such amounts are insurable under the law applicable to this **Coverage Part**;
4. any amount that constitutes the return or disgorgement of fees or any other compensation paid to the **Insured**;
5. the cost of compliance with an injunction or any other non-monetary relief or any agreement to provide such relief;
6. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, or demand that was not then a **Claim**, even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding, or demand ultimately gives rise to a **Claim**;
7. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**;
8. any amount representing an increase in the consideration paid (or proposed to be paid) by an **Insured Organization** in connection with its purchase of any securities or assets; or
9. matters uninsurable under the law applicable to this **Coverage Part**.

In determining the insurability of punitive, exemplary, or multiplied damages, or any other **Loss** the insurability of which is dependent on the law applicable to this **Coverage Part**, the law of the jurisdiction most favorable to the insurability of those damages or other **Loss** shall apply, provided that such jurisdiction is (i) where the punitive, exemplary or multiplied damages or other **Loss** were awarded, imposed, or incurred; (ii) where the **Wrongful Act** underlying the **Claim** took place; (iii) where either the Insurer or any **Insured** is incorporated, has its principal place of business, or resides; or (iv) where this Policy was issued or became effective.

- K. **Outside Entity** means any non-profit entity that is not an **Insured Organization**, or any other entity specifically added as an **Outside Entity** by written endorsement to this **Coverage Part**.
- L. **Outside Position** means the position of director, officer, trustee or other equivalent executive position held by any **Insured Individual** in an **Outside Entity** if service in such position is with the express consent and knowledge of an **Insured Organization**.
- M. **Securityholder Derivative Demand** means:
1. a written demand by one or more securityholders of the **Insured Organization** upon the board of directors or equivalent governing body of the **Insured Organization** to bring a civil proceeding in a court of law against an **Insured Individual** for a **Wrongful Act**; or
 2. a lawsuit by a securityholder of the **Insured Organization** brought derivatively on behalf of the **Insured Organization** against an **Insured Individual** for a **Wrongful Act** without first making a demand as described in paragraph 1 above.
- N. **Wage & Hour Law** means any federal, state, or local common law or statutory law, including the Fair Labor

Standards Act, and any regulations promulgated thereunder, governing or relating to payroll practices and policies, payment of wages, including the payment of overtime, on-call time, rest periods, minimum wages, garnishments, withholdings or deductions from wages, the form or timing of the payment of wages, or the classification of employees for the purpose of determining employees' eligibility for compensation or other benefits under such law(s).

O. **Wrongful Act** means:

1. any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty by:
 - a. any **Insured Individual** in his or her capacity as such or in an **Outside Position**; or
 - b. the **Insured Organization** with respect to Insuring Agreement C. Company Liability; or
2. any matter claimed against any **Insured Individual** solely by reason of his or her service in his or her capacity as such, or in an **Outside Position**.

IV. EXCLUSIONS

A. The Insurer shall not be liable under any Insuring Agreement of this **Coverage Part** for **Loss** on account of any **Claim**:

1. Prior Notice

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, transaction, event or **Wrongful Act** that, before the inception of the **Policy Period**, was the subject of any notice given under any other policy of insurance of which this **Coverage Part** is a direct or indirect renewal or replacement;

2. Pending or Prior Demand, Suit, or Proceeding

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any written demand, suit or other proceeding pending, or order, decree, or judgment entered, against any **Insured** on or prior to the Pending or Prior Date set forth in Item 5 of the Declarations of this **Coverage Part**, or any **Wrongful Act**, fact, circumstance, or situation underlying or alleged therein;

3. Public Offering & Publicly Traded Securities

based upon or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any public offering of securities issued by any **Insured Organization** or by an **Outside Entity**, or the purchase or sale of any publicly traded securities subject to the Securities Exchange Act of 1934, provided that this exclusion shall not apply to a **Claim** for a **Wrongful Act** in connection with:

- a. the offering, sale, or purchase of securities in a transaction or series of transactions that are exempt from registration under the Securities Act of 1933, as amended, and any amendments thereto or any rules and regulations promulgated thereunder, or any similar foreign law;
- b. the failure of the **Insured Organization** to undertake or complete the initial public offering or sale of securities of the **Insured Organization**; or
- c. the **Insured Organization's** preparation for a public offering of its securities, including any **Wrongful Act** occurring in the course of the "road show" presentation to potential investors, if the offering does not occur;

4. Insured v. Insured

brought or maintained by or on behalf of any **Insured** in any capacity against any other **Insured**,

provided that this exclusion shall not apply to the extent:

- a. with respect to a **Claim** brought or maintained by or on behalf of an **Insured Organization** against an **Insured Individual**:
 - i. such **Claim** is a derivative action brought or maintained on behalf of the **Insured Organization** by one or more persons who are not directors, officers, trustees, managers, or equivalent executives of the **Insured Organization**, and who bring and maintain the **Claim** totally independent of and without the solicitation, assistance, active participation, or intervention of any **Insured** unless such solicitation, participation or intervention by the **Insured** is solely pursuant to or in compliance with a subpoena or similar legal process or is protected pursuant to any whistleblower statute, rule, or regulation;
 - ii. such **Claim** is brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, creditor's committee or rehabilitator for an **Insured Organization** or any assignee of any of the foregoing; or
 - iii. such **Claim** is brought or maintained outside the United States, Canada, or any other common law jurisdiction;
 - b. with respect to a **Claim** brought or maintained by or on behalf of an **Insured Individual** against another **Insured**:
 - i. such **Claim** is brought or maintained for contribution or indemnity, provided that the **Claim** directly results from another **Claim** covered under this **Coverage Part**;
 - ii. such **Claim** is brought or maintained by one or more **Insured Individuals** who have not served as directors, officers, trustees, managers, or equivalent executives of the **Insured Organization** within two (2) years immediately preceding the date the **Claim** is first made, and the **Claim** is brought and maintained totally independent of and without the solicitation, assistance, active participation, or intervention of the **Insured Organization** or any **Insured Individual** not described in this subparagraph;
 - iii. such **Claim** is for a **Wrongful Act** involving the employment of such **Insured Individual**; or
 - iv. brought or maintained by an **Insured Individual** protected pursuant to any whistleblower statute, rule, or regulation against another **Insured Individual**;
5. Outside Entity v. Insured

brought or maintained by or on behalf of any **Outside Entity**, or any directors, officers, trustees, managers, or equivalent executives of the **Outside Entity** in any capacity against an **Insured Individual** serving in an **Outside Position** with such **Outside Entity**; provided that this exclusion shall not apply to the extent:

- a. such **Claim** is a derivative action brought or maintained on behalf of the **Outside Entity** by one or more persons who are not **Insured Individuals**, or directors, officers, trustees, managers, or equivalent executives of the **Outside Entity**, and who bring and maintain the **Claim** totally independent of and without the solicitation, assistance, active participation, or intervention of any **Insured Individuals**, or directors, officers, trustees, managers, or equivalent executives of the **Outside Entity** unless such solicitation, assistance, participation, or intervention is solely pursuant to or in compliance with a subpoena or similar legal process or is protected pursuant to any whistleblower statute, rule, or regulation;
- b. such **Claim** is brought or maintained by the directors, officers, trustees, managers, or equivalent executives of the **Outside Entity**, and such **Claim** is for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this **Coverage Part**;
- c. such **Claim** is brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, creditor's committee or rehabilitator for the **Outside Entity** or any assignee of any of the foregoing;

- d. such **Claim** is brought or maintained outside the United States, Canada, or any other common law jurisdiction; or
- e. such **Claim** is for a **Wrongful Act** involving the employment by the **Outside Entity** of such officer, manager, or equivalent executive;

6. Wage & Hour

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an actual or alleged violation of **Wage & Hour Law**;

7. Bodily Injury & Property Damage

for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property or electronic data, including loss of use of any such property or data whether or not it is damaged or destroyed; provided that this exclusion shall not apply to mental anguish or emotional distress asserted in an employment-related **Claim** that is otherwise covered under Insuring Agreement A. Directors & Officers Liability or Insuring Agreement B. Company Indemnification;

8. Pollution

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- a. any nuclear reaction, radiation, or contamination;
- b. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal, or disposal of **Pollutants** anywhere or anytime or the creation of any injurious condition involving **Pollutants**; or
- c. any direction, request, demand or order that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**;

whether or not the events described in a, b, or c above were sudden, accidental, gradual, intended, expected or preventable, and whether or not any **Insured** caused or contributed to such events; provided that this exclusion shall not apply to the extent such **Claim**:

- i. is made against an **Insured Individual**, is otherwise covered under Insuring Agreement A. Directors & Officers Liability and results in **Loss** for which the **Insured Organization** is neither permitted nor required to indemnify, or for which the **Insured Organization** is permitted or required to indemnify but does not do so solely by reason of **Financial Impairment**; or
- ii. is brought by or on behalf of any securityholder of the **Insured Organization** in his, her, or its capacity as such, while acting totally independent of and without the solicitation, assistance, participation, or intervention of the **Insured Organization** or any **Insured Individual**;

9. ERISA

for actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, as amended, or any other federal, state, local or foreign statutory law or common law that governs the same topics or subjects and any rules, regulations and amendments to any of the foregoing; or

10. Illegal Profit / Conduct

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- a. any profit, remuneration, or advantage to which the **Insured** was not legally entitled; or
- b. any willful violation of any statute or regulation, or any deliberately criminal or fraudulent act, error or omission by an **Insured**;

if established by a final and non-appealable adjudication adverse to such **Insured** in the underlying action; provided that with respect to this exclusion, the conduct of any **Insured Individual** shall not be imputed to any other **Insured Individual**, and only the conduct of the chief executive officer and the chief financial officer or the functional equivalent of those positions in an **Insured Organization** shall be imputed to the **Insured Organization**.

B. The Insurer shall not be liable under Insuring Agreement C. Company Liability for **Loss** on account of any **Claim**:

1. Personal Injury

based upon or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving libel, slander, defamation, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, assault, battery, or loss of consortium;

2. Contractual Liability

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged liability of an **Insured Organization** under any contract or agreement; provided that this exclusion shall not apply to liability that would have attached to the **Insured Organization** in the absence of such contract or agreement;

3. Employment-Related Practices or Claims

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the employment or prospective employment of any individual or any employment practice, including but not limited to any breach of any employment contract, violation of any law or public policy concerning employment, any employment-related tortious conduct, or any other employment-related **Wrongful Act**;

4. Discrimination

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving discrimination against any person, including, but not limited to, sexual or other discriminatory harassment;

5. Professional Services

for the rendering of or failure to render any service to a customer or client, whether or not in exchange for a fee; provided that this exclusion shall not apply to **Loss** on account of a securities **Claim**, a **Securityholder Derivative Demand**, or a derivative action.

6. Product Liability / Product Defect

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy, or dangerous condition in such product or in its design or manufacture; provided that this exclusion shall not apply to **Loss** on account of a securities **Claim**, a **Securityholder Derivative Demand**, or a derivative action; or

7. Intellectual Property

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, or service mark or the misappropriation of ideas or trade secrets, or the unauthorized disclosure of or access to confidential information; provided that this exclusion shall not apply to **Loss** on account of a securities **Claim**, a **Securityholder Derivative Demand**, or a derivative action.

VI. LIMITS OF LIABILITY AND RETENTIONS

A. Limits of Liability

In addition to the provisions set forth in Subsection IV.A. Limits of Liability of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

1. Investigation Cost Sublimit of Liability

The Insurer's maximum aggregate liability for all **Investigation Costs** under this **Coverage Part** shall be the **Investigation Cost** Sublimit of Liability set forth in Item 3(C) of the Declarations of this **Coverage Part**, which amount shall be part of, and not in addition, to the aggregate Limit of Liability for all **Loss** on account of all **Claims** under this **Coverage Part** as set forth in Item 3(B) of the Declarations of this **Coverage Part**. If the **Investigation Cost** Sublimit of Liability is exhausted, then the Insurer's obligations with respect to Insuring Agreement D. Derivative Demand Investigation shall be completely fulfilled and extinguished.

2. Additional Side-A Excess Limit of Liability

If the Side-A Excess Limit of Liability is purchased by the **Insured**, as indicated in Item 3(D) of the Declarations of this **Coverage Part**, then the Insurer's maximum aggregate liability for all **Loss** that is incurred by **Insured Individuals** and that is covered under Insuring Agreement A Directors & Officers Liability shall be increased by the amount set forth in Item 3(D) of the Declarations of this **Coverage Part** (the "Side-A Excess Limit"). The Side-A Excess Limit is in addition to, and not part of, the Limits of Liability set forth in Items 3(A) and 3(B) of the Declarations of this **Coverage Part** and the Combined Aggregate Limit of Liability for this Policy, if applicable. The Side-A Excess Limit shall be excess of, and shall not contribute with:

- a. the Limits of Liability set forth in Items 3(A) and 3(B) of the Declarations of this **Coverage Part** and the Combined Aggregate Limit of Liability for this Policy, if applicable; and
- b. any limits provided by any policy that is written to be specifically excess of this **Coverage Part**, or any other valid insurance applicable to an **Independent Director**.

Defense Costs with respect to **Claims** subject to the Side-A Excess Limit are part of, and not in addition to, the Side-A Excess Limit, and the payment by the Insurer of such **Defense Costs** reduces and may totally exhaust the Side-A Excess Limit.

B. Retentions

In addition to the provisions set forth in Subsection IV.B. Retentions of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

1. The Retentions applicable to the Insuring Agreements of this **Coverage Part** are set forth in Item 4 of the Declarations of this **Coverage Part**.
2. If the **Insured Organization** is permitted or required by law to indemnify the **Insured Individuals** for any covered **Loss** or to advance **Defense Costs** on their behalf, and does not do so for any reason other than **Financial Impairment** of the **Insured Organization**, then the Insurer shall pay such **Loss**

or advance such **Defense Costs** on behalf of the **Insured Individuals** within the applicable Retention amount, and the **Insured Organization** shall have a direct and immediate obligation to pay the Insurer any such **Loss** or **Defense Costs** within the applicable Retention amount.

VII. DEFENSE AND SETTLEMENT

- A. If any part of any **Claim** against an **Insured** is based upon, arises out of, directly or indirectly results from, or in any way involves an actual or alleged violation of **Wage & Hour Law**, then the provisions set forth in Paragraph 1 of Subsection V.A. Defense and Settlement of the General Terms and Conditions shall not apply to such **Claim**. The **Insured**, and not the Insurer, shall have the duty to defend all such **Claims**.

With respect to any such **Claim** covered in part under this **Coverage Part**, the **Insureds** shall select defense counsel from the Insurer's then current list of approved defense firms in the jurisdiction in which the **Claim** is made. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense and settlement of such **Claim**, including but not limited to the negotiation of a settlement of any such **Claim**. Subject to the relevant allocation provisions set forth in Subsection IX.A. Allocation of this **Coverage Part** and the applicable Retention, the Insurer shall advance, on a current basis, **Defense Costs** that the **Insureds** have incurred in connection with any such **Claim** prior to the final disposition of the **Claim**, provided that to the extent that it is ultimately established that any such **Defense Costs** are not covered, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Insurer. In all events, the **Insured** shall comply with the Insurer's Litigation Management Guidelines.

- B. The **Insureds** shall not incur **Investigation Costs** on account of a **Securityholder Derivative Demand** without the Insurer's prior written consent, which shall not be unreasonably withheld.
- C. Notwithstanding Paragraph 2 of Subsection V.A. Defense and Settlement of the General Terms and Conditions, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount, including **Defense Costs**, not exceeding the applicable Retention, then the Insurer's consent shall not be required for such disposition.

VIII. REPRESENTATIONS AND SEVERABILITY

In addition to the provisions set forth in Section VII of the General Terms and Conditions, the following is applicable to this **Coverage Part**:

The Insurer shall not seek to void or rescind this **Coverage Part**, in whole or in part, for any reason.

IX. CONDITIONS

A. Allocation

1. If in any **Claim**, **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage for such **Claim**, or if such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer agree to use their best efforts to determine a fair and proper allocation between covered **Loss** and uncovered loss, taking into account the relative legal and financial exposures of the **Insureds**.
2. With respect to **Claims** other than those subject to Subsection VII.A of this **Coverage Part**, the Insurer agrees to allocate one hundred percent (100%) of **Defense Costs** incurred by the **Insured** in defense of a **Claim** to covered **Loss**; provided that such **Defense Costs** are incurred in accordance with the terms and conditions of this Policy.
3. With respect to **Claims** subject to Subsection VII.A of this **Coverage Part**, if the **Insureds** and the Insurer cannot agree on an allocation of **Defense Costs**, the Insurer shall advance, on a current basis, **Defense Costs** that the Insurer believes to be covered under this **Coverage Part** until a different allocation is negotiated, arbitrated, or judicially determined. Any such allocation shall be applied retroactively to all **Defense Costs** on account of such **Claim**, but shall not apply to or create any presumption with respect to the allocation of other amounts arising from such **Claim** or any other **Claim**.

B. Indemnification Obligations

The **Insured Organization** agrees to indemnify the **Insured Individuals** for covered **Loss** to the fullest extent permitted by law.

C. Priority of Payments

1. This Coverage Part

The Insurer shall be entitled to pay **Loss** as it becomes due and payable under this **Coverage Part** without regard to future payment obligations under this Policy. However, if such **Loss** exceeds the remaining applicable Limit of Liability, the Insurer shall pay such **Loss** in the following order: (i) first, pay **Loss** under Insuring Agreement A. Directors & Officers Liability; and (ii) second, pay all other **Loss** for which coverage is provided under this **Coverage Part**.

2. Among Coverage Parts

If any **Loss** on account of a **Claim** against an **Insured** is covered under both this **Coverage Part** and the Employment Practices Liability **Coverage Part**, if purchased, then any such **Loss** shall first be paid under the Employment Practices Liability **Coverage Part** until the applicable Limit of Liability for that **Coverage Part** is exhausted, and then under this **Coverage Part**; provided that in all events, the Insurer's maximum liability for **Loss** on account of any such **Claim** shall be limited to the larger of the Each **Claim** Limit of Liability for this **Coverage Part**, or the Each **Claim** Limit of Liability for the Employment Practices Liability **Coverage Part**.

D. Subrogation

The Insurer shall not exercise its right of subrogation against any **Insured Individual** with respect to this **Coverage Part** unless Exclusion A.10 applies to such **Insured Individual**.

E. Territory, Valuation and Currency

This Policy shall apply anywhere in the world, where legally permissible. All monetary amounts under this Policy are expressed and payable in the currency of the United States. If a judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

F. Alteration and Assignment of Interest

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy signed by an authorized representative of the Insurer. The **Insureds** agree that this Policy constitutes the entire agreement between the **Insureds** and the Insurer, or any of their agents or brokers. Notice to or knowledge possessed by the Insurer, the **Insureds**, or any agent, broker, or other person acting on behalf of the **Insureds** or Insurer shall not effect a waiver of nor estop the Insurer from asserting any rights under this Policy.

G. No Action Against Insurer

No action shall lie against the Insurer unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

H. Authorization

By acceptance of this Policy, the **First Named Insured** agrees to act on behalf of the **Insureds** with respect to payment of all premiums and Retentions, giving and receiving notice of cancellation and nonrenewal, receiving any return premiums that may become due under this Policy, agreeing to any changes to this Policy, and purchasing an Extended Reporting Period. The **Insureds** agree that the **First Named Insured** shall act on their behalf.

I. Headings

The descriptions in the headings and subheadings of this Policy are solely for convenience and form no part of the terms and conditions of coverage.



PRIVATUS[®] PLUS+

DECLARATIONS – FIDUCIARY LIABILITY COVERAGE PART

THIS COVERAGE PART IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

| | |
|--|------------------------------|
| Insurer: AXIS Insurance Company | |
| Item 1. First Named Insured: <Name> | Item 2. Policy Number: _____ |
| Item 3. Limits of Liability: | |
| (A) Each Claim Limit of Liability under this Coverage Part: | \$ _____ |
| (B) Aggregate Limit of Liability for all Claims under this Coverage Part: | \$ _____ |
| (C) Voluntary Compliance Program Loss Sublimit of Liability: | \$ _____ |
| (D) Civil Penalties Sublimit of Liability: | \$ _____ |
| (E) Plan Purchaser Sublimit of Liability: | \$ _____ |
| Item 4. Retentions: | |
| (A) Each Claim under Insuring Agreement A: | \$ _____ |
| (B) No retention shall apply to Voluntary Compliance Program Loss under Insuring Agreement B. | |
| (C) No retention shall apply to Civil Penalties under Insuring Agreement A. | |
| Item 5. Pending or Prior Date: | |
| Item 6. Endorsements Effective at Inception: | |



PRIVATUS[®] PLUS+

DECLARATIONS – EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

THIS COVERAGE PART IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

| | |
|---|------------------------|
| Insurer: AXIS Insurance Company | |
| Item 1. First Named Insured: <Name> | Item 2. Policy Number: |
| Item 3. Limits of Liability: | |
| (A) Each Claim Limit of Liability under this Coverage Part: | \$ _____ |
| (B) Aggregate Limit of Liability for all Claims under this Coverage Part: | \$ _____ |
| (C) Training Cost Sublimit of Liability: | \$ _____ |
| Item 4. Retention: | |
| Each Claim under this Coverage Part: | \$ _____ |
| Item 5. Pending or Prior Date: _____ | |
| Item 6. Third Party Liability: | |
| Coverage Purchased? <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| Item 7. Endorsements Effective at Inception: | |



PRIVATUS[®] PLUS+

FIDUCIARY LIABILITY COVERAGE PART

THIS IS A CLAIMS MADE COVERAGE PART

In consideration of payment of the premium, and in reliance on all information provided to the Insurer and all statements made in the **Application**, all of which are made a part of this Policy and subject to the Declarations and all other provisions of this Policy, including any endorsements to this Policy, the Insurer and the **First Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Fiduciary Liability

The Insurer shall pay on behalf of the **Insured**, all **Loss** (except **Voluntary Compliance Program Loss**) that the **Insured** has become legally obligated to pay on account of a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

B. Voluntary Compliance Program

The Insurer shall pay on behalf of the **Insured**, all **Voluntary Compliance Program Loss** following a **Voluntary Compliance Program Notice** first given to the Insurer during the **Policy Period**.

As a condition precedent to the coverage afforded by Insuring Agreement A., Fiduciary Liability the **Insureds** shall give to the Insurer written notice of any **Claim** as soon as practicable after any of the **Insured Organization's Executive Officers** first becomes aware of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period**, or, if applicable, no later than the expiration of the Extended Reporting Period.

II. DEFINITIONS

For purposes of this **Coverage Part**, and whether singular or plural:

A. **Administrator** means an **Insured** with responsibility for the performance of one or more of the following administrative duties or activities:

1. counseling participants or beneficiaries with respect to a **Plan**;
2. providing interpretations with respect to a **Plan**;
3. handling of records with respect to a **Plan**; or
4. activities affecting enrollment, termination, amendment, or cancellation of participants or beneficiaries under a **Plan**.

Administrator also means any third party that is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.

B. **Application** means:

1. any written application, including any attachments, and any other documents or information submitted to the Insurer in connection with the underwriting of this **Coverage Part**;
2. all materials filed with the Internal Revenue Service, the U.S. Department of Labor, or the Pension Benefit Guarantee Corporation, by or on behalf of the **Plans** during the past three (3) years, including the audited financial statements for the **Plans**; and
3. all written representations or warranties submitted to the Insurer in the past three (3) years in connection with the underwriting of this **Coverage Part** and any other similar liability policy of which this **Coverage Part** is a renewal or replacement.

C. **Benefits** means any obligation under a **Plan** to a participant or beneficiary of a **Plan** to make a payment of money or property or to grant a privilege or perquisite.

D. **Civil Penalties** means:

1. the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of ERISA; the twenty percent (20%) or less penalty imposed upon an **Insured** under Section 502(l) of ERISA, and penalties under Section 502(c) of ERISA;
2. civil penalties for violations of any privacy provision of the Health Insurance Portability and Accountability Act of 1996, the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act of 2010;
3. the fifteen percent (15%) or less civil penalty under Section 4975 of the Internal Revenue Code of 1986;
4. civil penalties imposed for a violation of Section 507 of Title V of the Pension Protection Act of 2006 (PPA); and
5. civil penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State or the United Kingdom Occupational Pensions Regulatory Authority pursuant to the Pension Scheme Act 1993, the English Pensions Act 1995, the Pensions Act 2004 as amended, and any rules and regulations promulgated thereunder; provided that no part of the premium for this **Coverage Part** attributable to this exception has been funded, paid, or reimbursed from the funds or assets of any pension scheme insured under this **Coverage Part**.

E. **Claim** means:

1. a written demand for monetary, non-monetary, or injunctive relief;
2. a civil proceeding commenced by the service of a complaint or similar pleading;
3. a criminal proceeding commenced by the return of an indictment, information, arrest warrant, or similar document; or a demand or request for extradition of an **Insured Individual**;
4. a written demand to engage in arbitration, or a written request to engage in mediation or to toll or waive a statute of limitations;
5. an administrative or regulatory proceeding or formal investigation commenced by the issuance of a notice of charges, formal investigative order, or similar document; or
6. a fact-finding investigation by the Department of Labor, the Pension Benefit Guaranty Corporation, or similar governmental agency located outside the United States commenced by a written notice of such investigation;

including an appeal from any of the foregoing.

All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**, whether brought by one or multiple claimants, and such **Claim** shall be deemed to be first made on the earliest date on which the first of any such **Claims** is first made against the **Insured**, or deemed to be made pursuant to the terms of this Policy, whether such date is before or during the **Policy Period**.

F. **Consulting Fees** means fees charged by a third party actuary, benefits consultant, or accountant other than such fees associated with: (i) a **Plan** audit; or (ii) normal **Plan** administration or compliance costs.

G. **Defense Costs** means reasonable and necessary fees, including attorney and expert fees, and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred by or on behalf of the **Insureds** in defending, settling, or appealing **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds. **Defense Costs** also means reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the Insurer resulting from an **Insured Individual** lawfully opposing, challenging, resisting or defending against any request for or any effort to obtain the extradition of that **Insured Individual**, or appealing any order or other grant of extradition of that **Insured Individual**.

- H. **Employee Benefit Plan Law** means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985) (ERISA), and any amendment or revision thereto, or any similar common or statutory law of any country, state, or other jurisdiction to which a **Plan** is subject. **Employee Benefit Plan Law** shall not include any law concerning worker's compensation, unemployment insurance, Social Security, government-mandated disability benefits, or similar law.
- I. **ESOP** means any employee stock ownership plan as defined in **Employee Benefit Plan Law**.
- J. **Executive Officer** means any one or more natural persons who are a past, present or future chairperson of the board of directors, president, chief executive officer, chief financial officer, in-house general counsel, head of benefits, or risk manager of an **Insured Organization** or a **Plan** or the functional equivalent of any such positions.
- K. **Fiduciary** means a fiduciary of a **Plan** as defined in **Employee Benefit Plan Law**.
- L. **Insured** means an **Insured Individual**, the **Insured Organization**, and any **Plan**.
- M. **Insured Individual** means a natural person who was, now is, or shall become:
1. a duly elected or appointed director, officer, trustee, or employee, advisory director, or member of a duly constituted committee or board of any **Insured Organization** that is a corporation;
 2. a manager, managing member, member of the board of managers, trustee, or employee of any **Insured Organization** that is a limited liability company;
 3. a general partner, managing partner, trustee, or employee of an **Insured Organization** that is a partnership or joint venture, or management committee member of a joint venture;
 4. an employee or trustee of a **Plan** sponsored in whole or in part by the **Insured Organization** solely for the benefit of the employees of the **Insured Organization**; or
 5. the functional equivalent of any position listed above in any **Insured Organization** or **Plan** sponsored in whole or in part by the **Insured Organization** solely for the benefit of the employees of the **Insured Organization**;
- in his or her capacity as a **Fiduciary** or an **Administrator** of a **Plan**.
- N. **Liquidated Damages** means a sum of money stipulated in a written contract by the parties to such contract as the amount of damages to be recovered for a breach thereof.
- O. **Loss** means the amount(s) which the **Insureds** become legally obligated to pay on account of a **Claim**, including compensatory damages, punitive and exemplary damages and the multiple portion of any multiplied damage award (where insurable by law), judgments, any award of pre-judgment or post-judgment interest, settlement amounts, costs and fees awarded pursuant to judgments, and **Defense Costs**. Solely with respect to Insuring Agreement B. Voluntary Compliance Program, **Loss** shall mean only **Voluntary Compliance Program Loss**.

Loss does not include:

1. any amounts for which the **Insureds** are legally or financially absolved from payment;
2. taxes, including loss of tax benefits;
3. fines or penalties imposed by law on any **Insured**, other than **Civil Penalties** under Insuring Agreement A. Fiduciary Liability and **Voluntary Compliance Program Loss** under Insuring Agreement B. Voluntary Compliance Program;

4. any amount that constitutes the return or disgorgement of fees or any other compensation paid to the **Insured**;
5. the cost of compliance with an injunction or any other non-monetary relief or any agreement to provide such relief;
6. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, or demand that was not then a **Claim** or a **Voluntary Compliance Program Notice**, even if: (a) such amount also benefits the defense of a covered **Claim** or a **Voluntary Compliance Program Notice**; or (b) such action, proceeding, or demand ultimately gives rise to a **Claim** or a **Voluntary Compliance Program Notice**;
7. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**;
8. **Liquidated Damages**; or
9. matters uninsurable under the law applicable to this Policy.

In determining the insurability of punitive, exemplary, or multiplied damages, **Civil Penalties**, or any other **Loss**, the insurability of which is dependent on the law applicable to this **Coverage Part**, the law of the jurisdiction most favorable to the insurability of those damages, penalties, or other **Loss** shall apply, provided that such jurisdiction is (i) where the punitive, exemplary or multiplied damages, penalties, or other **Loss** were awarded, imposed, or incurred; (ii) where the **Wrongful Act** underlying the **Claim** took place; (iii) where either the Insurer or any **Insured** is incorporated, has its principal place of business or resides; or (iv) where this Policy was issued or became effective.

P. **Managed Care Services** means the administration or management of a health care plan utilizing cost control mechanisms, including, but not limited to, utilization review, case management, disease management, or the use of a preferred provider network; provided that **Managed Care Services** does not include: (i) any services provided by a **Self Administered Plan**; or (ii) any acts, errors, or omissions in the rendering of or failure to render **Medical Services** by an **Insured**.

Q. **Medical Services** means health care, medical care, or treatment provided to any individual, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the use, prescription, furnishing, or dispensing of medications, drugs, blood, blood products, or medical, surgical, dental, or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; counseling or other social services in connection with such care; and the handling of or the performance of post-mortem examinations of human bodies; provided that utilization review shall not be deemed **Medical Services**.

R. **Plan** means:

1. any employee welfare plan, employee pension plan, or employee benefit plan as defined in **Employee Benefit Plan Law**, established anywhere in the world, sponsored solely by the **Insured Organization**, or jointly by the **Insured Organization** and a labor organization, solely for the benefit of the employees of the **Insured Organization**, whether or not subject to ERISA; or
2. a government-mandated insurance program for workers' compensation, unemployment insurance, social security or disability benefits solely with respect to an **Insured** in the capacity of an **Administrator**;

Plan shall not include any multi-employer plan, as defined in **Employee Benefit Plan Law**, or any **ESOP** unless such plan or **ESOP** is specifically included as a **Plan** by endorsement to this **Coverage Part**. If a multi-employer plan is specifically included as a **Plan**, then coverage under this **Coverage Part** with respect to such plan shall be limited to **Insured Individuals** in the capacity of a **Fiduciary** or **Administrator** of such plan at the specific request of the **Insured Organization**. Any such coverage shall be specifically excess of any insurance maintained by such plan.

If a **Plan** is created, acquired, or first sponsored by the **Insured Organization** before or during the **Policy Period**, then coverage shall be provided under this **Coverage Part** for such **Plan** and its **Insureds**, but only for **Wrongful Acts**, or with respect to a **Voluntary Compliance Program Notice**, actual or alleged non-compliance with a statute, rule, or regulation, occurring after the date such **Plan** is created, acquired, or sponsored.

If a **Plan** is merged, sold, or spun-off prior to or during the **Policy Period**, coverage under this **Coverage Part** for such **Plan** and its **Insureds** shall continue until the end of the **Policy Period**, but only with respect to **Wrongful Acts**, or with respect to a **Voluntary Compliance Program Notice**, actual or alleged non-compliance with a statute, rule, or regulation occurring prior to the date of such merger, sale or spin-off. If a **Plan** is terminated prior to or during the **Policy Period**, coverage for such **Plan** and its **Insureds** shall continue until the end of the **Policy Period** for **Wrongful Acts**, or with respect to a **Voluntary Compliance Program Notice**, actual or alleged non-compliance with a statute, rule, or regulation, occurring prior to or after such termination.

- S. **Self Administered Plan** means any services provided by a health care plan sponsored and administered by an **Insured** solely for the benefit of the employees of the **Insured Organization**.
- T. **Voluntary Compliance Program** means the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program (VFCP), as administered by the Employee Benefits Security Administration of the Department of Labor (DOL), and the Employee Plans Compliance Resolution System, as administered by the Internal Revenue Service (IRS), or any similar program anywhere in the world.
- U. **Voluntary Compliance Program Loss** means **Voluntary Compliance Program Defense Costs** and **Voluntary Compliance Program Indemnity Amounts**.
- V. **Voluntary Compliance Program Defense Costs** means reasonable and necessary legal fees and expenses, and **Consulting Fees** incurred by or on behalf of the **Insureds** in connection with the **Insureds'** participation in a **Voluntary Compliance Program** solely as a result of a **Plan's** actual or alleged inadvertent non-compliance with a statute, rule, or regulation, provided that **Voluntary Compliance Program Defense Costs** shall not include: (i) any fees or costs incurred in finding or assessing such failure; or (ii) any regular or overtime wages, salaries, fees, or benefits of the **Insured Individuals** or employees of the **Insured Organization**.
- W. **Voluntary Compliance Program Indemnity Amounts** means:
 - 1. any fees, fines, penalties, or sanctions paid by the **Insured** to the IRS, the DOL, or other governmental authority pursuant to a **Voluntary Compliance Program**; or
 - 2. any damages or settlement amounts paid by an **Insured** pursuant to the VFCP as a result of a violation of the responsibilities, obligations or duties imposed upon such **Insured** by **Employee Benefit Plan Law**, provided that the **Insured** obtains a "no-action letter" from the DOL as a result of the **Insured's** compliance with the VFCP;

provided that such amounts are attributable to an actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule, or regulation.

Voluntary Compliance Program Indemnity Amounts shall not include any costs to correct the non-compliance or any other charges, expenses, taxes, or damages.

- X. **Voluntary Compliance Program Notice** means advance written notice to the Insurer by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program** with respect to any **Plan**, provided that no **Insured** knew prior to the **First Inception Date** that such **Plan** was non-compliant with a statute, rule or regulation.
- Y. **Wage & Hour Law** means any federal, state, or local law governing or relating to the payment of wages, including the payment of overtime, on-call time, rest periods, minimum wages, deductions from wages, the form or timing of the payment of wages, or the classification of employees for the purpose of determining employees' eligibility for compensation or other benefits under such law(s) including any statutory or

common law premised on such law.

Z. **Wrongful Act** means:

1. with respect to an **Insured** in his, her, or its capacity as a **Fiduciary**:
 - a. a violation of any of the responsibilities, obligations, or duties imposed on **Fiduciaries** by **Employee Benefit Plan Law** with respect to a **Plan**; or
 - b. any matter claimed against an **Insured** by reason of his, her, or its status as a **Fiduciary**; and
2. with respect to an **Administrator**:
 - a. any negligent act, error, or omission in the performance of the duties of an **Administrator**; or
 - b. any matter claimed against an **Administrator** by reason of his or her status as such.

III. EXCLUSIONS

A. The Insurer shall not be liable under any Insuring Agreement of this **Coverage Part** for **Loss** on account of any **Claim** or **Voluntary Compliance Program Notice**:

1. Prior Notice

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, transaction, event, or **Wrongful Act** that, before the inception of the **Policy Period**, was the subject of any notice given under any other policy of insurance of which this **Coverage Part** is a direct or indirect renewal or replacement;

2. Pending or Prior Demand, Suit, or Proceeding

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any written demand, suit or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the Pending or Prior Date set forth in Item 5 of the Declarations of this **Coverage Part**, or any **Wrongful Act**, fact, circumstance, or situation underlying or alleged therein;

3. Other Plans

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- a. any act or omission by an **Insured** in his, her, or its capacity as a **Fiduciary** or **Administrator** of any plan, fund, or program other than a **Plan** as defined in this **Coverage Part**, or by reason of his, her, or its status as a **Fiduciary** or **Administrator** of such other plan, fund, or program; or
- b. any **Wrongful Act** as respects a **Plan** taking place at any time when the **Insured Organization** did not sponsor such **Plan**;

4. Bodily Injury & Property Damage

for bodily injury, mental anguish, emotional distress, sickness, disease, or death of any person or damage to or destruction of any tangible property or electronic data including loss of use of such property or data whether or not it is damaged or destroyed; provided that this exclusion shall not apply to any actual or alleged mental anguish or emotional distress, bodily injury to, or sickness, disease, exacerbation of existing illness, or wrongful death of any person resulting from: (i) selection of any **Managed Care Services** provider; or (ii) denial or delay of any benefit under a health care plan or other than a **Self Administered Plan**;

5. Government Insurance Programs

based upon arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of an obligation of any **Insured** pursuant to any government-mandated insurance for workers' compensation, unemployment, Social Security, or disability benefits; provided that this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or the Health Insurance Portability and Accountability Act of 1996, as amended;

6. Wage & Hour

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an actual or alleged violation of **Wage & Hour Law**;

7. Illegal Profit / Conduct

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- a. any profit, remuneration, or advantage to which the **Insured** was not legally entitled; or
- b. any willful violation of any statute or regulation, or any deliberately criminal or fraudulent act, error or omission by an **Insured**;

if established by a final and non-appealable adjudication adverse to such **Insured** in the underlying action; provided that with respect to this exclusion the conduct of any **Insured Individual** shall not be imputed to any other **Insured Individual**, and only the conduct of the **Executive Officers** of an **Insured Organization** or **Plan** shall be imputed to the **Insured Organization** or **Plan**;

8. Discrimination

for discrimination in violation of any law other than **Employee Benefit Plan Law**; or

9. Liability Assumed Under Contract

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by the **Insured** under any oral, written, or implied contract or agreement, but this exclusion shall not apply to the extent: (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

B. The Insurer shall not be liable for **Loss**, other than: (i) **Defense Costs** on account of a **Claim**; or (ii) **Voluntary Compliance Program Defense Costs** on account of a **Voluntary Compliance Program Notice**:

1. Failure to Collect Plan Contributions

for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**; or

2. Benefits

for **Benefits** which are or will be due under a **Plan**, or which would be due under a **Plan** if such **Plan** complied with all applicable laws, including that portion of any settlement or judgment equal to such **Benefits**, unless recovery of such **Benefits** is based on a **Wrongful Act** and is payable as a personal obligation of an **Insured Individual**; provided that this exclusion shall not apply to that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan** due to investment losses, lost investment opportunities, excessive costs, or failure to comply with the participant's investment decisions.

IV. LIMITS OF LIABILITY AND RETENTIONS

A. Limits of Liability

In addition to the provisions set forth in Subsection IV.A. Limits of Liability of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

1. Voluntary Compliance Program Sublimit of Liability

The Insurer's maximum liability for all **Voluntary Compliance Program Loss** arising from all **Voluntary Compliance Program Notices** under this **Coverage Part** shall be the **Voluntary Compliance Program Sublimit of Liability** set forth in Item 3(C) of the Declarations of this **Coverage Part**, which amount shall be part of, and not in addition to, the Limits of Liability set forth in Item 3(B) in the Declarations of this **Coverage Part**. If the **Voluntary Compliance Program Sublimit of Liability** is exhausted by payment of **Voluntary Compliance Program Loss**, then the Insurer's obligations with respect to Insuring Agreement B. Voluntary Compliance Program shall be completely fulfilled and extinguished.

2. Civil Penalties Sublimit of Liability

The Insurer's maximum liability for all **Civil Penalties** under this **Coverage Part** shall be the **Civil Penalties Sublimit of Liability** set forth in Item 3(D) of the Declarations of this **Coverage Part**, which amount shall be part of, and not in addition to, the Limits of Liability set forth in Items 3(A) and 3(B) in the Declarations of this **Coverage Part**. If the **Civil Penalties Sublimit of Liability** is exhausted by payment of **Civil Penalties**, then the Insurer's obligations with respect to all **Civil Penalties** shall be completely fulfilled and extinguished.

3. Plan Purchaser Sublimit of Liability

The Insurer's maximum liability for all **Loss** resulting from all **Claims** in connection with the selection of any **Managed Care Services** provider or denial or delay of any benefit under a health care plan other than a **Self Administered Plan** shall be the Plan Purchaser Sublimit of Liability set forth in Item 3(E) of the Declarations of this **Coverage Part**, which amount shall be part of, and not in addition to, the Limits of Liability set forth in Items 3(A) and 3(B) in the Declarations of this **Coverage Part**. If the Plan Purchaser Sublimit of Liability is exhausted by payment of **Loss** resulting from all **Claims** in connection with the selection of any **Managed Care Services** provider or denial or delay of any benefit under a health care plan other than a **Self Administered Plan**, then the Insurer's obligations with respect to all such **Claims** shall be completely fulfilled and extinguished.

B. Retentions

In addition to the provisions set forth in Subsection IV.B. Retentions of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

1. No Retention shall apply to **Loss** of an **Insured Individual** under this **Coverage Part** if neither the **Insured Organization** nor any **Plan** is permitted or required to indemnify the **Insured Individual** for such **Loss**, or the **Insured Organization** is permitted or required to indemnify but does not do so solely by reason of **Financial Impairment**.
2. No Retention shall apply to **Civil Penalties** under Insuring Agreement A. Fiduciary Liability.
3. No Retention shall apply to **Voluntary Compliance Program Loss** under Insuring Agreement B. Voluntary Compliance Program.

V. DEFENSE AND SETTLEMENT

A. Voluntary Compliance Program

Solely with respect to coverage under Insuring Agreement B. Voluntary Compliance Program, the **Insureds**, and not the Insurer, shall have the duty to defend any matters under Insuring Agreement B. Voluntary Compliance Program.

The **Insureds** shall not settle or offer to settle any matter under Insuring Agreement B. Voluntary Compliance Program, select any defense counsel, incur any **Voluntary Compliance Program Defense Costs**, admit or assume any liability, stipulate to any judgment, or otherwise assume any obligation without the Insurer's prior written consent, which shall not be unreasonably withheld. The **Insureds** shall select defense counsel from the Insurer's then current list of approved fiduciary liability defense firms in the applicable jurisdiction. The Insurer shall not be liable for any **Voluntary Compliance Program Loss**, assumed obligation, admission, or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated. The **Insureds** shall provide the Insurer with all information, assistance, and cooperation which the Insurer reasonably requests and shall do nothing that may prejudice the Insurer's potential or actual rights of recovery with respect to any **Voluntary Compliance Program Loss**. The **Insureds** shall not knowingly take any action which increases the Insurer's exposure for **Voluntary Compliance Program Loss**. In all events, the **Insured** shall comply with the Insurer's Litigation Management Guidelines.

B. Wage & Hour

If any part of any **Claim** against an **Insured** is based upon, arises out of, directly or indirectly results from, or in any way involves an actual or alleged violation of **Wage & Hour Law**, then the provisions set forth in Paragraph 1 of Subsection V.A. Defense and Settlement of the General Terms and Conditions shall not apply to such **Claim**. The **Insured**, and not the Insurer, shall have the duty to defend all such **Claims**.

With respect to any such **Claim** covered in part under this **Coverage Part**, then the **Insureds** shall select defense counsel from the Insurer's then current list of approved defense firms in the jurisdiction in which the **Claim** is made. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement of such **Claim**, including, but not limited to, the negotiation of a settlement of any such **Claim**. Subject to the relevant allocation provisions set forth in Subsection VIII.A. Allocation of this **Coverage Part**, and the applicable Retention, the Insurer shall advance, on a current basis, **Defense Costs** that the **Insureds** have incurred in connection with any such **Claim**, prior to the final disposition of the **Claim**, provided that to the extent that it is ultimately established that any such **Defense Costs** are not covered, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Insurer. In all events, the **Insured** shall comply with the Insurer's Litigation Management Guidelines.

C. Notwithstanding Paragraph 2 of Subsection V.A. Defense and Settlement of the General Terms and Conditions, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount, including **Defense Costs**, not exceeding the applicable Retention, then the Insurer's consent shall not be required for such disposition.

VI. CIRCUMSTANCE REPORTING

Section VI of the General Terms and Conditions shall not apply to Insuring Agreement B. Voluntary Compliance Program of this **Coverage Part**.

If an **Insured** submits a **Voluntary Compliance Program Notice** during the **Policy Period**, then any **Claim** subsequently arising from the circumstances underlying such **Voluntary Compliance Program Notice** shall be deemed to have been first made during the **Policy Period** in which such **Voluntary Compliance Program Notice** was first given by an **Insured** to the Insurer. With respect to any subsequent **Claim**, no coverage shall be provided for any loss, fees, and expenses incurred prior to the time such circumstances result in a **Claim**.

As a condition precedent to exercising their rights hereunder, the **Insureds** shall include with any **Voluntary Compliance Program Notice** a description of the facts, circumstances, situation, or **Wrongful Act**, the nature and extent of the potential damages, the names of the potential claimants, and the manner in which the **Insured** first became aware of such facts, circumstances, situation, or **Wrongful Act**, and shall give the Insurer such additional information and cooperation as it may reasonably require.

VII. REPRESENTATIONS AND SEVERABILITY

In addition to the provisions set forth in Section VII of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

- A. Subsection VII.B of the General Terms and Conditions shall not apply to this **Coverage Part**. If the **Application** contains any misrepresentation, and such misrepresentation either was made with the intent to deceive, or materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this Policy, then no coverage shall be available for any **Claim** or **Voluntary Compliance Notice** based upon or arising from such misrepresentation with respect to:
1. any **Insured Individual** who knew, as of the date the **Application** was signed, of the misrepresentation, whether or not such **Insured Individual** knew the **Application** contained the misrepresentation, or any **Insured Organization** or **Plan** to the extent that the **Insured Organization** or **Plan** indemnifies such **Insured Individual**; or
 2. any **Insured Organization** or **Plan** if any **Executive Officer** of the **Insured Organization** or **Plan** knew, as of the date the **Application** was signed, of the misrepresentation, whether or not such **Executive Officer** knew the **Application** contained such misrepresentation.
- B. The Insurer shall not seek to void or rescind this **Coverage Part**, in whole or in part, for any reason.

VIII. CONDITIONS

A. Allocation

1. If in any **Claim**, **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage for such **Claim**, or if such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer agree to use their best efforts to determine a fair and proper allocation between covered **Loss** and uncovered loss, taking into account the relative legal and financial exposures of the **Insureds**.
2. With respect to **Claims** other than those subject to Subsection V.B. of this **Coverage Part**, the Insurer agrees to allocate one hundred percent (100%) of **Defense Costs** incurred by the **Insured** in defense of a **Claim** to covered **Loss**; provided that such **Defense Costs** are incurred in accordance with the terms and conditions of this Policy.
3. With respect to **Claims** subject to Subsection V.B. of this **Coverage Part**, if the **Insureds** and the Insurer cannot agree on an allocation of **Defense Costs**, the Insurer shall advance, on a current basis, **Defense Costs** that the Insurer believes to be covered under this **Coverage Part** until a different allocation is negotiated, arbitrated, or judicially determined. Any such allocation shall be applied retroactively to all **Defense Costs** on account of such **Claim**, but shall not apply to or create any presumption with respect to the allocation of other amounts arising from such **Claim** or any other **Claim**.

B. Indemnification Obligations

The **Insured Organization** agrees to indemnify the **Insured Individuals** for covered **Loss** to the fullest extent permitted by law.

C. Priority of Payments

The Insurer shall be entitled to pay **Loss** as it becomes due and payable under this **Coverage Part** without regard to future payment obligations under this Policy. However, if the **Insured Organization** becomes subject to **Financial Impairment** and such **Loss** exceeds the remaining applicable Limit of Liability, the Insurer shall pay such **Loss** in the following order: (i) first, pay **Loss** of the **Insured Individuals** and the **Plans**; and (ii) second, pay all other **Loss** for which coverage is provided under this **Coverage Part**.

D. Subrogation

The Insurer shall not exercise its right of subrogation against any **Insured Individual** with respect to this **Coverage Part** unless Exclusion A.7 applies to such **Insured Individual**.



PRIVATUS[®] PLUS+

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

THIS IS A CLAIMS MADE COVERAGE PART

In consideration of payment of the premium, and in reliance on all information provided to the Insurer and all statements made in the **Application**, all of which are made a part of this Policy and subject to the Declarations and all other provisions of this Policy, including any endorsements to this Policy, the Insurer and the **First Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Employment Practices Liability

The Insurer shall pay on behalf of the **Insured**, all **Loss** that the **Insured** has become legally obligated to pay on account of a **Claim** by or on behalf of any **Employee**, first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable for a **Wrongful Employment Act**.

B. Third Party Liability

The Insurer shall pay on behalf of the **Insured**, all **Loss** that the **Insured** has become legally obligated to pay on account of a **Third Party Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Third Party Act**, but only if such coverage is purchased as indicated in Item 6 of the Declarations.

As a condition precedent to the coverage afforded by these Insuring Agreements, the **Insureds** shall give to the Insurer written notice of any **Claim** as soon as practicable after any of the **Insured Organization's Executive Officers** first becomes aware of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period**, or, if applicable, no later than the expiration of the Extended Reporting Period.

II. COVERAGE EXTENSIONS

A. Training Costs

Subject to the terms and conditions of this **Coverage Part** and the General Terms and Conditions, Insuring Agreements A. Employment Practices Liability and B. Third Party Liability include coverage for **Training Costs** incurred by the **Insured** on account of a covered **Claim**, provided that no more than two (2) years of such **Training Costs** shall be covered under this **Coverage Part**.

B. Wrongful Internet Activity

Subject to the terms and conditions of this **Coverage Part** and the General Terms and Conditions, Insuring Agreement A. Employment Practices Liability includes coverage for a **Claim** by or on behalf of any **Employee** against the **Insured Organization** for **Wrongful Internet Activity**.

III. DEFINITIONS

For purposes of this **Coverage Part**, and whether singular or plural:

A. **Application** means:

1. any written application, including any attachments, and any other documents or information submitted to the Insurer in connection with the underwriting of this **Coverage Part**; and
2. all written representations or warranties submitted to the Insurer in the past three (3) years in connection with the underwriting of this **Coverage Part** and any other similar liability policy of which this **Coverage Part** is a renewal or replacement.

- B. **Back Pay** means all wages and other employment benefits an **Employee** would have earned if an alleged **Wrongful Employment Act** that affected the **Employee's** job-related compensation had not occurred, less any amounts the **Employee** received, accrued, earned, or was actually paid during the time period between the loss of employment caused by the **Wrongful Employment Act** and the time of the judgment.
- C. **Breach of Employment Contract** means a breach of any oral, written, or implied employment contract.
- D. **Claim** means:
1. a written demand for monetary, non-monetary, or injunctive relief, including a written demand for reinstatement, reemployment, or reengagement;
 2. a civil proceeding commenced by the service of a complaint or similar pleading;
 3. a criminal proceeding commenced by the return of an indictment, information, arrest warrant, or similar document;
 4. a written demand to engage in arbitration, or a written request to engage in mediation or to toll or waive a statute of limitations;
 5. an administrative or regulatory proceeding or formal investigation commenced by the issuance of a notice of charges, formal investigative order, or similar document, including a formal administrative, investigative, or regulatory proceeding by or before the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), or other formal proceeding before a similar federal, state, or other governmental agency; or
 6. an audit conducted by the OFCCP commenced by a notice of violation, an order to show cause, or a written demand for monetary or injunctive relief by the OFCCP;

including an appeal from any of the foregoing.

Claim does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**, whether brought by one or multiple claimants, and such **Claim** shall be deemed to be first made on the earliest date on which the first of any such **Claims** is first made against the **Insured**, or deemed to be made pursuant to the terms of this Policy, whether such date is before or during the **Policy Period**.

- E. **Defense Costs** means reasonable and necessary fees, including attorney and expert fees, and expenses (other than regular or overtime wages, salaries, fees, or benefits of any **Insured**) incurred by or on behalf of the **Insureds** in defending, settling, or appealing **Claims**, and the premiums for appeal, attachment, or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds.
- F. **Discrimination** means the violation of any federal, state, local, or foreign statute, regulation, ordinance, or common law with respect to discrimination in employment anywhere in the world, including, but not limited to, discrimination based on age, gender, gender identity or expression, sexual orientation or preference, pregnancy, marital status, race, color, national origin, genetic information, disability, religion, or military status.
- G. **Employee** means any one or more natural persons who was, now is, or shall become:
1. an individual whose labor or service is directed by the **Insured Organization**, whether such labor or service is on a part-time, temporary, seasonal, volunteer, or full-time basis, including a leased employee, but only while performing duties pursuant to a lease or other written contract to which the **Insured Organization** is a party, and a duly elected or appointed officer of the **Insured Organization**;
 2. an individual contracted to perform work for the **Insured Organization** or who is an independent contractor for the **Insured Organization**, but only while such individual performs work or services solely for or on behalf of the **Insured Organization**; or

3. an applicant for prospective employment by the **Insured Organization**.
- H. **Employment Benefits** means perquisites, fringe benefits, deferred compensation, retirement or medical benefits, vacation days, sick days, stock options, or other rights or payments (including insurance premiums) in connection with an employee benefit plan or arising out of the employment relationship. **Employment Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.
- I. **Executive Officer** means any one or more natural persons who was, now is, or shall become chairperson of the board of directors, president, chief executive officer, chief financial officer, in-house general counsel, human resource manager, or risk manager of the **Insured Organization**, or the functional equivalent of any such positions.
- J. **Front Pay** means prospective wages and/or other employment benefits awarded in lieu of traditional rightful place relief such as hiring, promotion, or reinstatement.
- K. **Harassment** means:
1. work-related sexual harassment that interferes with an **Employee's** performance or creates an intimidating, hostile, or offensive working environment;
 2. sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment or that is used as a basis for employment decisions; or
 3. illegal work-related harassment, including illegal workplace bullying.
- L. **Insured** means an **Insured Individual** and the **Insured Organization**.
- M. **Insured Individual** means any one or more natural persons who was, now is, or shall become:
1. a duly elected or appointed director, officer, trustee, advisory director, or member of a duly constituted committee or board of any **Insured Organization** that is a corporation;
 2. a manager, managing member, or member of the board of managers of any **Insured Organization** that is a limited liability company;
 3. a general partner, managing partner, or trustee of any **Insured Organization** that is a partnership or joint venture, or management committee member of a joint venture;
- or the functional equivalent of any position listed above in any **Insured Organization** located in the United States or any other jurisdiction; or
4. an individual whose labor or service is directed by the **Insured Organization**, whether such labor or service is on a part-time, temporary, seasonal, volunteer, or full-time basis;
 5. an individual leased to the **Insured Organization**, but only if prior to any **Claim** against such individual the **Insured Organization** has agreed in writing to indemnify such individual or the company leasing that individual for matters within the scope of coverage of this Policy, provided that any coverage for such leased individual shall be specifically excess of any indemnification or insurance otherwise available to such leased individual from the applicable leasing company or any other source; or
 6. an individual contracted to perform work for the **Insured Organization** or who is an independent contractor for the **Insured Organization**, but only if the **Insured Organization** agrees to indemnify such individual or independent contractor in the same manner as an **Insured Individual** set forth in paragraph 4 above.

N. **Loss** means compensatory damages, punitive and exemplary damages, and the multiple portion of any multiplied damage award, judgments, any award of pre-judgment or post-judgment interest, settlement amounts, costs and fees awarded pursuant to judgments, prevailing plaintiff attorney's fees awarded pursuant to Section 1988 of the Civil Rights Act, liquidated damages awarded under the Age Discrimination in Employment Act, the Equal Pay Act, or the Family Medical Leave Act, **Defense Costs**, and **Training Costs**.

Loss does not include:

1. any amounts for which the **Insureds** are legally or financially absolved from payment;
2. taxes, including loss of tax benefits;
3. fines or penalties imposed by law on any **Insured**;
4. any amount that constitutes the return or disgorgement of fees or any other compensation paid to the **Insured**;
5. the cost of compliance with an injunction or any other non-monetary relief or any agreement to provide such relief (except **Training Costs**, subject to the terms and conditions of this **Coverage Part**);
6. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, or demand that is not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**, or (b) such action, proceeding or demand ultimately gives rise to a **Claim**;
7. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**;
8. the future salary, wages, commissions, or **Employment Benefits** of a claimant who has been or shall be hired, promoted, or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**;
9. **Employment Benefits** due or that will become due, or any payment, incentive, or other compensation that is granted in the form of securities of the **Insured Organization** or is based on the value of securities of the **Insured Organization**;
10. compensation earned by the claimant in the course of employment but not paid by the **Insured Organization**, including any unpaid salary, wages, commissions, severance payments, and **Employment Benefits** (other than **Back Pay** or **Front Pay**); or
11. matters uninsurable under the law applicable to this **Coverage Part**.

In determining the insurability of punitive, exemplary, multiplied, or liquidated damages, or any other **Loss** the insurability of which is dependent on the law applicable to this **Coverage Part**, the law of the jurisdiction most favorable to the insurability of those damages or other **Loss** shall apply, provided that such jurisdiction is: (i) where the punitive, exemplary, multiplied, or liquidated damages or other **Loss** were awarded, imposed, or incurred; (ii) where the **Wrongful Act** underlying the **Claim** took place; (iii) where either the Insurer or any **Insured** is incorporated, has its principal place of business, or resides; or (iv) where this Policy was issued or became effective.

O. **Other Workplace Tort** means:

1. failure to grant or adopt adequate employment-related policies and procedures;
2. negligent hiring, training, supervision, or retention of employees;
3. false arrest, detention, or false imprisonment; or
4. employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;

but only when alleged as part of a **Claim**, other than a **Third Party Claim**, for an actual or alleged **Breach of Employment Contract, Discrimination, Harassment, Retaliation, or Wrongful Job Action**.

P. **Retaliation** means the illegal retaliatory treatment of **Employees**, including any retaliatory treatment against an **Employee** for such **Employee** engaging in any of the following activities:

1. exercising his or her rights under the law;
2. refusing to violate any law or opposing an unlawful practice;
3. threatening to disclose or actually disclosing violations of the law to any governmental authority or the management of the **Insured Organization**;
4. bringing a claim against the **Insured Organization** under Section 806 of the Sarbanes-Oxley Act of 2002, the Federal False Claims Act, or any similar whistleblower statute; or
5. testifying, cooperating, or assisting with respect to an investigation or proceeding by a governmental authority against the **Insured Organization**, or any internal investigation by the **Insured Organization's** human resources or legal department, relating to an **Insured's** alleged violation of the law.

Q. **Third Party Claim** means any **Claim** brought and maintained against any **Insured** by or on behalf of any natural person who is not an **Employee** for a **Wrongful Third Party Act**.

R. **Training Costs** means reasonable and necessary costs incurred by the **Insureds** for educational, sensitivity, or diversity training or protected class development programs required under the terms of a judgment, court ordered consent decree, or settlement in a **Claim**.

S. **Wage & Hour Law** means any federal, state, or local common law or statutory law, including the Fair Labor Standards Act and any regulations promulgated thereunder, governing or relating to payroll practices and policies, payment of wages, including the payment of overtime, on-call time, rest periods, minimum wages, garnishments, withholdings or deductions from wages, the form or timing of the payment of wages, or the classification of employees for the purpose of determining employees' eligibility for compensation or other benefits under such law(s). **Wage & Hour Law** does not include the Equal Pay Act.

T. **Wrongful Act** means any **Wrongful Employment Act** or **Wrongful Third Party Act**.

U. **Wrongful Employment Act** means any **Breach of Employment Contract, Discrimination, Harassment, Retaliation, Wrongful Job Action**, or **Other Workplace Tort** actually or allegedly committed or attempted by:

1. the **Insured Organization**;
2. any **Insured Individuals** in their capacities as such, except as provided in Subsection II.B. Wrongful Internet Activity of this **Coverage Part**; or
3. by any other persons for whom the **Insureds** are legally responsible.

V. **Wrongful Internet Activity** means a **Wrongful Employment Act** when committed by an **Insured Individual** of the **Insured Organization** by means of the internet, including, but not limited to, social networking activities, whether or not such internet activity is during or after work hours or on or off the work premises, and whether or not the **Insured Individual** was acting in his or her capacity as such.

W. **Wrongful Job Action** means:

1. wrongful dismissal, discharge or termination (either actual or constructive) of employment;
2. wrongful failure to employ or promote;
3. wrongful discipline, evaluation, deprivation of a career opportunity, or negative reference;
4. wrongful demotion or adverse change in the terms, conditions, or status of employment;
5. failure to grant tenure;
6. employment-related misrepresentation to an **Employee**;
7. employment-related defamation, libel, or slander; or
8. employment-related invasion of privacy, including the unauthorized use or disclosure of an **Employee's**: (i) medical information in violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended; (ii) credit and related information in violation of the Fair Credit Reporting Act; and any rules or regulations promulgated thereunder; or (iii) information obtained through a background check.

X. **Wrongful Third Party Act** means any:

1. harassment, including but not limited to unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature; or
2. discrimination based on any status protected under any federal, state, local, or foreign statute, regulation, ordinance, or common law, including, but not limited to, gender, gender identity or expression, sexual orientation or preference, pregnancy, marital status, race, color, national origin, genetic information, disability, religion, or military status;

against any person who is not an **Employee**, and which is actually or allegedly committed by the **Insured Organization**, any **Insured Individuals** in their capacities as such, or any other persons for whom the **Insureds** are legally responsible.

IV. EXCLUSIONS

A. The Insurer shall not be liable under any Insuring Agreement of this **Coverage Part** for **Loss** arising from any **Claim**:

1. Prior Notice

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, transaction, event, or **Wrongful Act** that, before the inception of the **Policy Period**, was the subject of any notice given under any other policy of insurance of which this **Coverage Part** is a direct or indirect renewal or replacement;

2. Pending or Prior Demand, Suit, or Proceeding

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any written demand, suit or other proceeding pending, or order, decree, or judgment entered, against any **Insured** on or prior to the Pending or Prior Date set forth in Item 5 of the Declarations of this **Coverage Part**, or any **Wrongful Act**, fact, circumstance, or situation underlying or alleged therein;

3. Wage & Hour

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an actual or alleged violation of **Wage & Hour Law**; provided that this exclusion shall not apply to:

- a. a **Claim** for **Retaliation** under Insuring Agreement A. Employment Practices Liability; or
- b. a **Claim** for tort-based **Back Pay** or **Front Pay** under Insuring Agreement A. Employment Practices Liability;

4. Collective Bargaining Agreement

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act**, conduct, or event that relates to a collective bargaining agreement;

5. Liability Assumed Under Contract

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided that this exclusion shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;

6. Workers' Compensation, Unemployment, Social Security & Disability

for an actual or alleged violation of the responsibilities, obligations, or duties imposed by any law governing workers' compensation, unemployment insurance, social security, disability benefits, or similar law; provided that this exclusion shall not apply to any **Claim** for **Retaliation** under Insuring Agreement A. Employment Practices Liability;

7. Employee Benefits Law

for an actual or alleged violation of the responsibilities, obligations, or duties imposed by the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), the Consolidated Omnibus Budget Reconciliation Act of 1985, any amendments thereto, or any law that governs any employee benefit arrangement, program, policy, plan, or scheme of any type; provided that this exclusion shall not apply to any **Claim** for **Retaliation** under Insuring Agreement A. Employment Practices Liability;

8. Labor Law

for an actual or alleged violation of the responsibilities, obligations, or duties imposed by

- a. the National Labor Relations Act or any law that pertains to the rights of employees with respect to unions, unionizing, or collective activities in the workplace or any obligations of employers with respect to such employee activities;
- b. the Worker Adjustment and Retraining Notification Act, or any law that governs any obligation of an employer to notify, discuss, or bargain with its employees or others in advance of any plant or facility closing, or mass layoff or any similar obligation; or
- c. the Occupational Safety and Health Act or any law that governs workplace safety and health;

including any other federal, state, local, or foreign statute or law similar to those described in a, b, or c of this exclusion, or rules or regulations promulgated under any such statutes or laws; provided that this exclusion shall not apply to any **Claim** for **Retaliation** under Insuring Agreement A. Employment Practices Liability;

9. Breach of Contract with Independent Contractor

for any actual or alleged breach of any express contract between the **Insured Organization** and an independent contractor of the **Insured Organization**; or

10. Bodily Injury & Property Damage

for bodily injury, sickness, disease, or death of any person or damage to or destruction of any tangible property or electronic data, including loss of use of any such property or data whether or not it is damaged or destroyed; provided that this exclusion shall not apply to any actual or alleged mental anguish, humiliation, or emotional distress in a **Claim** otherwise covered under this **Coverage Part**.

B. The Insurer shall not be liable for that portion of **Loss** which constitutes any of the following, provided that the following exclusions shall not apply to **Defense Costs** in an otherwise covered **Claim** for the following:

1. Compliance with Disabilities or Civil Rights Law

costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including, but not limited to, the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law; or

2. Employment Contract Liability

amounts owing by any **Insured** under any express written employment contract or agreement with any **Employee**; provided that this exclusion shall not apply to the extent the **Insured** would be liable for such amounts in the absence of such contract or agreement.

V. LIMITS OF LIABILITY, RETENTIONS AND COINSURANCE

A. Limits of Liability

In addition to the provisions set forth in Subsection IV.A. Limits of Liability of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

Training Cost Sublimit of Liability

The Insurer's maximum aggregate liability for all **Training Costs** shall be the **Training Cost** Sublimit of Liability set forth in Item 3(C) of the Declarations of this **Coverage Part**, which is part of, and not in addition to, the Limits of Liability applicable to the **Claim** to which the **Training Costs** are related. If the **Training Cost** Sublimit of Liability is exhausted by payment of **Training Costs**, then the Insurer's obligations with respect to all **Training Costs** shall be completely fulfilled and extinguished.

B. Retentions

In addition to the provisions set forth in Subsection IV.B. Retentions of the General Terms and Conditions, the following provisions are applicable to this **Coverage Part**:

1. No Retention shall apply to **Loss** of an **Insured Individual** under this **Coverage Part** if the **Insured Organization** is neither permitted nor required to indemnify the **Insured Individual** for such **Loss**, or the **Insured Organization** is permitted or required to indemnify but does not do so solely by reason of **Financial Impairment**.
2. Solely with respect to this **Coverage Part**, if the **Insured** reports any **Claim** to the Insurer within ten (10) days after the **Claim** is first made against the **Insured**, then the **Retention** applicable to that **Claim** shall be reduced by ten percent (10%); provided that this provision shall not apply to any **Claim** arising out of circumstances reported to the Insurer pursuant to Section VI of the General Terms and Conditions.

C. Coinsurance

With respect to **Training Costs** in excess of the applicable Retention amount stated in Item 4 of the Declarations of this **Coverage Part**, the **Insured** shall bear uninsured fifteen percent (15%) of all **Training Costs** otherwise covered under this **Coverage Part**, and the Insurer's liability hereunder shall apply only to the remaining percentage of all such **Training Costs**; provided that the **Insured**, at its sole option, may insure this coinsurance percentage under another insurance policy.

VI. DEFENSE AND SETTLEMENT

- A. If any part of any **Claim** against an **Insured** is based upon, arises out of, directly or indirectly results from, or in any way involves an actual or alleged violation of **Wage & Hour Law**, then the provisions set forth in Paragraph 1 of Subsection V.A. Defense and Settlement of the General Terms and Conditions shall not apply to such **Claim**. The **Insured**, and not the Insurer, shall have the duty to defend all such **Claims**.

With respect to any such **Claim** covered in whole or in part under this **Coverage Part**, then the **Insureds** shall select defense counsel from the Insurer's then current list of approved defense firms in the jurisdiction in which the **Claim** is made. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense and settlement of such **Claim**, including, but not limited to, the negotiation of a settlement of any such **Claim**. Subject to the relevant allocation provisions set forth in Subsection VIII.A of this **Coverage Part** and the applicable Retention the Insurer shall advance, on a current basis, **Defense Costs** that the **Insureds** have incurred in connection with any such **Claim** prior to the final disposition of the **Claim**, provided that to the extent that it is ultimately established that any such **Defense Costs** are not covered, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Insurer. In all events, the **Insured** shall comply with the Insurer's Litigation Management Guidelines.

- B. The **Insureds** shall not incur **Training Costs** on account of a **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld.
- C. Notwithstanding Paragraph 2 of Subsection V.A. Defense and Settlement of the General Terms and Conditions, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount, including **Defense Costs**, not exceeding the applicable Retention, then the Insurer's consent shall not be required for such disposition.

VII. REPRESENTATIONS AND SEVERABILITY

In addition to the provisions set forth in Section VII of the General Terms and Conditions, the following shall apply for purposes of this **Coverage Part**:

The Insurer shall not seek to void or rescind this **Coverage Part**, in whole or in part, for any reason.

VIII. CONDITIONS

A. Allocation

1. If in any **Claim**, **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage for such **Claim**, or if such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer agree to use their best efforts to determine a fair and proper allocation between covered **Loss** and uncovered loss, taking into account the relative legal and financial exposures of the **Insureds**.
2. With respect to **Claims** other than those subject to Subsection VI.A of this **Coverage Part**, the Insurer agrees to allocate one hundred percent (100%) of **Defense Costs** incurred by the **Insured** in defense of the **Claim** to covered **Loss**; provided that such **Defense Costs** are incurred in accordance with the terms and conditions of this Policy.

3. With respect to **Claims** subject to Subsection VI.A of this **Coverage Part**, if the **Insureds** and the Insurer cannot agree on an allocation of **Defense Costs**, the Insurer shall advance, on a current basis, **Defense Costs** that the Insurer believes to be covered under this **Coverage Part** until a different allocation is negotiated, arbitrated, or judicially determined. Any such allocation shall be applied retroactively to all **Defense Costs** on account of such **Claim**, but shall not apply to or create any presumption with respect to the allocation of other amounts arising from such **Claim** or any other **Claim**.

B. Indemnification Obligations

The **Insured Organization** agrees to indemnify the **Insured Individuals** for covered **Loss** to the fullest extent permitted by law.

C. Priority of Payments

1. This Coverage Part

The Insurer shall be entitled to pay **Loss** as it becomes due and payable under this **Coverage Part** without regard to future payment obligations under this Policy. However, if such **Loss** exceeds the remaining applicable Limit of Liability, the Insurer shall pay such **Loss** in the following order: (i) first, pay **Loss** of an **Insured Individual** under this **Coverage Part** if the **Insured Organization** is neither permitted nor required to indemnify the **Insured Individual** for such **Loss**, or the **Insured Organization** is permitted or required to indemnify the **Insured Individual** for such **Loss** but does not do so solely by reason of **Financial Impairment**; and (ii) second, pay all other **Loss** for which coverage is provided under this **Coverage Part**.

2. Among Coverage Parts

If any **Loss** on account of a **Claim** against an **Insured** is covered under both this **Coverage Part** and the Directors and Officers and Corporate Liability **Coverage Part**, if purchased, then any such **Loss** shall first be paid under this **Coverage Part**, until the applicable limit of Liability for this **Coverage Part** is exhausted, and then under the Directors and Officers and Corporate Liability **Coverage Part**; provided that in all events, the Insurer's maximum liability for **Loss** on account of any such **Claim** shall be limited to the larger of the Each **Claim** Limit of Liability for this **Coverage Part**, or the Each **Claim** Limit of Liability for the Directors and Officers and Corporate Liability **Coverage Part**.

D. Subrogation

The Insurer shall not exercise its right of subrogation against any **Insured Individual** with respect to this **Coverage Part** unless a final and non-appealable adjudication adverse to such **Insured Individual** in the underlying action establishes: (i) that such **Insured Individual** gained any profit, remuneration, or advantage to which the he or she was not legally entitled; or (ii) a willful violation of any statute or regulation, or any deliberately criminal or fraudulent act, error, or omission by an **Insured Individual**.