

RESOLUTE PORTFOLIOSM
For Private Companies

POLICY NUMBER:
RENEWAL OF:

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS GENERALLY LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN.

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

NOTICE (Applicable to all Coverage Sections Other Than the Crime and Fidelity Coverage Section): THE INSURER HAS NO DUTY TO DEFEND ANY CLAIM UNDER THIS POLICY EXCEPT WITH RESPECT TO ANY CLAIM FOR WHICH THE POLICY SPECIFICALLY STATES THAT DUTY TO DEFEND COVERAGE IS PROVIDED.

NOTICE (Applicable to All Coverage Sections): PLEASE READ THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

DECLARATIONS

ITEM 1: PARENT COMPANY:

ADDRESS:

ITEM 2: POLICY PERIOD:

From: _____ To: _____
(12:01 a.m. Standard Time at the address stated in Item 1)

ITEM 3: COVERAGE SECTIONS

This policy provides coverage only for the following Coverage Sections if purchased by the **Insured** and indicated by an X.

Directors & Officers Liability Coverage Section	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Derivative Demand Coverage	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Employment Practices Liability Coverage Section	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Third-Party Liability Coverage	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Fiduciary Liability Coverage Section	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Voluntary Compliance Program Coverage	Yes <input type="checkbox"/>	No <input type="checkbox"/>
HIPAA Claim Coverage	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Crime and Fidelity Coverage Section	Yes <input type="checkbox"/>	No <input type="checkbox"/>

ITEM 4: LIMITS OF LIABILITY

The Limits of Liability of this policy apply solely to the Coverage Section(s) for which a corresponding limit of liability amount is set forth below.

A. AGGREGATE LIMIT OF LIABILITY FOR EACH SEPARATE COVERAGE SECTION OTHER THAN THE CRIME AND FIDELITY COVERAGE SECTION

(i)

Separate Coverage Section: Directors & Officers Liability	\$
Sublimit of Liability for Derivative Demand Coverage	\$

(ii)

Separate Coverage Section: Employment Practices Liability	\$
Sublimit of Liability for Third-Party Liability Coverage	\$

(iii)

Separate Coverage Section: Fiduciary Liability	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

Each Sublimit of Liability set forth in Item 4 A. above is part of, and not in addition to, the Limit of Liability for the corresponding Separate Coverage Section.

B. AGGREGATE LIMIT OF LIABILITY FOR EACH COMBINED COVERAGE SECTION OTHER THAN THE CRIME AND FIDELITY COVERAGE SECTION

(i)

Combined Coverage Section: Directors & Officers Liability / Employment Practices Liability / Fiduciary Liability	\$
Sublimit of Liability for Derivative Demand Coverage	\$
Sublimit of Liability for Third-Party Liability Coverage	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

(ii)

Combined Coverage Section: Directors & Officers Liability / Employment Practices Liability	\$
Sublimit of Liability for Derivative Demand Coverage	\$
Sublimit of Liability for Third-Party Liability Coverage	\$

(iii)

Combined Coverage Section: Directors & Officers Liability / Fiduciary Liability	\$
Sublimit of Liability for Derivative Demand Coverage	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

(iv)

Combined Coverage Section: Employment Practices Liability / Fiduciary Liability	\$
Sublimit of Liability for Third-Party Liability Coverage	\$
Sublimit of Liability for Voluntary Compliance Program Coverage	\$
Sublimit of Liability for HIPAA Claim Coverage	\$

Each Sublimit of Liability set forth in Item 4 B. above is part of, and not in addition to, the Limit of Liability for the corresponding Combined Coverage Section.

The Limits of Liability set forth in Item 4 A. and B. above are the maximum limits of liability for all **Loss** including **Defense Costs**, under the applicable Coverage Section(s).

C. AGGREGATE POLICY LIMIT OF LIABILITY \$

The above Limit of Liability set forth in Item 4 C. above is the maximum limit of liability for all **Loss**, including **Defense Costs**, for all Coverage Sections purchased other than the Crime and Fidelity Coverage Section.

D. PER OCCURRENCE LIMIT OF LIABILITY- CRIME AND FIDELITY COVERAGE SECTION

The Limits of Liability of this policy apply solely to the Crime and Fidelity Coverage Section(s) for which a corresponding limit of liability amount is set forth below.

Crime and Fidelity Coverage Section:

(i) Insuring Agreement A, Employee Theft	\$
(ii) Insuring Agreement B, Forgery or Alteration	\$
(iii) Insuring Agreement C, Inside the Premises – Loss of Money and Securities	\$
(iv) Insuring Agreement D, Inside the Premises - Robbery or Safe Burglary of Other Property	\$
(v) Insuring Agreement E, Outside the Premises	\$
(vi) Insuring Agreement F, Computer Fraud	\$
(vii) Insuring Agreement G, Funds Transfer	\$
(viii) Insuring Agreement H, Money Orders and Counterfeit Money	\$
(ix) Insuring Agreement I, Credit, Debit, Charge Card Forgery	\$
(x) Insuring Agreement J, Clients’ Property	\$
(xi) Insuring Agreement K, Investigative Expense Incurred to Establish Amount of Covered Loss	\$

ITEM 5: RETENTION OR DEDUCTIBLE AMOUNTS

RETENTION AMOUNTS

A. Directors & Officers Liability Coverage Section:

(i) Insuring Agreement A.	\$
(ii) Insuring Agreement B. and C.	\$
(iii) Insuring Agreement D.	\$0

B. Employment Practices Liability Coverage Section:

(i) Insuring Agreement A. - Employment Practices Liability Coverage	\$
(ii) Insuring Agreement B. - Third-Party Liability Coverage	\$

C. Fiduciary Liability Coverage Section:

(i) Insuring Agreement A. - Fiduciary Liability Coverage All Claims, except HIPAA Claims	\$
HIPAA Claims	\$0
(ii) Insuring Agreement B. - Voluntary Compliance Program Coverage	\$0

DEDUCTIBLE AMOUNTS

D. Crime and Fidelity Coverage Section:

(i) Insuring Agreement A, Employee Theft	\$
(ii) Insuring Agreement B, Forgery or Alteration	\$
(iii) Insuring Agreement C, Inside the Premises – Loss of Money and Securities	\$
(iv) Insuring Agreement D, Inside the Premises - Robbery or Safe Burglary of Other Property	\$
(v) Insuring Agreement E, Outside the Premises	\$
(vi) Insuring Agreement F, Computer Fraud	\$
(vii) Insuring Agreement G, Funds Transfer	\$
(viii) Insuring Agreement H, Money Orders and Counterfeit Money	\$
(ix) Insuring Agreement I, Credit, Debit, Charge Card Forgery	\$
(x) Insuring Agreement J, Clients’ Property	\$
(xi) Insuring Agreement K, Investigative Expense Incurred to Establish Amount of Covered Loss	\$

ITEM 6: PENDING OR PRIOR DATE

A. Directors & Officers Liability Coverage Section:

(i) Insuring Agreement A.	
(ii) Insuring Agreement B. and C.	

B. Employment Practices Liability Coverage Section:

(i) Insuring Agreement A - Employment Practices Liability Coverage	
(ii) Insuring Agreement B. – Third-Party Liability Coverage	

C. Fiduciary Liability Coverage Section:

(i) Fiduciary Liability Coverage	
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D. Crime and Fidelity Coverage Section:

Not Applicable

ITEM 7: PREMIUM

A. Directors & Officers Liability Coverage Section:	\$
B. Employment Practices Liability Coverage Section:	\$
C. Fiduciary Liability Coverage Section:	\$
D. Crime and Fidelity Coverage Section:	\$
E. Total Policy Premium:	\$

ITEM 8: DISCOVERY PERIOD (APPLICABLE TO ALL COVERAGE SECTIONS OTHER THAN CRIME AND FIDELITY)

- A. One Year: **100% of the applicable premium**
- B. Two to Six Years: **Premium to be determined**

ITEM 9: ADDRESS OF INSURER AND ITS AUTHORIZED CLAIMS AGENT FOR NOTICES UNDER THIS POLICY

A. Claims-Related Notices

LVL CLAIMS SERVICES, LLC
 111 JOHN STREET
 SUITE 1500
 NEW YORK, NEW YORK 10038
 e-mail: notice@lvlclaims.com

B. All Other Notices To The Insurer:

STARR INDEMNITY AND LIABILITY COMPANY
 ATTN: FINANCIAL LINES DEPARTMENT
 399 PARK AVE. 8TH FLOOR
 NEW YORK, NY 10022


In Witness Whereof, the **Insurer** has caused this policy to be executed and attested. This policy shall not be valid unless countersigned by a duly authorized representative of the **Insurer**.



Charles H. Dangelo, President



Honora M. Keane, General Counsel



Authorized Representative

STARR INDEMNITY AND LIABILITY COMPANY

RESOLUTE PORTFOLIOSM For Private Companies

Directors & Officers Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

- A. The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, except if the **Company** has indemnified the **Insured Person** for such **Loss**.
- B. The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against any **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy, if the **Company** has indemnified the **Insured Person** for such **Loss**.
- C. The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against the **Company** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.
- D. The **Insurer** shall reimburse the **Company** for the **Derivative Costs** incurred by the **Company** in response to a **Derivative Demand** first made during the **Policy Period** (or Discovery Period, if applicable) for any **Wrongful Act** of any **Executive**, and reported to the **Insurer** in accordance with the terms of this policy. This Insuring Agreement D. shall apply only if purchased by the **Insured** as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement D. for all **Derivative Costs** arising from all **Derivative Demands**. The Sublimit of Liability for **Derivative Costs** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section. This Insuring Agreement D. shall not provide coverage for any civil proceeding that is based upon or arises from a **Derivative Demand**.

2. DEFINITIONS

- (a) “**Claim**” means any:
 - (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (i) service of a complaint or similar pleading;

- (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 - (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
 - (4) formal civil, criminal, administrative or regulatory investigation of an **Insured Person**, which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying such **Insured Person** as a person against whom a proceeding identified in (2) or (3) above may be commenced;
 - (5) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**; or
 - (6) **Derivative Demand**, solely under Insuring Agreement D. if purchased by the **Insured**.
- (b) **“Derivative Costs”** means the reasonable and necessary fees, costs, charges, or expenses incurred by the **Company**, its board of directors or any committee of its board of directors, solely in response to a **Derivative Demand** and do not include any settlements, judgments or damages, nor any compensation or benefits of any **Insured Persons**, or any overhead expenses of the **Company**. **Derivative Costs** shall be reimbursed by the **Insurer** sixty (60) days after the **Company** provides written notice to the **Insurer** of its final decision not to bring a civil proceeding against an **Executive**.
- (c) **“Derivative Demand”** means a written demand by one or more shareholders of the **Company** upon the **Company’s** board of directors to bring a civil proceeding on behalf of the **Company** against any **Executive** for a **Wrongful Act**.
- (d) **“Employee”** means:
- (1) any person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Company**, other than an **Executive**, but only while that person is acting in the capacity as such;
 - (2) any person leased to the **Company** so long as this person is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** indemnifies such leased person in the same manner as the **Company’s** employees; and
 - (3) any volunteer whose labor and service is engaged and directed by the **Company**, but only while that person is acting in the capacity as such.
- (e) **“Executive”** means any:
- (1) past, present or future duly elected or appointed director, officer, trustee, governor, management committee **Member** or **Member** of the board of managers;
 - (2) past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in item (1) above; or
 - (3) past, present or future general counsel and risk manager (or equivalent position) of the **Company**.
- (f) **“Insured”** means the **Company** and any **Insured Person**.

(g) **“Insured Person(s)”** means any:

- (1) **Executive;**
- (2) **Employee;** or
- (3) **Outside Entity Insured Person.**

(h) **“Loss”** means:

- (1) damages, settlements or judgments;
- (2) pre-judgment or post-judgment interest;
- (3) costs or fees awarded in favor of the claimant;
- (4) punitive, exemplary or the multiplied portion of any multiple damages awards, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages;
- (5) **Derivative Costs**, solely under Insuring Agreement D. if purchased by the **Insured**; and
- (6) **Defense Costs.**

“Loss” does not include:

- (i) any amounts for which the **Insureds** are not legally liable;
- (ii) any amounts which are without legal recourse to the **Insureds**;
- (iii) taxes;
- (iv) fines and penalties, except as provided for in Definition (h) (4) above;
- (v) matters which may be deemed uninsurable under applicable law; or
- (vi) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the **Company**.

(i) **“Outside Entity”** means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an **Executive** acts as a director, officer, trustee or governor (or the equivalent thereof) at the written request of the **Company**. Any such person shall be referred to herein as an **“Outside Entity Insured Person”**, but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an **Outside Entity**.

(j) **“Securities Claim”** means a **Claim**, other than an administrative or regulatory proceeding against the **Company** or an investigation of the **Company**, made against any **Insured**:

- (1) alleging a violation of any foreign, federal, state or local regulation, rule or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:

- (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the **Company**; or
 - (ii) brought by a security holder of the **Company** with respect to such security holder's interest in securities of such **Company**; or
- (2) brought derivatively on behalf of the **Company** by a security holder of such **Company**.

Notwithstanding the foregoing, **Securities Claim** shall include any formal administrative or regulatory proceeding against the **Company**, but only if and only during the time that such proceeding also constitutes a **Securities Claim** commenced and continuously maintained against an **Insured Person**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes uninsurable loss and, subject to all other terms and conditions of this policy, shall deem that portion of such **Loss** as constituting **Loss** under this policy.

- (k) **"Subsidiary"** means any privately-held for-profit entity (except a partnership) of which the **Parent Company**:
- (1) has **Management Control** ("Controlled Entity") before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
 - (2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals less than 25% of the consolidated revenue of the **Parent Company** as of its latest fiscal year; or
 - (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity's annual revenue totals 25% or more of the consolidated revenue of the **Parent Company** as of its latest fiscal year, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in items (2) and (3) above shall not mean any entity which is a financial institution, including but not limited to a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

"Subsidiary" also means any not-for-profit entity which is under the exclusive control of the **Company**.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.

- (l) **"Wrongful Act(s)"** means:
- (1) with respect to an **Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by an **Insured**

Person in his or her capacity as such or any matter claimed against an **Insured Person** by reason of such capacity;

- (2) with respect to an **Outside Entity Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or misleading statement by a person in his or her capacity as an **Outside Entity Insured Person** or any matter claimed against such **Outside Entity Insured Person** by reason of such capacity; or
- (3) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration if a final judgment or adjudication establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;
- (b) arising out of, based upon or attributable to any deliberate fraudulent act or any willful violation of law by an **Insured** if a final judgment or adjudication establishes that such act or violation occurred;
- (c) arising out of, based upon or attributable to the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and any amendments thereto or similar provisions of any state statutory law if a final judgment or adjudication establishes that a violation of Section 16(b) occurred;

In determining the applicability of Exclusions (a), (b) and (c), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

- (d) alleging, arising out of, based upon or attributable to any facts or circumstances of which an **Insured Person** had actual knowledge or information of, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, and that he or she reasonably believed may give rise to a **Claim** under this policy;
- (e) based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement, except to the extent that such **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall apply only to any **Claim** under Insuring Agreement C.;
- (f) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (g) alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of any **Insured Person** serving in any capacity other than as an **Executive** or an **Employee** or an **Outside Entity Insured Person**;
- (i) brought by or on behalf of any **Insured**, other than an **Employee**; provided, however, that this exclusion shall not apply to:
 - (i) any **Claim** brought by an **Insured Person** that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded under the terms of this Coverage Section;
 - (ii) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any **Insured**;
 - (iii) any **Claim** brought by any **Executive** who has not served in such capacity, nor has acted as a consultant to the **Company**, for at least three (3) years prior to the **Claim** being first made;
 - (iv) any **Claim** brought against an **Insured Person** arising out of or based upon any protected activity specified in any "whistleblower" protection pursuant to any foreign, federal, state or local law;
 - (v) any **Claim** brought by any **Executive** of a **Company** formed and operating in a foreign jurisdiction against such **Company** and any **Insured Person** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
 - (vi) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Company** or any assignee of such trustee, examiner, receiver or similar official.
- (j) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**; provided, however, that this exclusion shall not apply to any **Claim** under Insuring Agreement A. or any **Securities Claim**, except for **Loss** constituting **Cleanup Costs**;
- (k) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law;
- (l) alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly any public offering of securities by the **Company** or an **Outside Entity**, or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, that this exclusion shall not apply to:

- (i) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall be conditioned solely upon the **Company** giving the **Insurer** written notice of any such public offering, including all details thereof, as soon as practicable, but not later than thirty days after the effective date of such offering; or
 - (ii) any public offering of securities, other than an offering described in paragraph (i) above, as well as any purchase or sale of securities subsequent to such public offering. Coverage for such transaction shall be conditioned upon, within thirty days prior to the effective time of such public offering, the **Company**: (a) giving the **Insurer** written notice of such offering, including all details thereof, and any underwriting information required by the **Insurer**; and (b) accepting such terms, conditions and additional premium required by the **Insurer** for such coverage. Coverage provided pursuant to this paragraph is also subject to the **Company** paying such additional premium when due. The **Insurer** shall provide the **Company** with a quote for such coverage if the **Company** gives written notice of the offering as required in this paragraph.
- (m) for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; or which is brought by any securities holder of the **Outside Entity**, whether directly or derivatively, unless such securities holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Outside Entity**, any director, officer, trustee or governor thereof, an **Executive** or the **Company**; provided, however, that this exclusion shall not apply to:
- (i) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded under the terms of this Coverage Section;
 - (ii) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Outside Entity** or any assignee of such trustee, examiner, receiver or similar official;
 - (iii) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity** who has not served in such capacity, nor acted as a consultant to the **Outside Entity**, for at least three (3) years prior to such **Claim** being first made; or
 - (iv) any **Claim** brought by any director, officer, trustee or governor of an **Outside Entity**, formed and operating in a foreign jurisdiction against any **Outside Entity Insured Person** of such **Outside Entity**, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
- (n) for bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, violation of any right of privacy, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to any **Securities Claim**;
- (o) alleging, arising out of, based upon, or attributable to any actual or alleged: (i) violation of the Foreign Corrupt Practices Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; (ii) payments, commissions, gratuities, benefits or

other favors for the direct or indirect benefit of any officials, directors, agents, partners, representatives, principal shareholders, or owners of the **Company** or employees of any customers of the **Company**; or (iii) political contributions;

- (p) alleging, arising out of, based upon, or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim, including but not limited to any wage-hour claim or any third-party discrimination or harassment claim; provided, however, that this exclusion shall not apply to any **Securities Claim**;
- (q) alleging, arising out of, based upon, or attributable to the ownership, management, maintenance, operation and/or control by the **Company** of any captive insurance company or entity, including but not limited to any **Claim** alleging the insolvency or bankruptcy of the **Company** as a result of such ownership, management, maintenance, operation and/or control;
- (r) alleging, arising out of, based upon, or attributable to based upon, arising from, or in consequence of any actual or alleged plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets; provided, however, that this exclusion shall apply only to any **Claim** under Insuring Agreement C.;
- (s) alleging, arising out of, based upon or attributable to the rendering or failure to render any professional service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any **Securities Claim**, but only if such **Securities Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**.

4. ORDER OF PAYMENTS

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Coverage Section, the **Insurer** shall in all events:

- (1) first, pay **Loss** for which coverage is provided under this Coverage Section for any **Insured Person** under Insuring Agreement A.;
- (2) second, only after payment of **Loss** has been made pursuant to item (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company** under Insuring Agreement B.; and
- (3) third, only after payment of **Loss** has been made pursuant to items (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company** under Insuring Agreement C. and D.

5. NON-RESCINDABLE CLAUSE

The **Insurer** irrevocably waives any right it may have to rescind coverage available under Insuring Agreement A. of this Coverage Section, in whole or in part, on any grounds.

STARR INDEMNITY AND LIABILITY COMPANY

RESOLUTE PORTFOLIOSM

For Private Companies

Employment Practices Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

A. Employment Practices Liability Coverage

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.

B. Third-Party Liability Coverage (Optional)

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Third-Party Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Third-Party Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy. This Insuring Agreement B. shall apply only if purchased by the **Insured** as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement B. for all Loss arising from all **Third-Party Claims**. The Sublimit of Liability for **Third-Party Claims** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

2. DEFINITIONS

- (a) “**Benefits**” means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan. **Benefits** shall not include salary, wages, bonuses or non-deferred cash incentive compensation.
- (b) “**Claim**” means any:
 - (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;

- (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
- (4) notification of an investigation of an **Insured** by the Equal Employment Opportunity Commission (“EEOC”) or similar governmental agency commenced by the filing of a notice of charges, formal investigative order or similar document;
- (5) audit of an **Insured** conducted by the United States of America Office of Federal Contract Compliance Programs (“OFCCP”), but only if commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or non-monetary or injunctive relief;
- (6) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**; or
- (7) **Third-Party Claim**, solely under Insuring Agreement B. if purchased by the **Insured**.

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

- (c) **“Discrimination”** means any violation of employment discrimination laws, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment by the **Company** in any way that would deprive any person of employment opportunities based on such person's race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law.
- (d) **“Employee”** means any:
 - (1) person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Company**, but only while that person is acting in the capacity as such;
 - (2) person leased to the **Company** or any **Independent Contractor** so long as this person is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** indemnifies such leased person or **Independent Contractor** in the same manner as the **Company’s** employees; and
 - (3) volunteer whose labor and service is engaged and directed by the **Company**, but only while that person is acting in the capacity as such.
- (e) **“Executive”** means:
 - (1) any past, present or future duly elected or appointed director, officer, trustee, governor, management committee **Member** or **Member** of the board of managers, but only while that person is acting in the capacity as such; or
 - (2) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in (1) above, but only while that person is acting in the capacity as such.
- (f) **“Harassment”** means:

- (1) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company** or **Outside Entity**; or
 - (2) workplace harassment, including work-related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company** or **Outside Entity**.
- (g) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Company** which specifies the terms of the **Company’s** engagement of the **Independent Contractor**.
- (h) **“Insured(s)”** means the **Company** and any **Insured Person**.
- (i) **“Insured Person(s)”** means any:
- (1) **Executive**;
 - (2) **Employee**; or
 - (3) **Outside Entity Insured Person**.
- (j) **“Loss”** means:
- (1) damages (including back pay and front pay), settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive, exemplary and multiplied damages (including the multiple or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act), but only to the extent such damages are insurable under the applicable law most favorable to the insurability of such damages; and
 - (5) **Defense Costs**.

“Loss” does not include:

- (i) any amounts for which the **Insureds** are not legally liable;
- (ii) any amounts which are without legal recourse to the **Insureds**;
- (iii) taxes;
- (iv) fines and penalties, except as provided for in Definition (j) (4) above;
- (v) matters which may be deemed uninsurable under applicable law;
- (vi) any costs or liability incurred by any **Insured** to modify any building or property to make it more accessible or accommodating to any disabled person, or in connection with any educational, sensitivity or other corporate program, policy or seminar;

(vii) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; or

(viii) any future compensation, including any **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**.

However, this policy shall provide coverage for **Defense Costs** incurred in a **Claim** involving items (i) through (viii) above, subject to all other terms, conditions and exclusions of this policy.

(k) **“Outside Entity”** means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an **Executive** acts as a director, officer, trustee or governor (or the equivalent thereof) at the specific request of the **Company**. Any such **Executive** shall be referred to herein as an **“Outside Entity Insured Person”**, but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an **Outside Entity**.

(l) **“Retaliation”** means retaliatory treatment of an **Employee** or an employee of an **Outside Entity** alleged to be on account of such individual:

(1) exercising his or her rights under law, including rights under worker’s compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;

(2) refusing to violate any law or opposing any unlawful practice;

(3) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **Insured**;

(4) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or

(5) filing or expressing an intent to file any claim against the **Company** or **Outside Entity** under the Federal False Claims Act or any other similar foreign, federal, state, or local “whistle blower” law.

(m) **“Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Insured Person** thereof, which grants stock or stock options or stock appreciation rights to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

(n) **“Subsidiary”** means any privately-held for-profit entity (except a partnership) of which the **Parent Company**:

(1) has **Management Control** (“Controlled Entity”) before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;

(2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s employee count totals less than 25% of the consolidated employee count of the **Parent Company**; or

- (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity's employee count totals 25% or more of the consolidated employee count of the **Parent Company**, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in items (2) and (3) above shall not include any entity which is a financial institution, such as a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

"Subsidiary" also means any not-for-profit entity which is under the exclusive control of the **Company**.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.

- (o) **"Third-Party"** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**. **Third-Party** shall not include an **Insured Person**.

- (p) **"Third-Party Claim"** means a **Claim** for any **Third-Party Wrongful Act**.

- (q) **"Third-Party Wrongful Act"** means any actual or alleged:

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

- (r) **"Workplace Tort"** means any employment-related:

- (1) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or
- (2) negligent retention, supervision, hiring or training, wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures,

when alleged as part of a **Claim** for actual or alleged **Wrongful Employment Decision, Discrimination, Harassment, or Retaliation**.

- (s) **"Wrongful Act(s)"** means any actual or alleged **Discrimination, Harassment, Retaliation, Workplace Tort** or **Wrongful Employment Decision** committed by the **Insured** but only if such act relates to an **Employee** or an applicant for employment with the **Company** or an **Outside Entity**.

- (t) **"Wrongful Employment Decision"** means any actual or alleged: (1) wrongful termination,

dismissal, or discharge of employment, demotion, denial of tenure, or failure or refusal to hire or promote; or (2) breach of any implied employment contract or obligation, including but not limited to any such obligation arising out of any personnel manual, employee handbook or policy statement.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) alleging, arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act by an **Insured** if a final judgment or adjudication establishes that such criminal or fraudulent act occurred;

In determining the applicability of Exclusion (a), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

- (b) alleging, arising out of, based upon or attributable to any actual or alleged liability of the **Insured** under any express contract or agreement, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall not apply to any **Claim** brought against an **Insured Person**;
- (c) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (d) alleging, arising out of, based upon or attributable to the same facts or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (e) for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof;
- (f) for bodily injury (except emotional distress or mental anguish when associated with a **Wrongful Act**), sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (g) alleging, arising out of, based upon, attributable to or in any way relating to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (exclusive of tort-based front pay or back pay), improper classification of any **Employee(s)**, improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, or failure to provide or enforce legally required meal or rest break periods; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;

- (h) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; provided, however, that this exclusion shall not apply to any **Claim for Retaliation**;
- (i) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, that this exclusion shall not apply to any **Claim for Retaliation**;
- (j) alleging, arising out of, based upon or attributable to any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations; provided, however, that this exclusion shall not apply to any **Claim for Retaliation**;
- (k) alleging, arising out of, based upon or attributable to any **Claim** brought by a securities holder of a **Company** or an **Outside Entity** in their capacity as such;
- (l) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Insured Person** serving in any capacity, other than as an **Insured Person**.

STARR INDEMNITY AND LIABILITY COMPANY

RESOLUTE PORTFOLIOSM

For Private Companies

Fiduciary Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

A. Fiduciary Liability Coverage

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.

The **Insurer** shall also pay on behalf of any **Insured** the **Loss** arising from a **HIPAA Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy. Coverage for **HIPAA Claims** under this Insuring Agreement A. is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement A. for all Loss arising from all **HIPAA Claims**. The Sublimit of Liability for **HIPAA Claims** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

B. Voluntary Compliance Program Coverage (Optional)

The **Insurer** shall reimburse any **Insured** the **Voluntary Compliance Program Loss** incurred by the **Insured** during the **Policy Period** (or Discovery Period, if applicable), and reported to the **Insurer** in accordance with the terms of this policy. This Insuring Agreement B. shall apply only if purchased by the **Insured** as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement B. for all **Voluntary Compliance Program Losses**. The Sublimit of Liability for **Voluntary Compliance Program Loss** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

The reimbursement by the **Insurer** to the **Insured** of any **Voluntary Compliance Program Loss** under this Coverage Section shall not waive any of the **Insurer’s** rights under this policy or at law, including in the event that such **Loss** results in a **Claim** under Insuring Agreement A. of this Coverage Section.

2. DEFINITIONS

- (a) “**Administration**” means:
- (1) advising, counseling or giving notice to **Employees** with respect to any **Plan**;
 - (2) providing interpretations to **Employees**, participants or beneficiaries with respect to any **Plan**; or
 - (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries under any **Plan**.
- (b) “**Benefits**” means any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- (c) “**Claim**” means any:
- (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 - (3) written notice of commencement of a fact finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority located outside the United States, including but not limited to, the Pensions Ombudsman appointed by the United Kingdom Pensions Regulator or any successor body thereto;
 - (4) **Voluntary Settlement Program Loss**, solely under Insuring Agreement B. if purchased by the **Insured**; or
 - (5) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.
- (d) “**Employee(s)**” means any natural person whose labor or service is engaged or directed by the **Company** or any **Plan** including any part-time, seasonal, leased or temporary employees or volunteers. **Employee** shall not include any **Independent Contractor**.
- (e) “**ERISA**” means the Employee Retirement Income Security Act of 1974, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law;
- (f) “**ESOP**” means any employee stock ownership plan as defined in **ERISA**, or any other **Plan** under which investments are made in securities of or issued by the **Company**;
- (g) “**HIPAA Claim**” means a **Claim** alleging, arising out of, based upon or attributable to the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto (“**HIPAA**”).

- (h) **“HIPAA Penalties”** means civil money penalties imposed upon an **Insured** for violation of HIPAA’s privacy provisions.
- (i) **“Indemnifiable Loss”** means **Loss** for which the **Company** has indemnified or is permitted or required to indemnify any **Insured Person**.
- (j) **“Independent Contractor”** means any person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Company** which specifies the terms of the **Company’s** engagement of the **Independent Contractor**.
- (k) **“Insured(s)”** means:
- (1) the **Company**;
 - (2) any **Plan**;
 - (3) any **Insured Person**; and
 - (4) any other person or entity in his, her or its capacity as a fiduciary, administrator or trustee of a **Plan** and included in the Definition of **Insured** by specific written endorsement attached to this policy.
- (l) **“Insured Person(s)”** means any: (1) past, present or future natural person director, officer, trustee, general partner, management committee member, member of board of managers, governor (or any foreign equivalent); or (2) **Employee** of the **Company** or the **Plan** while acting in his or her capacity as a fiduciary of a **Plan**.
- (m) **“Loss”** means:
- (1) damages, settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive, exemplary or the multiplied portion of any multiple damages awards, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages;
 - (5) **Voluntary Compliance Program Loss**, solely under Insuring Agreement B. if purchased by the **Insured**; and
 - (6) **Defense Costs**.
- “Loss”** does not include:
- (i) any amounts for which the **Insureds** are not legally liable;
 - (ii) any amounts which are without legal recourse to the **Insureds**;
 - (iii) taxes;
 - (iv) fines and penalties, except:

- (a) as provided for in Definition (m) (4) above;
- (b) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502 (i) of ERISA;
- (c) the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502 (l) of ERISA;
- (d) any civil fines and penalties imposed by either the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services, by the United Kingdom Occupational Pensions Regulatory Authority, by the United Kingdom Pensions Regulator or any successor body thereto; provided, however, that any coverage for such fines and penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section;
- (e) fines and penalties as respects **Voluntary Compliance Program Loss**, solely under Insuring Agreement B. if purchased by the **Insured**; or
- (f) **HIPAA Penalties**, solely under Insuring Agreement A.
- (v) the return or reversion to an employer of any contribution or asset of a **Plan**;
- (vi) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**;
- (vii) matters which may be deemed uninsurable under applicable law; or
- (viii) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the **Company**.

However, this policy shall provide coverage for **Defense Costs** incurred in a **Claim** involving items (i) through (viii) above, subject to all other terms, conditions and exclusions of this policy.

- (n) **“Non-qualified Plan”** means any of the following plans for a select group of management or highly compensated directors, officers and/or employees: deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan. **Non-qualified Plan** shall not include any **ESOP** or stock option plan.
- (o) **“Plan”** means any plan, fund, trust, program or **Non-qualified Plan** regardless of whether or not it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:
 - (1) a welfare plan, as defined in **ERISA**, sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**;
 - (2) a pension plan, as defined in **ERISA** (other than an **ESOP**), sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**, provided that, prior to the inception date of this policy, such

plan has been reported in writing to the **Insurer** pursuant to the terms of the **Application** for this policy or pursuant to the terms of any prior policy issued by the **Insurer** or the **Application** for such policy and the **Company** shall have paid the premium required for such plan;

- (3) a pension plan, as defined in **ERISA** (other than an **ESOP**), which, during the **Policy Period** becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**, subject to the following:
 - (i) if the assets of such **Plan** total 25% or less of the total consolidated assets of the **Plans** covered by this policy as of the inception date of this Coverage Section, this policy shall provide coverage with respect to **Wrongful Acts** that occurred after the date of such sponsorship. As a condition precedent to such coverage, the **Company** shall give written notice of such sponsorship to the **Insurer** prior to the end of the **Policy Period**; and
 - (ii) if the assets of such **Plan** total more than 25% of the total consolidated assets of the **Plans** covered by this policy as of the inception date of this Coverage Section, this policy shall provide coverage with respect to **Wrongful Acts** that occurred after the date of such sponsorship. As a condition precedent to such coverage, the **Company** shall give written notice of such sponsorship to the **Insurer** within ninety (90) days after the date of such sponsorship, with full particulars regarding such plan, and the **Company** shall have paid the premium required for such plan.
- (4) a plan which is both a welfare plan and a pension plan as defined in **ERISA** (other than an **ESOP**);
- (5) a government-mandated program for workers compensation, unemployment, social security or disability benefits for **Employees**; solely with respect to a **Wrongful Act** as defined in Definition (r) (2) by an **Insured Person**;
- (6) an **ESOP** that is included in the definition of **Plan** by written endorsement to this policy; or
- (7) any other plan, fund, trust or program, including a multi-employer plan(s), solely with respect to a **Wrongful Act** by an **Insured Person** if acting at the specific request of the **Company**, which is included in the definition of **Plan** by specific written endorsement attached to this policy.

With respect to paragraphs (1) and (2) of this Definition, coverage under this policy shall apply to any pension or welfare plan that was merged, sold, spun-off or terminated prior to the **Policy Period** with respect to **Wrongful Acts** that occurred prior to the date of such merger, sale or spin-off or prior to the final date of asset distribution of such plan. As a condition precedent to such coverage, the **Company** shall give written notice of such transaction to the **Insurer** prior to the inception date of this policy and the **Company** shall have paid the premium required for such plan.

With respect to paragraphs (1) and (2) of this Definition, coverage under this policy shall apply to any pension or welfare plan that was merged, sold, spun-off or terminated during the **Policy Period** with respect to **Wrongful Acts** that occurred prior to the date of such merger, sale or spin-off or prior to the final date of asset distribution of such plan. As a condition precedent to such coverage, the **Company** shall give written notice of such transaction to the **Insurer** prior to the end of the **Policy Period**.

(p) **“Subsidiary”** means any for-profit entity (except a partnership) of which the **Parent Company**:

- (1) has **Management Control** (“Controlled Entity”) before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
- (2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s assets total less than 35% of the consolidated assets of the **Parent Company** as of its most recently filed Form 10-Q; or
- (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s assets total 35% or more of the consolidated assets of the **Parent Company** as of its most recently filed Form 10-Q, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in (2) and (3) above shall not mean any entity which is a financial institution, including but not limited to a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

“Subsidiary” also means any not-for-profit entity which is under the exclusive control of the **Company**.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.

(q) **“Voluntary Compliance Program Loss”** means:

- (1) fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees imposed upon or collected from an **Insured** by the Internal Revenue Service (“IRS”) under the Employee Plans Compliance Resolution System pursuant to a written agreement with the IRS, but only in the event that the **Insured** first becomes aware during the **Policy Period** that a **Plan** must be corrected;
- (2) penalties imposed upon an **Insured** by the IRS or the U.S. Department of Labor (“DOL”) under a Delinquent Filer Voluntary Compliance Program, but only in the event that the failure to timely file Form 5500 occurs during the **Policy Period**; and
- (3) damages incurred by an **Insured** in connection with the DOL’s Voluntary Fiduciary Correction Program, but only in the event that the **Insured’s** compliance with such program results in the **Insured** obtaining a “No Action” letter from the DOL and that the breach of fiduciary duty occurs during the **Policy Period**; provided, however, that **Voluntary Compliance Program Loss** under this Definition (q) (3) shall not include fines, penalties or sanctions.

Voluntary Compliance Program Loss shall not include any costs to correct the **Insured’s** non-compliance.

- (r) **“Wrongful Act”** means, with respect to any **Plan**, any actual or alleged:
- (1) breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Plan** by **ERISA**;
 - (2) negligent act, error or omission in the **Administration** of any **Plan**;
 - (3) matter claimed against an **Insured Person** solely by reason of his or her service as a fiduciary of any **Plan**; or
 - (4) negligent hiring of a third-party to administer a **Plan** or **Benefits** provided thereunder.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage or improper or illegal remuneration if a final judgment or adjudication establishes that such **Insured** was not legally entitled to such profit or advantage or that such remuneration was improper or illegal;
- (b) arising out of, based upon or attributable to any deliberate fraud or any wilful violation of law by an **Insured** if a final judgment or adjudication establishes that such fraud or violation occurred;

In determining the applicability of Exclusions (a) and (b), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

- (c) for failure to fund a **Plan** in accordance with **ERISA** or the **Plan** instrument or to collect an employer's contributions owed to a **Plan**; provided, however, this exclusion shall not apply to: (i) the portion of **Loss** that is payable as a personal obligation of an **Insured Person**; or (ii) **Defense Costs**;
- (d) alleging, arising out of, based upon or attributable to the liability of others assumed by any **Insured** under any contract or agreement, either oral or written; provided, however, that this exclusion shall not apply: (i) to the extent that an **Insured** would have been liable in the absence of such contract or agreement; (ii) if the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established; or (iii) to **Defense Costs**.
- (e) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (f) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (g) alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**; provided, however, that this exclusion shall not apply to any non-**Indemnifiable Loss** alleging damage to a **Plan**, except for non-**Indemnifiable Loss** constituting **Cleanup Costs**;
- (h) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in defending a **Claim** alleging a violation of the responsibilities, obligations or duties of **ERISA**;
- (i) for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, anywhere in the world, except: (1) the Consolidated Omnibus Budget Reconciliation Act of 1985; (2) HIPAA; or (3) any amendments thereto or any rules or regulations promulgated thereunder;
- (j) by or on behalf of a fidelity insurer against a natural person whose conduct has resulted in a loss which has been paid under a fidelity bond;
- (k) alleging, arising out of, based upon, or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim; provided, however, that this exclusion shall not apply to any **Claim** asserted under Section 510 of **ERISA**;
- (l) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Plan** taking place at any time when the **Company** did not sponsor such **Plan** or when the **Insured Person** was not a fiduciary, administrator, trustee, director, officer, governor, management committee member, member of the board of managers, general partner or employee of the **Company** or, if applicable, a **Plan**;
- (m) alleging, arising out of, based upon or attributable to any act or omission of 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 Section, or by reason of his, her or its status as a fiduciary or administrator of such other plan, fund or program.

4. RIGHT OF RECOURSE

In the event an **Insured** breaches a fiduciary obligation under **ERISA**, the **Insurer** has the right of recourse against such **Insured** for any amount paid by the **Insurer** as a result of such breach of fiduciary duty, subject to all other terms and conditions of this policy; however, the **Insurer** shall have no right of recourse if the policy has been purchased by a fiduciary or by an employer or an employee organization.

5. ORDER OF PAYMENTS

In the event of **Loss** arising from a covered **Claim** for which payment is due under the provisions of this Coverage Section, the **Insurer** shall in all events:

- (1) first, pay **Loss** for which coverage is provided under this Coverage Section for any **Insured Person**;
- (2) second, only after payment of **Loss** has been made pursuant to item (1) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for any covered **Plan**; and
- (3) third, only after payment of **Loss** has been made pursuant to items (1) and (2) above, with respect to whatever remaining amount of any Limit of Liability applicable to this Coverage Section is available, pay the **Loss** for which coverage is provided under this Coverage Section for the **Company**.

6. NON-RESCINDABLE CLAUSE

Solely with respect to the coverage provided by this Coverage Section for any non-**Indemnifiable Loss**, the **Insurer** irrevocably waives any right it may have to rescind such coverage, in whole or in part, on any grounds.

STARR INDEMNITY AND LIABILITY COMPANY

RESOLUTE PORTFOLIOSM

For Private Companies

Crime and Fidelity Coverage Section

In consideration of the payment of the premium and subject to the Insuring Agreements, terms, conditions and exclusions of this Coverage Section, if purchased by the **Company** as indicated in Item 3 of the Declarations, STARR INDEMNITY AND LIABILITY COMPANY (the “**Insurer**”) and the **Parent Company**, on behalf of the **Company**, agree as follows:

1. INSURING AGREEMENTS

Coverage is provided under the following Insuring Agreements for which a Limit of Liability is indicated in Item 4 of the Declarations, and, applies to loss sustained by the **Company** resulting directly from an **Occurrence** taking place during the **Policy Period**, except as indicated in Condition 6.(a)(10), Loss Sustained During Prior Insurance Issued By The Insurer Or Any Affiliate, or Condition 6.(a)(11), Loss Sustained During Prior Insurance Not Issued By The Insurer Or Any Affiliate, and which is **Discovered** by the **Company** during the **Policy Period** or during the period of time provided in Condition 6.(a)(6), Extended Period To Discover Loss, of this Coverage Section.

A. Employee Theft Insuring Agreement

The **Insurer** shall pay the **Parent Company** for direct loss of **Money, Securities** or **Other Property** sustained by the **Company** resulting from **Theft** or **Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

B. Forgery Or Alteration Insuring Agreement

(1) The **Insurer** shall pay the **Parent Company** for loss resulting directly from **Forgery** or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in **Money** that are:

- a. made or drawn by or drawn upon the **Company**, or
- b. made or drawn by one acting as an agent of the **Company**, or
- c. that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement B, a substitute check as defined in the *Check Clearing for the 21st Century Act* shall be treated the same as the original it replaced.

(2) If the **Company** is sued for refusing to pay any instrument covered item in B.(1) above, on the basis that it has been forged or altered, and the **Company** has the written consent of the **Insurer** to defend against the suit, the **Insurer** will pay for any reasonable legal expenses incurred and paid by the **Company** in that defense. The amount that the **Insurer** shall pay is in addition to the Limit of Liability applicable to Insuring Agreement B.(1).

C. Inside the Premises – Loss of Money and Securities Insuring Agreement

- (1) The **Insurer** shall pay the **Parent Company** for the loss of **Money and Securities** inside the **Premises** or **Banking Premises**:
 - a. resulting directly from **Theft** committed by a person present inside such **Premises** or **Banking Premises**; or
 - b. resulting directly from disappearance or destruction.
- (2) The **Insurer** shall pay the **Parent Company** for loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Theft** of **Money and Securities**, if the **Company** is the owner of the **Premises** or is liable for damage to it.
- (3) The **Insurer** shall pay the **Parent Company** for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the **Premises** resulting directly from an actual or attempted **Theft** of or unlawful entry into those containers.

D. Inside the Premises – Robbery Or Safe Burglary of Other Property Insuring Agreement

- (1) The **Insurer** shall pay the **Parent Company** for loss of or damage to **Other Property**:
 - a. inside the **Premises** resulting directly from an actual or attempted **Robbery** of a **Custodian**; or
 - b. inside the **Premises** in a safe or vault resulting directly from an actual or attempted **Safe Burglary**.
- (2) The **Insurer** shall pay the **Parent Company** for loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Robbery** of **Other Property**, if the **Company** is the owner of the **Premises** or is liable for damage to it.
- (3) The **Insurer** will pay the **Parent Company** for loss of or damage to a locked safe or vault located inside the **Premises** resulting directly from an actual or attempted **Robbery** or **Safe Burglary**.

E. Outside The Premises Insuring Agreement

- (1) The **Insurer** shall pay the **Parent Company** for loss of **Money and Securities** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from **Theft**, disappearance or destruction.
- (2) The **Insurer** shall pay the **Parent Company** for loss of or damage to **Other Property** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from an actual or attempted **Robbery**.

F. Computer Fraud Insuring Agreement

The **Insurer** shall pay the **Parent Company** for loss of or damage to **Money, Securities** and **Other Property** resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the **Premises** or **Banking Premises**:

- a. to a person (other than a **Messenger**) outside those **Premises**.
- b. to a place outside those **Premises**.

G. Funds Transfer Insuring Agreement

The **Insurer** shall pay the **Parent Company** for loss of **Funds** resulting directly from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from the **Company's Transfer Account**.

H. Money Orders and Counterfeit Money Insuring Agreement

The **Insurer** shall pay the **Parent Company** for loss resulting directly from the **Company** having accepted in good faith, in exchange for merchandise, **Money**, or services:

- a. money orders issued by any post office, express company or bank that are not paid upon presentation; or
- b. **Counterfeit Money** that is acquired during the regular course of business.

I. Credit, Debit, Charge Card Forgery Insuring Agreement

The **Insurer** shall pay the **Parent Organization** for loss sustained by the **Company** resulting directly from **Credit Card Forgery** committed by a **Third Party**.

J. Clients Property Insuring Agreement

The **Insurer** shall pay the **Parent Organization** for the direct loss of **Money, Securities**, or **Other Property** sustained by a **Client** resulting from **Theft** or **Forgery** committed by an **Employee** not in collusion with such **Client's** employees.

K. Investigative Expense Incurred to Establish Amount of Covered Loss Insuring Agreement

The **Insurer** shall pay the **Parent Company** for reasonable investigative expense incurred by the **Company**, excluding the **Company's** internal corporate costs (such as salary, wages, commissions, benefits or overhead expenses), to establish the existence and amount of a covered loss. Investigative expenses shall not include expenses incurred by any **Client**. Coverage as provided by this Insuring Agreement K shall be subject to the prior written consent of the **Insurer**.

2) DEFINITIONS

- (a) "**Banking Premises**" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- (b) "**Client**" means a customer of the **Company** to whom the **Company** provides goods or services for a fee under written contract.

- (c) “**Credit Card Forgery**” means the **Forgery** or alteration of, on or in any written instrument required in connection with any credit, debit or charge card issued to the **Company** or, at the request of the **Company**, to an **Employee**.
- (d) “**Counterfeit Money**” means an imitation of **Money** that is intended to deceive and to be taken as genuine.
- (e) “**Custodian**” means the **Company**, any partners, any **Members**, or any **Employee** while having care and custody of property inside the **Premises**, excluding any person while acting as a **Watchperson** or janitor.
- (f) “**Discover(s)**”, “**Discovery**” or “**Discovered**” means the time when the **Company’s** General Counsel, any **Employee** of the Risk Management Department or Human Resources Department, or any **Employee** or officer at the level of corporate Vice President or above first becomes aware of facts which would cause a reasonable person to assume that a loss of a type covered by this Coverage Section has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

“**Discover(s)**”, “**Discovery**” or “**Discovered**” also means the time when the **Company’s** General Counsel, any **Employee** of the Risk Management Department or Human Resources Department, or any **Employee** or officer at the level of corporate Vice President or above first receives notice of an actual or potential claim in which it is alleged that the **Company** is liable to a **Third Party** under circumstances, which, if true, would constitute a loss under this Coverage Section.

- (g) “**Employee**” means
 - (1) any natural person:
 - (i) while in the regular service of the **Company** and for the first forty-five (45) days immediately after termination of service, unless such termination is due to **Theft** or any other dishonest act committed by the **Employee**;
 - (ii) who is compensated directly by the **Company** by salary, wages or commissions; and
 - (iii) who the **Company** has the right to direct and control while performing services for the **Company**;
 - (2) any natural person who is furnished temporarily to the **Company**:
 - (i) to substitute for a permanent **Employee** as defined in 2.(g)(1) above who is on leave; or
 - (ii) to meet seasonal or short-term workload conditions:
 - a. while that person is subject to the **Company’s** direction and control, and
 - b. performing services for the **Company**, excluding, however, any such person while having care and custody of property outside the **Premises**;
 - (3) any natural person who is leased to the **Company** under a written agreement between the **Company** and a labor leasing firm to perform duties related to the conduct of the **Company’s** business, but does not mean a temporary employee as defined in 2.(g)(2) above;
 - (4) any natural person who is:

- (i) a trustee, officer, **Employee**, administrator or manager of any **Employee Benefit Plan**, except an administrator or manager who is an independent contractor; and
- (ii) a director or trustee of the **Company** while that person is engaged in handling **Funds** or **Other Property** of any **Employee Benefit Plan**;
- (5) Any natural person fiduciary, trustee, administrator or other plan official, while in the regular service of an **Employee Benefit Plan**, who is required to be bonded by the **Company** in connection with such **Employee Benefit Plan** as required by Title 1 of the *Employee Retirement Income Security Act of 1974*, as amended, but does not mean a natural person as defined in 2.(g)(4) above;
- (6) any natural person who is a former **Employee, Member, Manager**, director or trustee retained as a consultant while performing services for the **Company**;
- (7) any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the **Premises**;
- (8) any **Employee** of an entity merged or consolidated with the **Company** prior to the effective date of this Coverage Section; or
- (9) any **Managers**, directors or trustees of the **Company** while:
 - (i) performing acts within the scope of the usual duties of an **Employee**; or
 - (ii) acting as a member of any committee duly elected or appointed by resolution of the **Company's** board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on behalf of the **Company**.

“**Employee**” does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in 2.(g)(1) through 2.(g)(9) above.

- (h) “**Employee Benefit Plan**” means any welfare or pension benefit plan, defined and required to be bonded under Title 1 of the *Employee Retirement Income Security Act of 1974*, as amended, which is operated solely by the **Company** or jointly by the **Company** and a labor organization for the benefit of **Employees** and which existed on or before the inception date of the **Policy Period** or the inception date of this Coverage Section, if the dates differ.
- (i) “**Forgery**” means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one’s own name signed with or without authority, in any capacity, for any purpose.
- (j) “**Fraudulent Instruction**” means
 - (1) an electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by the **Company**, but which was in fact fraudulently transmitted by someone else without the **Company's** knowledge or consent;
 - (2) a written instruction (other than those described in Insuring Agreement B) issued by the **Company**, which was forged or altered by someone

other than the **Company** without the **Company's** knowledge or consent, or which purports to have been issued by the **Company**, but was in fact fraudulently issued without the **Company's** knowledge or consent; or

(3) an electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by the **Company** which purports to have been transmitted by an **Employee** but which was in fact fraudulently transmitted by someone else without the **Employee's** knowledge or consent.

(k) **"Funds"** means **Money** and **Securities**.

(l) **"Messenger"** means the **Company**, a relative of the **Company**, or any partners or **Members**, or any **Employee** while having care and custody of property outside the **Premises**.

(m) **"Money"** means

- (1) currency, coins and bank notes in current use and having a face value; and
- (2) travelers checks, register checks and money orders held for sale to the public.

(n) **"Occurrence"** means

- (1) Under Insuring Agreement A
 - (i) an individual act;
 - (ii) the combined total of all separate acts whether or not related; or
 - (iii) a series of acts whether or not relatedcommitted by an **Employee** acting alone or in collusion with other persons, during the **Policy Period**, except as provided under Condition 6.(a)(10) Loss Sustained During Prior Insurance Issued By The Insurer Or Any Affiliate, or, Condition 6.(a)(11) Loss Sustained During Prior Insurance Not Issued By The Insurer Or Any Affiliate, of this Coverage Section.
- (2) Under Insuring Agreement B
 - (i) an individual act;
 - (ii) the combined total of all separate acts whether or not related; or
 - (iii) a series of acts whether or not relatedcommitted by a person acting alone or in collusion with other persons, involving one or more instruments, during the **Policy Period**, except as provided under Condition 6.(a)(10) Loss Sustained During Prior Insurance Issued By The Insurer Or Any Affiliate, or, Condition 6.(a)(11) Loss Sustained During Prior Insurance Not Issued By The Insurer Or Any Affiliate, of this Coverage Section.
- (3) Under All Other Insuring Agreements:
 - (i) an individual act or event;
 - (ii) the combined total of all separate acts or events whether or not related; or
 - (iii) a series of acts or events whether or not relatedcommitted by a person acting alone or in collusion with other persons, or not committed by any person, during the **Policy Period**, except as indicated under Condition 6.(a)(10) Loss Sustained During Prior

Insurance Issued By The Insurer Or Any Affiliate, or, Condition
6.(a)(11) Loss Sustained During Prior Insurance Not Issued By The
Insurer Or Any Affiliate, of this Coverage Section.

- (o) “**Other Property**” means any tangible property other than **Money** and **Securities** that has intrinsic value. **Other Property** does not include computer programs, electronic data or any property specifically excluded under this Coverage Section.
- (p) “**Premises**” means the interior of that portion of any building occupied by the **Company** in conducting its business.
- (q) “**Robbery**” means the unlawful taking of property from the care and custody of a person by one who has:
 - (1) caused or threatened to cause that person bodily harm; or
 - (2) committed an obviously unlawful act witnessed by that person.
- (r) “**Safe Burglary**” means the unlawful taking of
 - (1) property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
 - (2) a safe or vault from inside the **Premises**.
- (s) “**Securities**” means negotiable and non negotiable instruments or contracts representing either **Money** or property and includes
 - (1) tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
 - (2) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Company**;but does not include **Money**.
- (t) “**Subsidiary**” means any privately-held for-profit entity of which the **Parent Company**
 - (1) has **Management Control** (“Controlled Entity”) before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
 - (2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s annual revenue totals less than 25% of the consolidated revenue of the **Parent Company** as of its latest fiscal year; or
 - (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled entities, if such entity’s annual revenue totals 25% or more of the consolidated revenue of the **Parent Company** as of its latest fiscal year, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**.

Provided, however, that **Subsidiary** as indicated in items 2.(t)(2) and 2.(t)(3) above shall not include any entity which is a financial institution, such as a bank, insurance company, insurance agent or broker, securities broker or dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

“**Subsidiary**” also means any not-for-profit entity which is under the exclusive control of the **Company**.

- (u) “**Theft**” means the unlawful taking of property to the deprivation of the **Company**.
- (v) “**Third Party**” means a natural person other than:
 - (1) an **Employee**; or
 - (2) a natural person acting in collusion with an **Employee**.
- (w) “**Transfer Account**” means an account maintained by the **Company** at a financial institution from which the **Company** can initiate the transfer, payment or delivery of **Funds**:
 - (1) by means of electronic, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system; or
 - (2) by means of written instructions (other than those described in Insuring Agreement B) establishing conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
- (x) “**Watchperson**” means any person the **Company** retains specifically to have care and custody of property inside the **Premises** and who has no other duties.

3. EXCLUSIONS

- (a) The insurance afforded under this Coverage Section shall not apply to:
 - (1) Loss resulting from **Theft** or any other dishonest act committed by:
 - (i) the **Company**; or
 - (ii) any partners or **Members** of the **Company**;
whether acting alone or in collusion with other persons.
 - (2) Loss caused by an **Employee** if the **Employee** had also committed **Theft** or any other dishonest act prior to the effective date of this policy and the **Company** or any of partners, **Members**, **Managers**, officers, directors or trustees, not in collusion with the **Employee**, learned of that **Theft** or dishonest act prior to the inception date of the **Policy Period** or the inception date of this Coverage Section, if the dates differ; However, this exclusion shall not apply if the value of that **Theft** or dishonest act was valued at \$10,000 or less.
 - (3) Loss resulting from **Theft** or any other dishonest act committed by any of the **Company’s Employees**, **Managers**, directors, trustees, or authorized representatives:
 - (i) whether acting alone or in collusion with other persons; or
 - (ii) while performing services for the **Company** or otherwise;

except when covered under Insuring Agreement A.

- (4) Loss resulting from:
 - (i) the unauthorized disclosure of the **Company's** confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists; or
 - (ii) the unauthorized use or disclosure of confidential information of another person or entity which is held by the **Company** including, but not limited to, financial information, credit card information or similar non-public information.
- (5) Loss resulting from seizure or destruction of property by order of governmental authority.
- (6) Loss that is an indirect result of an **Occurrence** covered by this Coverage Section including, but not limited to, loss resulting from:
 - (i) The **Company's** inability to realize income that would have been realized by the **Company** had there been no loss of or damage to **Money, Securities, or Other Property**;
 - (ii) Payment of damages of any type for which the **Company** is legally liable. But the **Insurer** will pay compensatory damages arising directly from a loss covered under this Coverage Section;
 - (iii) Payment of costs, fees or other expenses incurred by the **Company** in establishing either the existence or the amount of loss under this Coverage Section, except when covered under Insuring Agreement K.
- (7) Fees, costs and expenses incurred by the **Company** which are related to any legal action, except when covered under Insuring Agreement B.
- (8) Loss or damage resulting from nuclear reaction or radiation or radioactive contamination, however caused.
- (9) Loss or damage resulting from:
 - (i) war, including undeclared or civil war;
 - (ii) warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

(b) The insurance afforded under Insuring Agreement A shall not apply to:

- (1) Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (i) an inventory computation; or
 - (ii) a profit and loss computation.

However, where the **Company** establishes wholly apart from such computations that the **Company** has sustained a loss, then the **Company** may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.

- (2) Loss resulting from trading, whether in the **Company's** name or in a genuine or fictitious account.
- (3) Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

(c) The insurance afforded under Insuring Agreements C, D, and E shall not apply to:

- (1) Loss resulting from accounting or arithmetical errors or omissions.
- (2) Loss resulting from the giving or surrendering of property in any exchange or purchase.
- (3) Loss or damage resulting from fire, however caused, except:
 - (i) loss of or damage to **Money** and **Securities**, and,
 - (ii) loss from damage to a safe or a vault.
- (4) Loss of property contained in any **Money** operated device unless the amount of **Money** deposited in it is recorded by a continuous recording instrument in the device.
- (5) Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.
- (6) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the **Premises** or **Banking Premises**:
 - (i) on the basis of unauthorized instructions;
 - (ii) as a result of a threat to do bodily harm to any person;
 - (iii) as a result of a threat to do damage to any property;
 - (iv) as a result of a threat to introduce a denial of service attack into the **Company's** computer system;
 - (v) as a result of a threat to introduce a virus or other malicious instruction into the **Company's** computer system which is designed to damage, destroy or corrupt data or computer programs stored within the **Company's** computer system;
 - (vi) as a result of a threat to contaminate, pollute or render substandard the **Company's** products or goods; or
 - (vii) as a result of a threat to disseminate, divulge or utilize:
 - a. the **Company's** confidential information; or
 - b. weaknesses in the **Company's** source code within its computer system.

However this exclusion shall not apply, under Insuring Agreement E, to loss of **Money**, **Securities** or **Other Property** while outside the **Premises** in the care and custody of a **Messenger** if the **Company**:

- (i) had no knowledge of any threat at the time the conveyance began; or
- (ii) had knowledge of a threat at the time the conveyance began, but, the loss was not related to the threat.

- (7) Loss from damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or **Other Property** by vandalism or malicious mischief.
 - (8) Loss resulting from the **Company's**, or anyone acting on the **Company's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.
- (d) The insurance afforded under Insuring Agreement F shall not apply to:
- (1) Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.
 - (2) Loss resulting from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from the **Company's Transfer Account**.
 - (3) Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (i) an inventory computation; or
 - (ii) a profit and loss computation.
- (e) The insurance afforded under Insuring Agreement G shall not apply to loss resulting from the use of any computer to fraudulently cause a transfer of **Money, Securities or Other Property**.

4. **LIMIT OF LIABILITY**

The most the **Insurer** will pay for all loss resulting directly from an **Occurrence** is the applicable Limit of Liability as indicated in Item 4 D. of the Declarations.

If any loss is covered under more than one Insuring Agreement in this Coverage Section, the most the **Insurer** will pay for such loss shall not exceed the largest Limit of Liability indicated in Item 4 D. of the Declarations under any one of the Insuring Agreements.

5. **DEDUCTIBLE**

The **Insurer** will not pay for loss resulting directly from an **Occurrence** unless the amount of loss exceeds the Deductible Amount shown in Item 5 D. of the Declarations. The **Insurer** will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Liability as indicated in Item 4.D of the Declarations .

6. **CONDITIONS**

(a) **Conditions Applicable To All Insuring Agreements**

- (1) **Additional Premises Or Employees**
If, while this Coverage Section is in force, the **Company** establishes any additional **Premises** or hires additional **Employees**, other than through consolidation or merger with, or purchase or acquisition or assets or liabilities of, another entity, such **Premises** and **Employees** shall automatically be covered under this Coverage Section. Notice to the **Insurer** of an increase in the number

of **Premises** or **Employees** need not be given and no additional premium need be paid for the remainder of the **Policy Period**.

(2) **Concealment, Misrepresentation Or Fraud**

Notwithstanding Section 10 in the General Terms & Conditions Section, this Coverage Section is void in any case of fraud by the **Company** as it relates to this Coverage Section at any time. It is also void if the **Company**, at any time, intentionally conceals or misrepresents a material fact concerning:

- (i) this Coverage Section;
- (ii) the property covered under this Coverage Section;
- (iii) the **Company's** interest in the property covered under this Coverage Section; or
- (iv) a claim under this Coverage Section.

(3) **Duties In the Event of Loss**

After the **Company Discovers** a loss or a situation that may result in loss of or damage to **Money, Securities, or Other Property**, the **Company** must:

- (i) notify the **Insurer** as soon as possible if the **Company** has reason to believe that the value of any loss will equal or exceed one-fourth (1/4) of the Deductible Amount specified in Item 5. D of the Declarations
- (ii) if the **Company** has reason to believe that any loss (except for loss covered under Insuring Agreements A and B) involves a violation of law, the **Company** must also notify the local law enforcement authorities.
- (iii) submit to examination under oath at the **Insurer's** request and give the **Insurer** a signed statement of its answers.
- (iv) produce for the **Insurer's** examination all pertinent records.
- (v) give the **Insurer** a detailed, sworn proof of loss within 120 days.
- (vi) cooperate with the **Insurer** in the investigation and settlement of any claim.

With respect to knowledge, belief or **Discovery** referenced in this Condition 6.(a) (3), **Company** shall mean the **Company's** Corporate Compliance, Ethics or Responsibility Officer, General Counsel, any **Employee** of the Risk Management Department or Human Resources Department.

(4) **Employee Benefit Plans**

- (i) **Employee Benefit Plans** are included in the definition of **Company** solely with respect to Insuring Agreement A.
- (ii) If any **Employee Benefit Plan** is covered jointly with any other entity under this Coverage Section, the **Company** or the plan administrator must select a Limit of Liability for Insuring Agreement A that is sufficient to provide a Limit of Liability for each **Employee Benefit Plan** that is at least equal to that required if each **Employee Benefit Plan** were separately insured.
- (iii) With respect to loss sustained or **Discovered** by any such **Employee Benefit Plan**, Insuring Agreement A is replaced by the following: The **Insurer** will pay for loss of or damage to **Funds and Other Property** resulting directly from fraudulent or dishonest acts committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.
- (iv) If the **Parent Company** is an entity other than an **Employee Benefit Plan**, any payment the **Insurer** makes for loss sustained by any

Employee Benefit Plan will be made to the **Employee Benefit Plan** sustaining the loss.

- (v) If two or more **Employee Benefit Plans** are covered under this Coverage Section, any payment the **Insurer** makes for loss
 - a. sustained by two or more **Employee Benefit Plans**, or
 - b. of commingled **Funds** or **Other Property** of two or more **Employee Benefit Plans**,

resulting directly from an **Occurrence** will be made to each **Employee Benefit Plan** sustaining loss in the proportion that the Limit of Liability, as indicated in Item 4 D. of the Declarations, required for each **Employee Benefit Plan** bears to the total Limit of Liability of all **Employee Benefit Plans** sustaining loss.

- (vi) The Deductible Amount as indicated in Item 5 D. of the Declarations and applicable to Insuring Agreement A does not apply to loss sustained by any **Employee Benefit Plan**.

(5) **Examination Of The Company's Books And Records**

The **Insurer** may examine and audit the **Company's** books and records as they relate to this Coverage Section at any time during the **Policy Period** and up to three (3) years thereafter.

(6) **Extended Period To Discover Loss**

The **Insurer** will pay for loss sustained by the **Company** prior to the effective date of cancellation of this Coverage Section, which is **Discovered** by the **Company**:

- (i) no later than one (1) year from the effective date of such cancellation. However, this extended period to **Discover** loss terminates immediately upon the effective date of any other insurance obtained by the **Company**, whether from the **Insurer** or another insurer, replacing in whole or in part the coverage afforded under this Coverage Section, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (ii) no later than one (1) year from the date of that cancellation with regard to any **Employee Benefit Plans**

(7) **Inspections And Surveys**

- (i) The **Insurer** has the right to:
 - a. make inspections and surveys at any time;
 - b. give the **Company** reports on the conditions found; and
 - c. recommend changes.
- (ii) The **Insurer** is not obligated to make any inspections, surveys, reports or recommendations and any such actions undertaken by the **Insurer** relate only to insurability and the premiums charged. The **Insurer** does not make safety inspections. The **Insurer** does not undertake to perform the duty of any person or organization to provide for the health and safety of workers or the public. The **Insurer** does not warrant that conditions:
 - a. are safe or healthful; or
 - b. comply with laws, regulations, codes or standards.

Conditions 6.(a)(7)(i) and 6.(a)(7)(ii) above apply not only to the **Insurer** but also to any rating, advisory, rate service or similar organization which makes

insurance inspections, surveys, reports or recommendations.

(8) **Parent Company**

- (i) If the **Parent Company**, or any partner, **Member**, or officer of the **Parent Company** or of any **Company** has knowledge of any information relevant to this Coverage Section, that knowledge is considered knowledge of the **Company**.
- (ii) An **Employee** of the **Parent Company** or of any **Company** covered under this Coverage Section is considered to be an **Employee** of the **Parent Company** and every **Company** covered under this Coverage Section.
- (iii) If this Coverage Section or any of its Agreements is cancelled as to any **Company**, loss sustained by that **Company** is covered only if it is **Discovered** by the **Company**:
 - a. no later than one (1) year from the date of that cancellation. However, this extended period to **Discover** loss terminates immediately upon the effective date of any other insurance obtained by that **Company**, whether from the **Insurer** or another insurer, replacing in whole or in part the coverage afforded under this Coverage Section, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
 - b. no later than one (1) year from the date of that cancellation with regard to any **Employee Benefit Plan**.
- (iv) The **Insurer** will not pay more for loss sustained by the **Parent Company**, any one or more **Subsidiary** and/or any one or more **Employee Benefit Plan** than the amount the **Insurer** would pay if all such loss had been sustained only by the **Parent Company** or only one **Subsidiary**, or only one **Employee Benefit Plan**.
- (v) Payment by the **Insurer** to the **Parent Company** for loss sustained by any **Company**, other than an **Employee Benefit Plan**, shall fully release the **Insurer** on account of such loss.

(9) **Liberalization**

If the **Insurer** adopts any revision that would broaden the coverage under this Coverage Section without additional premium within forty-five (45) days prior to or during the **Policy Period**, the broadened coverage will immediately apply to this Coverage Section.

(10) **Loss Sustained During Prior Insurance Issued By The Insurer Or Any Affiliate**

- (i) Loss Sustained Partly During This Coverage Section and Partly During Prior Insurance
If the **Company Discovers** loss during the **Policy Period**, resulting directly from an **Occurrence** taking place:
 - a. partly during the **Policy Period**; and
 - b. partly during the **Policy Period(s)** of any prior cancelled insurance that the **Insurer** or any affiliate issued to the **Company** or any predecessor in interest;

and this Coverage Section became effective at the time of cancellation of the prior insurance, the **Insurer** will first settle the amount of loss sustained by the **Company** during this **Policy Period**. The **Insurer** will then settle the remaining amount of loss sustained by the **Company** during the policy period(s) of the prior insurance.

- (ii) Loss Sustained Entirely During Prior Insurance
If the **Company Discovers** loss during the **Policy Period**, resulting directly from an **Occurrence** taking place entirely during the policy period(s) of any prior cancelled insurance that the **Insurer** or any affiliate issued to the **Company** or any predecessor in interest, the **Insurer** will pay for the loss provided:
 - a. this Coverage Section became effective at the time of cancellation of the prior insurance; and
 - b. the loss would have been covered under this Coverage Section had it been in effect at the time of the **Occurrence**.
- (iii) In settling loss subject to this Condition:
 - a. the most the **Insurer** will pay for the entire loss is the highest single Limit of Liability applicable during the period of loss, whether such limit was written under this Coverage Section or was written under the prior insurance issued by the **Insurer**.
 - b. the **Insurer** will apply the applicable Deductible Amount shown in Item 5 D. of the Declarations to the amount of loss sustained under the **Policy Period**. If no loss was sustained under the **Policy Period**, the **Insurer** will apply the Deductible Amount shown in Item 5 D. of the Declarations to the amount of loss sustained under the most recent prior insurance.
If the Deductible Amount, provided in Item 5 D. of the Declarations, is larger than the amount of loss sustained under this Coverage Section, or the most recent prior insurance, the **Insurer** will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance. The **Insurer** will not apply any other Deductible Amount that may have been applicable to the loss.
- (iv) The following examples demonstrate how the **Insurer** will settle losses subject to this Condition:

EXAMPLE NO. 1:

The Company sustained a covered loss of \$10,000 resulting directly from an occurrence taking place during the terms of Policy A and Policy B.

POLICY A

The current policy. Written at a limit of liability of \$50,000 and a deductible amount of \$5,000.

POLICY B

Issued prior to Policy A. Written at a limit of liability of \$50,000 and a deductible amount of \$5,000.

The amount of loss sustained under Policy A is \$2,500 and under Policy B is \$7,500.

The highest single limit of liability applicable to this entire loss is \$50,000 written under Policy A. The Policy A deductible amount of \$5,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$2,500) is settled first. The amount the Insurer will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).
2. The **remaining** amount of loss sustained under Policy **B** (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining deductible amount from Policy **A** of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most the Insurer will pay for this loss is \$5,000.

EXAMPLE NO. 2:

The Company sustained a covered loss of \$250,000 resulting directly from an occurrence taking place during the terms of Policy **A** and Policy **B**.

POLICY A

The current policy. Written at a limit of liability of \$125,000 and a deductible amount of \$10,000.

POLICY B

Issued prior to Policy **A**. Written at a limit of liability of \$150,000 and a deductible amount of \$25,000.

The amount of loss sustained under Policy **A** is \$175,000 and under Policy **B** is \$75,000.

The highest single limit of liability applicable to this entire loss is \$150,000 written under Policy **B**. The Policy **A** deductible amount of \$10,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$175,000) is settled first. The amount the Insurer will pay is the Policy **A** Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000 which is greater than the \$125,000 policy limit.
2. The remaining amount of loss sustained under Policy **B** (\$75,000) is settled next. The amount the Insurer will pay is \$25,000 (i.e., \$150,000 Policy **B** limit - \$125,000 paid under Policy **A** = \$25,000).

The most the Insurer will pay for this loss is \$150,000.

EXAMPLE NO. 3:

The Company sustained a covered loss of \$2,000,000 resulting directly from an occurrence taking place during the terms of Policies **A**, **B**, **C** and **D**.

POLICY A

The current policy. Written at a limit of liability of \$1,000,000 and a deductible amount of \$100,000.

POLICY B

Issued prior to Policy **A**. Written at a limit of liability of \$750,000 and a deductible amount of \$75,000.

POLICY C

Issued prior to Policy **B**. Written at a limit of liability of \$500,000 and a deductible amount of \$50,000.

POLICY D

Issued prior to Policy **C**. Written at a limit of liability of \$500,000 and a deductible amount of \$50,000.

The amount of loss sustained under Policy **A** is \$350,000, under Policy **B** is \$250,000, under Policy **C** is \$600,000 and under Policy **D** is \$800,000.

The highest single limit of liability applicable to this entire loss is \$1,000,000 written under Policy **A**. The Policy **A** deductible amount of \$100,000 applies. The loss is settled as follows:

1. The amount of loss sustained under Policy **A** (\$350,000) is settled first. The amount the Insurer will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
2. The amount of loss sustained under Policy **B** (\$250,000) is settled next. The amount the Insurer will pay is \$250,000 (no deductible is applied).
3. The amount of loss sustained under Policy **C** (\$600,000) is settled next. The amount the Insurer will pay is \$500,000, the policy limit (no deductible is applied).
4. The Insurer will not make any further payment under Policy **D** as the maximum amount payable under the highest single limit of liability applying to the loss of \$1,000,000 under Policy **A** has been satisfied.

The most the Insurer will pay for this loss is \$1,000,000.

- (11) **Loss Sustained During Prior Insurance Not Issued By the Insurer Or Any Affiliate**
- (i) If the **Company Discovers** loss during the **Policy Period**, resulting directly from an **Occurrence** taking place during the policy period of any prior cancelled insurance that was issued to the **Company** or to a predecessor in interest by another insurer, and the period of time to discover loss under that insurance had expired, the **Insurer** will pay for the loss under this Coverage Section, provided:
 - a. this Coverage Section became effective at the time of cancellation of the prior insurance; and
 - b. the loss would have been covered under this Coverage Section had it been in effect at the time of the **Occurrence**.
 - (ii) In settling loss subject to this Condition:
 - a. the most the **Insurer** will pay for the entire loss is the lesser of the Limits of Liability as indicated in Item 4.D of the Declarations applicable during the period of loss, whether such limit was written under this Coverage Section or was written under the prior cancelled insurance.
 - b. the **Insurer** will apply the applicable Deductible Amount as indicated in Item 5.D of the Declarations to the amount of loss sustained under the prior cancelled insurance.
 - (iii) The insurance provided under this section is subject to the following:
 - a. If loss covered under this Condition 6.(a)(11) is also partially covered under Condition 6.(a)(10) above, the amount recoverable under this Condition 6.(a)(11) is part of, not in addition to, the amount recoverable under Condition 6.(a)(10) above.
 - b. For loss covered under this Condition 6.(a)(11) the amount recoverable under this section is part of, not in addition to, the Limit of Liability as indicated in Item 4 of the Declarations applicable to the loss covered under this Coverage Section and is limited to the lesser of the amount recoverable under:
 - i. this Coverage Section as of its effective date; or
 - ii. the prior cancelled insurance had it remained in effect.

(12) **Ownership of Property; Interests Covered**

The property covered under this Coverage Section is limited to property:

- (i) that the **Company** owns or leases; or
- (ii) that the **Company** holds for others whether or not the **Company** is legally liable for the loss of such property.

However, this Coverage Section is for the **Company's** benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this Coverage Section must be presented by the **Company**.

(13) **Records**

The **Company** must keep records of all property covered under this Coverage Section so the **Insurer** can verify the amount of any loss.

(14) **Recoveries**

Any recoveries, whether effected before or after any payment under this Coverage Section, whether made by the **Insurer** or the **Company**, shall be applied net of the expense of such recovery:

- (i) first, to the **Company** in satisfaction of the **Company's** covered loss in excess of the amount paid under this Coverage Section;
- (ii) second, to the **Insurer** in satisfaction of amounts paid in settlement of the **Company's** claim;
- (iii) third, to the **Company** in satisfaction of any Deductible Amount as indicated in Item 5 of the Declarations; and
- (iv) fourth, to the **Company** in satisfaction of any loss not covered under this Coverage Section.

Recoveries do not include any recovery:

- (i) from insurance, suretyship, reinsurance, security or indemnity taken for the **Insurer's** benefit; or
- (ii) of original **Securities** after duplicates of them have been issued.

(15) **Transfer Of The Company's Rights And Duties Under This Coverage Section**

The **Company's** rights and duties under this Coverage Section may not be transferred without the **Insurer's** written consent.

(16) **Transfer Of The Company's Rights Of Recovery Against Others To The Insurer**

The **Company** must transfer to the **Insurer** all of its rights of recovery against any person or organization for any loss the **Company** sustained and for which the **Insurer** has paid or settled. The **Company** must also do everything necessary to secure those rights and do nothing after loss to impair them.

(17) **Valuation-Settlement**

- (i) The value of any loss for purposes of coverage under this Coverage Section shall be determined as follows:
 - (a) loss of **Money** but only up to and including its face value. The **Insurer** will, at the **Company's** option, pay for loss of **Money** issued by any country other than the United States of America:
 - 1. At face value in the **Money** issued by that country; or
 - 2. In the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.
 - (b) loss of **Securities** but only up to and including their value at the close of business on the day the loss was **Discovered**. The **Insurer** may, at its option:
 - 1. pay the market value of such **Securities** or replace them in kind, in which event the **Company** must assign to the **Insurer** all the **Company's** rights, title and interest in and to those **Securities**; or
 - 2. pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **Securities**. However, the **Insurer** will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
 - (i) market value of the **Securities** at the close of business on the day the loss was **Discovered**; or
 - (ii) the Limit of Liability applicable to the **Securities**.

- (c) loss of or damage to **Other Property** or loss from damage to the **Premises** or its exterior for the replacement cost of the property without deduction for depreciation. However, the **Insurer** will not pay more than the least of the following:
 - 1. the cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;
 - 2. the amount the **Company** actually spends that is necessary to repair or replace the lost or damaged property; or
 - 3. the Limit of Liability applicable to the lost or damaged property.
 With regard to Conditions 6.(a)(17)(i)(c)(1) through 6.(a)(17)(i)(c)(3), the **Insurer** shall not pay on a replacement cost basis for any loss or damage:
 - i. until the lost or damaged property is actually repaired or replaced; and
 - ii. unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
 If the lost or damaged property is not repaired or replaced, the **Insurer** will pay on an actual cash value basis.
- (ii) the **Insurer** will, at the **Company's** option, settle loss or damage to property other than **Money**:
 - (a) in the **Money** of the country in which the loss or damage occurred; or
 - (b) in the United States of America dollar equivalent of the **Money** of the country in which the loss or damage occurred determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.
- (iii) Any property that the **Insurer** pays for or replaces becomes the **Insurer's** property.

(b) Conditions Applicable To Insuring Agreement A

- (1) Termination As To Any Employee
This Insuring Agreement terminates as to any **Employee**:
 - a. as soon as the **Company's** Corporate Compliance, Ethics or Responsibility Officer, General Counsel, any **Employee** of the Risk Management Department or Human Resources Department, or, any corporate Vice President or above not in collusion with the **Employee**; or
 - b. as soon as any of the **Company's** partners, **Managers, Members**, officers, directors, or trustees not in collusion with the **Employee**; learn of **Theft** or any other dishonest act committed by the **Employee** whether before or after the **Employee** became employed by the **Company**.
 - c. on the date specified in a notice mailed to the **Parent Company**. That date will be at least thirty (30) days after the date of mailing. The **Insurer** will mail or deliver its notice to the **Parent Company's** last mailing address known to the **Insurer**. If notice is mailed, proof of mailing will be sufficient proof of notice.

(c) Conditions Applicable To Insuring Agreement B

- (1) Deductible Amount
The Deductible Amount as provided in Item 5.D of the Declarations does not apply to legal expenses paid under Insuring Agreement B.
- (2) Electronic And Mechanical Signatures

The **Insurer** will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

(3) Proof Of Loss

The **Company** must include with its proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

(d) Conditions Applicable To Insuring Agreements D and E

(1) Armored Motor Vehicle Companies

a. Under Insuring Agreement E, the **Insurer** will only pay for the amount of loss the **Company** cannot recover:

- (i) under the **Company's** contract with the armored motor vehicle company; and
- (ii) from any insurance or indemnity carried by, or for the benefit of customers of the armored motor vehicle company.

(2) Special Limit of Liability For Specified Property

The **Insurer** will only pay up to \$5,000 for any one **Occurrence** of loss of or damage to:

- a. precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- b. manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

(e) Conditions Applicable To Insuring Agreement F

(1) Special Limit of Liability For Specified Property

The **Insurer** will only pay up to \$5,000 for any one **Occurrence** of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

STARR INDEMNITY AND LIABILITY COMPANY

RESOLUTE PORTFOLIOSM
For Private Companies

General Terms & Conditions Section

In consideration of the payment of the premium and in reliance upon the **Application**, as applicable to each Coverage Section, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to this General Terms & Conditions Section and any applicable Coverage Section(s), if purchased by the **Insured** as indicated in Item 3 of the Declarations, **STARR INDEMNITY AND LIABILITY COMPANY** (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. TERMS & CONDITIONS

The terms and conditions set forth in this General Terms & Conditions Section shall apply to all applicable Coverage Sections of this policy. The terms appearing in this General Terms & Conditions Section, which are defined in a Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of coverage under such Coverage Section. All defined terms used in this Policy, whether defined in Clause 2, below, or in a Coverage Section, appear in this Policy in boldface and initial-capitalized. The terms and conditions of each Coverage Section apply only to that particular Coverage Section. If any term or condition in this General Terms & Conditions Section is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control.

2. GENERAL DEFINITIONS

- (a) “**Application**” means all signed applications, including any attachments and other materials provided therewith or incorporated therein, submitted in connection with the underwriting of this policy or for any other policy of which this policy is a renewal, replacement or which it succeeds in time. **Application** shall also include, and incorporate, all publicly available documents.
- (b) “**Cleanup Costs**” means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- (c) “**Company**” means:
 - (1) the **Parent Company**;
 - (2) any **Subsidiary** of the **Parent Company**; and
 - (3) the **Parent Company** or any **Subsidiary** as a debtor, a debtor-in-possession or equivalent status;

provided, however, that this Definition (c) (3) shall not apply to the Fiduciary Liability Coverage Section.

- (d) “**Defense Costs**” means:
- (1) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
 - (2) premium for an appeal, attachment or similar bond, but without any obligation to apply for and obtain such bond;
 - (3) reasonable and necessary fees, costs, charges or expenses incurred in response to any extradition or similar proceeding brought against an **Insured** in connection with a **Claim**; and
 - (4) any fees, costs, charges or expenses incurred by the **Insured** at the specific request of the Insurer to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

“**Defense Costs**” does not include: (i) amounts incurred prior to the date a Claim is first made and reported to the **Insurer**, pursuant to the terms of the applicable Coverage Section; and (ii) compensation or benefits of any **Insured Person** or any overhead expenses of the Company.

- (e) “**Financial Impairment**” means the **Company** becoming a debtor-in-possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.
- (f) “**Management Control**” means: (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the board of directors of a corporation; the management committee members of a joint venture; or the **Members** of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of: the board of directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.
- (g) “**Manager**” means a person serving in a directorial capacity for a limited liability company.
- (h) “**Member**” means an owner of a limited liability company represented by its membership interest, who also may serve as a **Manager**.
- (i) “**Parent Company**” means the entity named in Item 1 of the Declarations.
- (j) “**Policy Period**” means the period from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy. If one or more Coverage Sections have different inception, expiration or cancellation dates from those shown in Item 2 of the Declarations, the **Policy Period** for those Coverage Sections shall be set forth in an endorsement to this Policy.
- (k) “**Pollutants**” means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on, any list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipality, or locality counterpart thereof. Such substances shall include, without limitation, nuclear material or waste, any solid, liquid, gaseous or thermal irritant or contaminant, or smoke, vapor, soot, fumes, acids, alkalis,

chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

- (l) “**Pollution**” means the actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any **Cleanup Costs**.

3. LIMITS OF LIABILITY

The Aggregate Limit of Liability For Each Separate Coverage Section, as set forth in Item 4 A. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, for each applicable Separate Coverage Section.

The Aggregate Limit of Liability For Each Combined Coverage Section, as set forth in Item 4 B. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, for all of the Coverage Sections that comprise the applicable Combined Coverage Section. Any **Loss** paid under one of the Coverage Sections that comprises a Combined Coverage Section will reduce, and may exhaust, the limit of liability available under the other Coverage Section(s) that comprise(s) such Combined Coverage Section.

Any Sublimit(s) of Liability, whether set forth in Item 4 of the Declarations or as otherwise provided under the terms of this policy, shall be part of, and not in addition to, the applicable Aggregate Limit of Liability set forth in Item 4 A. or 4 B. of the Declarations. Each Sublimit of Liability is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, to which the Sublimit(s) of Liability applies.

The Aggregate Policy Limit of Liability, as set forth in Item 4 C. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss**, including **Defense Costs**, from all **Claims** first made during the **Policy Period** (or Discovery Period, if applicable) and reported to the **Insurer** in accordance with the terms of this policy, for all Coverage Section(s) combined.

If any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations is exhausted by the payment of **Loss**, all obligations of the **Insurer** under this policy as respects the applicable Coverage Section(s) will be completely fulfilled and the **Insurer** will have no further obligations under this policy of any kind as respects the applicable Coverage Section(s) and the premium as respects the applicable Coverage Section(s) as set forth in Item 7 of the Declarations will be fully earned.

Any payment of **Loss** under any Aggregate Limit of Liability as set forth in Item 4 A. or 4 B. of the Declarations shall reduce and may exhaust the Aggregate Policy Limit of Liability as set forth in Item 4 C. of the Declarations. If the Aggregate Policy Limit of Liability is exhausted by the payment of such **Loss**, the **Insurer** will have no further obligations of any kind as respects this policy and the applicable premium set forth in Item 7 of the Declarations will be fully earned.

Defense Costs are part of, and not in addition to, the Aggregate Limit of Liability as set forth in Item 4 of the Declarations for each applicable Coverage Section, other than the Crime and

Fidelity Coverage Section, and payment by the **Insurer** of **Defense Costs** shall reduce and may exhaust such Aggregate Limit(s) of Liability. **Defense Costs** are subject to the Aggregate Policy Limit of Liability set forth in Item 4 C. of the Declarations.

If a Discovery Period is purchased by the **Insured** pursuant to Clause 8 of this General Terms & Conditions Section, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability as set forth in Item 4 of the Declarations.

The Limit of Liability applicable to the Crime and Fidelity Coverage Section is set forth in Clause 4 of that Coverage Section.

4. **RETENTION CLAUSE**

Subject to all other terms and conditions of this policy, the **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount as set forth in Item 5 of the Declarations for each Insuring Agreement of the applicable Coverage Section(s). A single Retention amount shall apply to all **Loss** alleging the same or related **Wrongful Acts**. The Retention amount shall be borne by the **Insureds** and remain uninsured.

The application of a Retention to **Loss** under one Insuring Agreement shall not reduce the Retention that applies to **Loss** under any other Insuring Agreement. If different Retention amounts apply to different parts of a single **Loss**, the applicable Retention shall be applied separately to each part of the **Loss** and the sum of such Retention amounts shall not exceed the largest of the applicable Retention amounts as set forth in Item 5 of the Declarations.

If the **Company** is required or permitted to indemnify an **Insured Person** for any **Loss** pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of a **Company** and does not do so for any reason, the **Insurer** shall not require payment of the applicable Retention by the **Insured Person**. However, the **Company** hereby agrees to reimburse the **Insurer** for the full amount of such applicable Retention, unless the **Company** is unable to do so because of **Financial Impairment**.

Provided, however that this Clause No. 4, shall not apply to the Crime and Fidelity Coverage Section.

5. **NOTICE OF CLAIM**

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice of a **Claim** made against an **Insured** or an **Occurrence**, as applicable under the appropriate Coverage Section, to the **Insurer** at the address set forth in Item 9 of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

With respect to the Directors & Officers Liability Coverage Section, the **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** pursuant to this Clause 5, of a **Claim** made against an **Insured** as soon as practicable after the **Company's** general counsel or risk manager (or individuals with equivalent responsibilities) becomes aware of the **Claim**; however, in no event shall such notice be provided later than sixty (60) days after the expiration of the **Policy Period** (or Discovery Period, if applicable).

With respect to the Employment Practices Liability Coverage Section and the Fiduciary Liability Coverage Section, the **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** pursuant to this Clause 5, of

a **Claim** made against an **Insured** as soon as practicable after any **Insured Person** becomes aware of the **Claim**; however, in no event shall such notice be provided later than thirty (30) days after the expiration of the **Policy Period** (or Discovery Period, if applicable).

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if written notice of a **Claim** has been given to the **Insurer** pursuant to this Clause 5, then a **Claim** which is subsequently made against an **Insured** and reported to the **Insurer** pursuant to this Clause 5, alleging, arising out of, based upon or attributable to the facts alleged in the previously noticed **Claim**, or alleging the same or related **Wrongful Act** alleged in the previously noticed **Claim**, shall be considered related to the previously noticed **Claim** and shall be deemed to have been made at the time notice of the previously noticed **Claim** was provided to the **Insurer**.

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if during the **Policy Period** (or Discovery Period, if applicable) an **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured**, the **Insured** may provide written notice to the **Insurer's** authorized agent of such circumstances. This written notice shall include the **Wrongful Act** allegations anticipated and the reasons for anticipating a **Claim**, with full particulars as to dates, persons and entities involved. If a **Claim** is subsequently made against such **Insured** and reported to the **Insurer** arising out of, based upon or attributable to the previously noticed circumstances, such **Claim** shall be considered first made at the time notice of such circumstances was provided to the **Insurer**.

6. DEFENSE OF CLAIM AND SETTLEMENT

The **Insurer** has the right and duty to defend any **Claim** against any **Insured** covered under this policy, even if such **Claim** is false, fraudulent or groundless; however, the **Insurer** shall not have the right or duty to defend any **Claim** under: (1) Insuring Agreement D.: Derivative Demand Coverage of the Directors & Officers Liability Coverage Section; or (2) Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section.

With respect to Insuring Agreement D.: Derivative Demand Coverage of the Directors & Officers Liability Coverage Section, the **Company**, and not the **Insurer**, has the duty to investigate and evaluate the **Derivative Demand**. The **Insurer** shall have the right to effectively associate with the **Company** in such process.

With respect to Insuring Agreement B: Voluntary Compliance Program Coverage of the Fiduciary Liability Coverage Section, the **Company**, and not the **Insurer**, has the duty to investigate and evaluate the **Voluntary Compliance Program Loss**. The **Insurer** shall have the right to effectively associate with the **Company** in such process, including the negotiation of any settlement as respects the **Voluntary Compliance Program Loss**.

The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. Any **Loss** incurred by the **Insured(s)** and/or any settlements or judgments agreed to by the **Insured(s)** without such consent shall not be covered by this policy. However, the **Insurer's** consent is not required for the **Insured** to settle a **Claim** for a **Loss** amount within the applicable Retention.

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense and settlement of any **Claim** and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation the assertion of an **Insured's** indemnification or contribution rights.

The **Insurer** shall have the right to investigate and conduct negotiations and, with the **Insured's** consent, which shall not be unreasonably withheld, enter into the settlement of any **Claim** that the **Insurer** deems appropriate. In the event the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, the **Insurer's** liability for **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled the **Claim**; plus (2) any **Defense Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus (3) eighty percent (80%) of covered **Loss**, other than **Defense Costs**, in excess of the amount for which the **Insurer** could have settled the **Claim**. However, in no event shall the **Insurer's** liability exceed the applicable Limit of Liability as set forth in Item 4 of the Declarations.

The **Insurer** shall pay **Defense Costs** prior to the final disposition of any **Claim**, excess of the applicable retention and subject to all other terms and conditions of this policy. In the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the terms and conditions of this policy, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

7. ALLOCATION

In the event the **Insured(s)** incurs **Loss** that is both covered and not covered by this policy, either because the **Claim** includes both covered and uncovered matters or because the **Claim** includes both insured and uninsured parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and appropriate allocation between covered and uncovered **Loss** based upon the relative legal and financial exposures of the parties to such matters. In the event of a settlement of such **Claim**, the allocation shall also be based upon the relative benefits to the **Insureds** from such a settlement.

If an allocation of **Loss** cannot be agreed to by the **Insurer** and the **Insured**: (1) the **Insurer** shall pay those amounts which it believes to be fair and equitable until an amount shall be agreed upon or determined pursuant to the provisions of this policy; and (2) there will be no presumption of allocation of **Loss** in any arbitration, suit or other proceeding.

8. DISCOVERY CLAUSE

With respect to all Coverage Sections, except the Crime and Fidelity Coverage Section, if the **Company** or the **Insurer** refuses to renew one or more Coverage Sections of this policy, or if this policy is terminated by the **Insurer** for any reason (except for non-payment of premium), or if an **Organizational Change** as defined in Clause 13 occurs, the **Insured(s)** shall have the right to purchase a Discovery Period of up to six years following the effective date of such non-renewal, termination or **Organizational Change**. In the event of the non-renewal of one or more Coverage Sections of this policy, the **Insured** may purchase a Discovery Period solely as respects the Coverage Section(s) that has been non-renewed.

The **Insured's** right to purchase a Discovery Period shall lapse unless written notice of election to purchase such Discovery Period and the additional premium for such Discovery Period is received by the **Insurer** or its authorized agent within sixty days after such non-renewal, termination or **Organizational Change**. The additional premium for a Discovery Period of one or two years is set forth in Item 8 of the Declarations and shall be determined by multiplying the applicable percentage set forth in Item 8 of the Declarations by the premium for each applicable Coverage Section(s) as set forth in Item 7 of the Declarations. The additional premium for a Discovery Period of more than two years shall be determined by the **Insurer**.

During such **Discovery Period**, the **Insured** may provide the **Insurer** with written notice, pursuant to Clause 5 of this policy, of **Claims** made against an **Insured** solely with respect to

Wrongful Acts occurring prior to the effective date of the non-renewal or termination of the policy or the effective date of the **Organizational Change** and otherwise covered by this policy.

The Limit of Liability for the Discovery Period shall be part of, and not in addition to, the applicable Limits of Liability set forth in Item 4 of the Declarations.

The Discovery Period premium shall be fully earned at the inception of the Discovery Period. The Discovery Period is non-cancellable.

9. **OTHER INSURANCE**

The insurance provided by this policy shall apply only as excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess insurance over the applicable Limit of Liability provided by this policy. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. This policy shall not be subject to the terms and conditions of any other insurance policy.

In connection with any covered **Claim** made against an **Outside Entity Insured Person**, a leased employee, or an **Independent Contractor**, and subject to all other terms and conditions herein, this policy shall apply specifically excess of any indemnification and any other insurance coverage available to an **Outside Entity Insured Person**, a leased employee or an **Independent Contractor**. In the event such other insurance coverage available to an **Outside Entity Insured Person**, a leased employee or an **Independent Contractor** is provided by the **Insurer** (or would be provided except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the **Insurer's** maximum aggregate limit of liability for all **Loss** combined in connection with a **Claim** covered, in whole or in part, by this policy and such other insurance policy, shall be the greater of (1) the Limit of Liability of the applicable Coverage Section(s) of this policy; or (2) the limit of liability of such other insurance policy.

10. **REPRESENTATIONS AND SEVERABILITY**

It is agreed that the **Insurer** has relied upon the information contained in the **Application**, as applicable to each Coverage Section, in issuing this policy. In regard to the statements, warranties, representations and information contained in the **Application**, no knowledge of any **Insured** shall be imputed to any other **Insured** for the purpose of determining whether coverage is available under this policy for any **Claim** made against such **Insured**. However, the knowledge possessed by any **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

11. **COVERAGE EXTENSIONS**

This policy shall cover **Loss** arising from any **Claims** made against the estates, heirs, or legal representatives of any deceased person who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such estates, heirs, or legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

This policy shall also cover **Loss** arising from any **Claims** made against the legal representatives of any incompetent, insolvent or bankrupt person who was an **Insured Person**

at the time the **Wrongful Acts** upon which such **Claims** are based were committed; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of any such legal representatives, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

This policy shall also cover **Loss** arising from any **Claims** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world or any formal program established by the

Company) of an **Insured Person** for all **Claims** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of the spouse or domestic partner, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

The coverage extensions set forth in this Clause 11 are subject to all other terms and conditions of this policy.

12. CANCELLATION AND NON RENEWAL CLAUSE

This policy, or any applicable Coverage Section(s), may be cancelled by the **Parent Company** by sending written prior notice to the **Insurer** or its authorized agent as set forth in Item 9 of the Declarations stating when thereafter the cancellation of the policy, or the applicable Coverage Section(s), shall be effective. The policy, or the applicable Coverage Section(s), terminates at the date and hour specified in such notice. This policy may also be cancelled by the **Parent Company** by surrender of this policy to the **Insurer** or its authorized agent as set forth in Item 9 of the Declarations. The policy terminates as of the date and time of surrender. The **Insurer** shall retain the customary short rate proportion of the premium, unless stated otherwise herein.

This policy, or any applicable Coverage Section(s), shall not be cancelled by or on behalf of the **Insurer** except by reason of non-payment of the premium set forth in Item 7 of the Declarations. The **Insurer** may cancel the policy by delivering to the **Parent Company** or by mailing to the **Parent Company**, by registered mail, or by courier at the **Parent Company's** address set forth in the Declarations, written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the policy will be deemed terminated as of the date indicated in the **Insurer's** written notice of cancellation to the **Parent Company**.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The **Insurer** shall have no obligation to renew this policy or any applicable Coverage Section. In the event the **Insurer** decides to non-renew this policy or any applicable Coverage Section, it shall deliver or mail to the **Parent Company**, as identified in Item 1 of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

13. ORGANIZATIONAL CHANGES

If during the **Policy Period**:

- (1) the **Parent Company** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert shall acquire more than 50% of the **Parent Company**,

(any events described in (1) or (2) are referred to herein as an “**Organizational Change**”) then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of an **Organizational Change**. However, there shall be no coverage afforded by this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Organizational Change**. This policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective time of the **Organizational Change**. The **Insured(s)** shall also have the right to purchase a Discovery Period described in Clause 8 in the event of an **Organizational Change**.

The **Parent Company** shall give the **Insurer** written notice of the **Organizational Change** as soon as practicable, but no later than thirty days after the effective date of the **Organizational Change**.

14. AUTHORIZATION AND NOTICES

The **Parent Company** shall act on behalf of all **Insureds** with respect to all matters as respects this policy including: (1) giving of notice of **Claim**; (2) giving and receiving of all correspondence and information; (3) giving and receiving notice of cancellation; (4) payment of premiums; (5) receiving of any return premiums; (6) receiving and accepting of any endorsements issued to form a part of this policy; and (7) the exercising of any right to a Discovery Period.

15. VALUATION AND CURRENCY

All amounts stated in this policy are expressed in United States dollars and all amounts payable under this policy are payable in United States dollars. If a judgment rendered or settlement entered into under this policy are stated in a currency other than United States dollars, then 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 final judgment is rendered or the settlement payment is established.

16. TERRITORY

This policy extends to **Wrongful Acts** taking place, **Occurrences**, or **Claims** made anywhere in the world to the extent permitted by law.

17. ASSIGNMENT AND CHANGES TO THE POLICY

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

Notice to any agent or knowledge possessed by any agent or person acting on behalf of the **Insurer**, other than the **Insurer's** authorized agent as identified in Item 9 of the Declarations, will not result in a waiver or change in any part of this policy or prevent the **Insurer** from

asserting any right under the terms and conditions of this policy. The terms and conditions of this policy may only be waived or changed by written endorsement signed by the **Insurer** or its authorized agent.

18. **BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations hereunder.

It is understood and agreed that the coverage provided under this policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding involving the **Company** is commenced (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered **Claim** under this policy, the **Insureds** shall:

- a. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the policy or its proceeds under such Bankruptcy Law; and
- b. agree not to oppose or object to any efforts by the **Company**, the **Insurer** or any **Insured Person** to obtain relief from any such stay or injunction.

In the event the **Company** becomes a debtor-in-possession or equivalent status under such Bankruptcy Law, and the total covered **Loss** under this policy exceeds the available applicable Limit of Liability, the **Insurer** shall:

- a. first pay the **Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted prior to the **Company** becoming a debtor-in-possession or some equivalent status, then
- b. pay any remaining **Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted after the **Company** became a debtor-in-possession or some equivalent status.

19. **SUBROGATION**

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the **Insurer** under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured(s)**' rights of recovery. The **Insured(s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

20. **ACTION AGAINST THE INSURER**

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and the **Insurer**.

No person or entity shall have any right under this policy to join the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the **Insurer** be impleaded by such **Insured** or legal representatives of such **Insured**.

21. CONFORMITY TO STATUTE

Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy, including any endorsement to this policy which is required by any state Department of Insurance, or equivalent authority ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other portion of this policy.

22. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.