



**DARWIN NATIONAL ASSURANCE COMPANY**

**(A member company of Allied World Assurance Company Holdings Ltd.)**

**9 Farms Spring Road, Farmington, CT 06032 · Tel. (860) 284-1300 · Fax (860) 284-1301**

**FORCEFIELD<sup>SM</sup>  
NOT-FOR-PROFIT ORGANIZATIONS  
MANAGEMENT LIABILITY PACKAGE POLICY**

**POLICY NUMBER:**

**RENEWAL OF:**

**NOTICES**

**THE FOLLOWING NOTICES ARE APPLICABLE TO ALL COVERAGE SECTIONS, EXCEPT THE CRIME AND THE KIDNAP AND RANSOM/EXTORTION COVERAGE SECTIONS.**

**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 INSURED DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN.**

**THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. AMOUNTS INCURRED FOR DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.**

**THE INSURER DOES NOT ASSUME THE DUTY TO DEFEND ANY CLAIM UNDER THIS POLICY; HOWEVER, IF THE INSURED TENDERS THE DEFENSE OF ANY CLAIM TO THE INSURER IN ACCORDANCE WITH THE TERMS HEREIN, THE INSURER SHALL ASSUME THE DEFENSE OF SUCH CLAIM.**

***PLEASE READ THE ENTIRE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE BROKER.***

**DECLARATIONS**

**ITEM 1. NAMED INSURED:**

**ADDRESS:**

**ITEM 2. POLICY PERIOD:**

**Inception Date:**

**Expiration Date:**

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

**ITEM 3. COVERAGE SECTIONS AND PREMIUM**

This Policy provides coverage under a Coverage Section only if purchased by the **Insured** and indicated by an “X” below.

	<b>Liability Coverage Section</b>	<b>Premium</b>
<input type="checkbox"/>	Directors and Officers Liability Coverage Section	\$
<input type="checkbox"/>	Employment Practices Liability Coverage Section	\$
<input type="checkbox"/>	Fiduciary Liability Coverage Section	\$
<input type="checkbox"/>	Employed Lawyers Coverage Section	\$
<input type="checkbox"/>	Crime Coverage Section	\$
<input type="checkbox"/>	Kidnap and Ransom/Extortion Coverage Section	\$
	<b>Total Policy Premium</b>	<b>\$</b>

**ITEM 4. LIMITS OF LIABILITY AND RETENTIONS OR DEDUCTIBLES**

**A. LIMIT OF LIABILITY AND RETENTION FOR EACH COVERAGE SECTION**

(Other than the Crime and Kidnap and Ransom/Extortion Coverage Sections.)

<b>Coverage Section</b>	<b>Separate Limit of Liability</b>	<b>Shared Limit of Liability</b>	<b>Retention*</b>
Directors and Officers Liability Coverage Section	\$	\$ Shared With:	All Claims: \$
Employment Practices Liability Coverage Section	\$	\$ Shared With:	
Third Party Liability Coverage Sublimit of Liability	\$		All Claims: \$
Fiduciary Liability Coverage Section	\$	\$ Shared With:	All Claims: \$
Employed Lawyers Coverage Section	\$	\$ Shared With:	All Claims: \$

\* With respect all Coverage Sections listed above, no Retention amount is applicable to Non-Indemnifiable Loss.

**B. AGGREGATE LIMIT OF LIABILITY**

\$

The Aggregate Limit of Liability set forth above is the maximum Limit of Liability of the Insurer for all Loss for which coverage is provided under all Coverage Sections listed in Item 4.A. above. This Aggregate Limit of Liability does not apply to the Crime and Kidnap and Ransom/Extortion Coverage Sections.

**C. LIMITS OF LIABILITY AND DEDUCTIBLES FOR CRIME COVERAGE SECTION**

<b>Insuring Agreement</b>	<b>Limit of Liability for a Single Loss</b>	<b>Deductible, each Single Loss</b>
Insuring Agreement A “Employee Theft” Coverage	\$	\$
Insuring Agreement B “Forgery or Alteration” Coverage	\$	\$
Insuring Agreement C “Inside the Premises” Coverage	\$	\$
Insuring Agreement D “In Transit” Coverage	\$	\$
Insuring Agreement E “Computer Fraud” Coverage	\$	\$

Insuring Agreement F "Funds Transfer Fraud" Coverage	\$	\$
Insuring Agreement G "Money Orders and Counterfeit Currency Fraud" Coverage	\$	\$
Insuring Agreement H "Credit Card Fraud" Coverage	\$	\$

**D. CRIME COVERAGE SECTION AGGREGATE LIMIT OF LIABILITY**

\$

*This Aggregate Limit of Liability set forth above is the maximum Limit of Liability of the Insurer for all loss for which coverage is provided under the Crime Coverage Section.*

**E. LIMITS OF INSURANCE AND RETENTIONS FOR KIDNAP AND RANSOM/EXTORTION COVERAGE SECTION**

Insuring Agreement	Limit of Insurance, Per Insured Event	Annual Aggregate Limit of Insurance	Retention, Per Insured Event
Insuring Agreement A "Kidnap and Ransom/Extortion"	\$	\$	\$
Insuring Agreement B "In-Transit/Custody"	\$	\$	\$
Insuring Agreement C "Expenses"	\$	\$	\$
Insuring Agreement D "Personal Loss"	\$ Per Insured Person; \$ Per Insured Event	\$	\$
Insuring Agreement E "Legal Costs"	\$	\$	\$

**F. OTHER COVERAGE SUBLIMITS**

Coverage	Sublimit of Liability
Strategic Response Costs Coverage (D&O)	\$
Voluntary Compliance Program Coverage (Fiduciary)	\$
HIPAA Claim Coverage (Fiduciary)	\$
Restoration Expenses (Crime)	\$
Authentication Expenses (Crime)	\$
Punitive Damages Coverage Options for D&O and EPL Coverage Sections:	
<input type="checkbox"/> D&O Punitive Damages Sublimit of Liability:	\$
<input type="checkbox"/> EPL Punitive Damages Sublimit of Liability:	\$
<input type="checkbox"/> Shared Punitive Damages Sublimit of Liability for D&O and EPL	\$
<input type="checkbox"/> No Punitive Damages Sublimit of Liability for D&O or EPL*	

*\* With respect to Punitive Damages Coverage, if "No Punitive Damages Sublimit of Liability for D&O or EPL" is selected above, the Limit of Liability for Punitive Damages shall be equal to either the D&O or the EPL Coverage Section Limit of Liability, as applicable, set forth above in Item 4.A.*

**ITEM 5. COVERAGE DATES**

Coverage Section	Date
Directors and Officers Liability Coverage Section	Pending or Prior Date:
Employment Practices Liability Coverage Section	Pending or Prior Date:
Fiduciary Liability Coverage Section	Pending or Prior Date:
Employed Lawyers Coverage Section	Pending or Prior Date:
Crime Coverage Section	N/A
Kidnap and Ransom/Extortion Coverage Section	N/A

**ITEM 6. DISCOVERY PERIOD**

1 Year:	%
2 Years:	%
3 Years:	%
4 Years:	%
5 Years:	%
6 Years:	%

**ITEM 7. ADDRESS OF INSURER FOR NOTICES UNDER THIS POLICY****A. Claim-Related Notices:**

**DARWIN NATIONAL ASSURANCE COMPANY  
ATTN: CLAIMS DEPARTMENT  
9 FARM SPRINGS ROAD  
FARMINGTON, CT 06032**  
or  
[noticeofloss@darwinpro.com](mailto:noticeofloss@darwinpro.com)

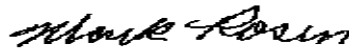
**B. All Other Notices:**

**DARWIN NATIONAL ASSURANCE COMPANY  
ATTN: PROFESSIONAL LIABILITY UNDERWRITING  
199 WATER STREET  
NEW YORK, NY 10038**

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**.



President



Secretary

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**AUTHORIZED REPRESENTATIVE**

**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**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 and Conditions and this Coverage Section, DARWIN NATIONAL ASSURANCE COMPANY (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. 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 Section V. of the General Terms and Conditions and Section IV. of this Coverage Section.

**B. Third-Party 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 **Third-Party Wrongful Act**, and reported to the **Insurer** in accordance Section V. of the General Terms and Conditions and Section IV. of this Coverage Section. The Sublimit of Liability set forth in Item 4.A. of the Declarations is the **Insurer’s** maximum Limit of Liability for all **Loss** arising from all **Claims** for **Third Party Wrongful Acts**. The Sublimit of Liability for **Claims** for **Third Party Wrongful Acts** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section, set forth in Item 4.A. of the Declarations.

**II. 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:
  - (a) service of a complaint or similar pleading;
  - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (c) 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; or
- (6) written request to toll or waive the applicable statute of limitations, or to waive any contractual time-bar, relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.

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

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

C. **“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 in connection with a **Claim**, but without any obligation to apply for and obtain such bond; or
- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific written request and direction of the **Insurer**, to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

**“Defense Costs”** do not include: (a) amounts incurred prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Organization**.

- D. **“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 **Organization** 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.
- E. **“Employee”** means any:
- (1) person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Organization**, but only while that person is acting in the capacity as such;
  - (2) person leased to the **Organization** or any **Independent Contractor** so long as this person is working solely for the **Organization** and only for conduct within his or her duties as such, but only if the **Organization** indemnifies such leased person or **Independent Contractor** in the same manner as the **Organization’s** employees; and
  - (3) volunteer whose labor and service is engaged and directed by the **Organization**, but only while that person is acting in the capacity as such.
- F. **“Financial Impairment”** means the **Organization** 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 **Organization**; or the filing of a petition under the bankruptcy laws of the United States of America or any equivalent event outside the United States of America.
- G. **“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 **Organization**; 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 **Organization**.
- H. **“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 **Organization** which specifies the terms of the **Organization’s** engagement of the **Independent Contractor**.
- I. **“Insured”** means the **Organization** and any **Insured Person**.

J. **“Insured Person”** means any:

- (1) past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, management committee member, member of board of managers, staff or faculty member (salaried or non-salaried); or
- (2) **Employee** of the **Organization**. Coverage will automatically apply to all new persons who become **Insured Persons** after the inception of this Policy.

K. **“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 subject to any applicable sublimit of liability (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:

- (a) any amounts for which the **Insureds** are not legally liable;
- (b) any amounts which are without legal recourse to the **Insureds**;
- (c) taxes;
- (d) fines and penalties, except as provided for in Definition K. (4) above;
- (e) matters which may be deemed uninsurable under applicable law;
- (f) 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;
- (g) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; or



- (h) 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 paragraphs (a) through (h) above, subject to all other terms, conditions and exclusions of this Policy.

L. **“Retaliation”** means retaliatory treatment of an **Employee** 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 **Organization** 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 **Organization** 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. **“Third-Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Organization**. **Third-Party** shall not include an **Insured Person**.

O. **“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) harassment, directed against a **Third Party**, including sexual harassment, unwelcome sexual advances, requests for sexual favors or other misconduct of a sexual nature.

P. “**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**.

Q. “**Wrongful Act**” means any actual or alleged:

- (1) **Discrimination;**
- (2) **Harassment;**
- (3) **Retaliation;**
- (4) **Workplace Tort;** or
- (5) **Wrongful Employment Decision;**

committed by the **Insured**, but only if such act relates to an **Employee** or an applicant for employment with the **Organization**.

**Wrongful Act** shall also include a **Third Party Wrongful Act** committed by an **Insured**, but solely with respect to the coverage provided under Insuring Agreement B. of this Coverage Section.

R. “**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.

### III. EXCLUSIONS

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

- A. 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;

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**.

- B. alleging, arising out of, based upon or attributable to any actual or alleged liability of the **Insured** under any express contract or agreement; provided, however, this exclusion shall not apply to:
- (1) liability which would have attached in the absence of such express contract or agreement;
  - (2) any **Claim** brought against an **Insured Person**; or
  - (3) **Defense Costs**.
- C. alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 5. of the Declarations as respects this Coverage Section, any pending or prior: (a) litigation; or (b) 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 Acts**, 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 Acts** 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 bodily injury, sickness, mental anguish, emotional distress, 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 that portion of a **Claim** seeking damages for emotional distress or mental anguish when resulting from the **Wrongful Act** of an **Insured**;
- F. 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, improper classification of any **Employee**, improper payroll deductions taken 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**;
- G. for 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**;
- H. 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**;

- I. 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**;
- 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**;

#### IV. NOTICE OF A CLAIM

The following provision shall apply in lieu of Section V.A. of the General Terms and Conditions:

- A. The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer**, at the physical or email address indicated in Item 7. of the Declarations, of a **Claim** made against an **Insured** as soon as practicable after the **Organization's** General Counsel, Director of Human Resources or Risk Manager, or any individual with functionally equivalent responsibilities, becomes aware of the **Claim**.

#### V. DEFENSE OF CLAIM AND SETTLEMENT

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Employment Practices Liability Coverage Section. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.
- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** as respects any **Claim**, such consent shall not be unreasonably withheld.
- C. 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.
- D. The **Insurer** shall have the right to associate with the **Insured** in the defense of any **Claim** that can reasonably be expected to require any payment by the **Insurer**, including but not limited to the right to investigate, conduct negotiations and enter into the settlement of any **Claim** that the **Insurer** deems appropriate, subject to the consent of the **Insured** which shall not be unreasonably withheld. 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:

- (a) the amount for which the **Insurer** could have settled the **Claim**; plus;
- (b) any **Defense Costs** incurred up to the date the **Insured** refused to settle such **Claim**; plus
- (c) eighty percent (80%) of covered **Loss**, other than **Defense Costs**, in excess of the amount for which the **Insurer** could have settled the **Claim**. The remaining amount of any **Loss**, including any **Defense Costs** incurred after the date the **Insured** refused to settle such **Claim**, shall be carried by the **Insured** at its own risk and be uninsured.

However, in no event shall the **Insurer's** liability exceed the applicable Limit of Liability for this Coverage Section, as set forth in Item 4.A. of the Declarations.

- E. 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.
- F. The **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, 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.
- G. **Right to Tender Defense**
  - (1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**.
  - (2) This right shall be exercised by the **Parent Organization** on behalf of all **Insureds** by providing written notice to the **Insurer**. The **Insured's** right to tender the defense of a **Claim** shall terminate if it is not exercised within thirty days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.
  - (3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation sent thereof to the **Parent Organization**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Section V.; provided, however, the **Insurer** shall

not be obligated to defend such **Claim** after the applicable Limit of Liability has been exhausted.

- (4) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, 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 **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.

## VI. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- B. With respect to the statements and representations contained in the **Application**, no knowledge of any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such **Insured Person**. However, the knowledge possessed by any **Insured Person** who is a past or current Chief Executive Officer, President or Chief Financial Officer of the **Organization** shall be imputed to the **Organization** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Organization**.

**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**Directors and 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 and Conditions and this Coverage Section, DARWIN NATIONAL ASSURANCE COMPANY (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. INSURING AGREEMENTS**

**A. Claims Against Insured Persons – Non-indemnifiable Loss Coverage**

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 Section V. of the General Terms and Conditions, unless the **Organization** is required or permitted to pay such **Loss** to or on behalf of the **Insured Person** as indemnification.

**B. Claims Against Insured Persons – Indemnifiable Loss Coverage**

The **Insurer** shall pay on behalf of the **Organization** 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 Section V. of the General Terms and Condition, if the **Organization** pays such **Loss** to or on behalf of the **Insured Person** as indemnification.

**C. Company Claims Coverage**

The **Insurer** shall pay on behalf of the **Organization** the **Loss** arising from a **Claim**, first made during the **Policy Period** (or Discovery Period, if applicable) against the **Organization** for any **Wrongful Act**, and reported to the **Insurer** in accordance with Section V. of the General Terms and Conditions.

**D. Crisis Event Coverage**

The **Insurer** shall reimburse the **Organization** for **Response Costs** incurred by the **Organization** in response to a **Crisis Event** which first takes place during the **Policy Period**, and reported to the **Insurer** in accordance with Section V. of the General Terms and Conditions. The Sublimit of Liability for **Response Costs** set forth in Item 4.F. of the Declarations is the **Insurer’s** maximum Limit of Liability for all **Response Costs**. The Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section, as

set forth in Item 4.A. of the Declarations. This Insuring Agreement D. shall not provide coverage for any **Claim** that arises from a **Crisis Event**.

## II. DEFINITIONS

A. **“Affiliate”** means any not-for-profit organization, other than a **Subsidiary**, which:

- (1) the **Named Insured** or any **Subsidiary** controls or otherwise has the ability to control the financial or managerial decisions of such organization, whether through the operation of law, contract or agreement, stock ownership or membership, charter, articles of incorporation, or by-law provisions; or
- (2) is granted by contract or agreement, the right to control the financial or managerial decisions of the **Named Insured** or any **Subsidiary**;

provided, however, that such coverage as may be provided under this Policy for any organization described in paragraphs (1) or (2) above shall be limited solely to coverage for **Claims** for **Wrongful Acts** occurring in the course of the exercise of such control of the financial or managerial decisions.

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:
  - (a) service of a complaint or similar pleading;
  - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (c) 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, Wells Notice, 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, or to waive any contractual time-bar, relating to a potential **Claim** against an **Insured** for a **Wrongful Act**;



- (6) official request for **Extradition** of any **Insured Person**, or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**.

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

- C. **“Crisis Event”** means an event that, in the absence of **Crisis Management Services** and in the good faith opinion of an **Executive** of the **Named Insured**, has resulted in or may result in:

- (1) **Loss** for which coverage would be provided under this Coverage Section; and
- (2) significant adverse media coverage for the **Organization**.

A **Crisis Event** will include but not be limited to the following, so long as the requirements set forth in paragraphs C.(1) and C.(2) above are met:

- (a) **Mass Tort:**  
The public announcement or accusation that the **Organization** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or widespread damage to or destruction of property, including the loss of use thereof.
- (b) **Debt Default:**  
The public announcement that the **Organization** has defaulted or intends to default on its debt, or intends to engage in a debt restructuring.
- (c) **Bankruptcy:**  
The public announcement that the **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Organization**; or the imminence of bankruptcy proceedings, whether voluntary or involuntary.
- (d) **Loss of Key Executives; Loss of Employees:**  
The public announcement of the death or resignation of one or more key **Executives** of the **Organization**; or a substantial lay-off of **Employees** of the **Organization** (i.e., the elimination of multiple jobs within the **Organization** without regard to employee performance, when the **Organization** is experiencing financial difficulties).
- (e) **Regulatory Crisis:**  
The public announcement of the commencement, or threat of commencement, of litigation, administrative or other proceedings against the **Organization** by any federal, state or local governmental or regulatory body.

D. **“Crisis Management Services”** means those services performed by a firm that is either listed in an Endorsement to this Policy, or which the **Insurer** at its sole discretion has provided prior written approval for the **Organization** to retain, to advise the **Organization** on minimizing potential harm to the **Organization’s** reputation or financial condition from a covered **Crisis Event**, by maintaining and restoring public confidence in the **Organization**.

E. **“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, in connection with a **Claim**;
- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

**“Defense Costs”** does not include: (a) amounts incurred by the **Insured** prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Organization**.

F. **“Employee”** means any:

- (1) person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Organization**, including any staff or faculty member (salaried or non-salaried), but only while that person is acting in their capacity as such;
- (2) person leased to the **Organization** or any **Independent Contractor**, so long as this person is working solely for the **Organization** and only for conduct within his or her duties as such, if the **Organization** indemnifies such leased person or any **Independent Contractor** in the same manner as the **Organization’s** employees described in paragraph (1); and
- (3) volunteer whose labor and service is engaged and directed by the **Organization**, but only while that person is acting in their capacity as such.

G. **“Executive”** means any:

- (1) past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, governor, management committee member or member of board of managers of the **Organization**;

- (2) with respect to any **Organization** organized and operating in a foreign jurisdiction, any person in a position that is functionally equivalent to any executive position listed in paragraph (1) above; or
  - (3) past, present or future General Counsel or Risk Manager of the **Organization**, or any person in a position that is functionally equivalent within the **Organization**.
- H. **“Extradition”** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- I. **“Financial Impairment”** means the **Organization** 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 **Organization**, or the filing of a petition under the bankruptcy laws of the United States of America or any equivalent event outside of the United States of America.
- J. **“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 **Organization**, which specifies the terms of the **Organization’s** engagement of the **Independent Contractor**.
- K. **“Insured”** means the **Organization** and any **Insured Person**.
- L. **“Insured Person”** means any:
- (1) **Executive**;
  - (2) **Employee**; or
  - (3) **Outside Entity Insured Person**.

Coverage under this Directors and Officers Coverage Section will automatically apply to all persons who become **Insured Persons** after the Inception Date of this Policy.

- 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 or exemplary damages, or the multiple portion of any multiple damages award, subject to any applicable Sublimit of Liability, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages; and

(5) **Defense Costs.**

“Loss” does not include:

- (a) amounts for which the **Insureds** are not legally liable;
- (b) amounts which are without legal recourse to the **Insureds**;
- (c) taxes;
- (d) fines and penalties, except as provided for in this Definition M.(4) above;
- (e) amounts deemed uninsurable under applicable law;
- (f) 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;
- (g) amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief.

However, this Coverage Section shall provide coverage for **Defense Costs** incurred in a **Claim** seeking amounts specified in paragraphs (a) through (g) above, subject to all other terms, conditions and exclusions of this Policy.

N. “**Outside Entity**” means:

- (1) any not-for-profit entity; or
- (2) any other entity listed as such by Endorsement attached to this Policy;

for which an **Executive** or **Employee** acts as a director, officer, trustee, trustee emeritus, executive director, department head, management committee member, member of board of managers or governor, or the equivalent thereof, at the specific request of the **Organization**. Any such person shall be referred to herein as an “**Outside Entity Insured Person**,” but only while that person is acting in their capacity as a director, officer, trustee, trustee emeritus or governor, or the equivalent thereof, of an **Outside Entity**.

O. “**Response Costs**” means the following amounts incurred by the **Organization** solely as a result of a **Crisis Event**:

- (1) amounts for the reasonable and necessary fees and expenses incurred by a firm described in Definition D. in the performance of **Crisis Management Services** for the **Organization**; and

- (2) amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Organization** or a firm described in Definition D., incurred at the direction of such.

P. **“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 his or her status as such;
- (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 his or her status as such; or
- (3) with respect to the **Organization**, any actual or alleged act, error, omission, neglect, breach of duty, misstatement or misleading statement by the **Organization**.

**“Wrongful Act(s)”** shall also specifically include any:

- (1) violation of the Sherman Antitrust Act or any similar federal, state or local statute or rule;
- (2) libel, slander, defamation or publication or utterance in violation of any individual’s right of privacy;
- (3) wrongful entry or eviction or other invasion of the right of occupancy;
- (4) false arrest or wrongful detention;
- (5) plagiarism or misappropriation of ideas; and
- (6) infringement or violation of any copyright or trademark or unauthorized use of title;

by any **Insured**, in their capacity as such.

### III. EXCLUSIONS

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

- A. arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act or any wilful violation of law by an **Insured**, if a final judgment or adjudication establishes that such act or violation occurred;

In determining the applicability of Exclusion A., the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**.

- B. based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement; provided however, that this Exclusion shall not apply: (1) to the extent that such **Insured** would have been liable in the absence of such contract or agreement; or (2) to the payment of **Defense Costs** in any such **Claim** 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 5. of the Declarations with respect to 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 Acts**, 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 or essentially the same facts alleged, or to the same or related **Wrongful Acts** 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. 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 **Employee** or as an **Outside Entity Insured Person**;
- F. brought by an **Outside Entity** or by any director, officer, trustee or governor thereof against an **Outside Entity Insured Person** serving for such **Outside Entity**; provided however, that this Exclusion shall not apply to:
  - (1) 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;
  - (2) 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;
  - (3) 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;
  - (4) 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** serving for 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); or

- (5) any **Claim** brought against an **Outside Entity Insured Person** arising out of or based upon the violation of any foreign, federal, state or local law providing protection for whistleblowers;

G. brought by or on behalf of any **Insured**; provided however, that this Exclusion shall not apply to:

- (1) 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;
- (2) any derivative **Claim** made on behalf of the **Organization** by a member, an attorney general or any other such representative party, but only if such action is brought and maintained without the solicitation, approval, assistance, active participation or intervention of any **Insured** or any **Affiliate** thereof;
- (3) any **Claim** brought by any **Executive** who has not served in such capacity, nor has acted as a consultant to the **Organization**, for at least three (3) years prior to the **Claim** being first made;
- (4) any **Claim** brought against an **Insured Person** arising out of or based upon the violation of any foreign, federal, state or local law providing protection for whistleblowers;
- (5) any **Claim** brought by any **Executive** of an **Organization** formed and operating in a foreign jurisdiction, against such **Organization** or 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
- (6) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **Organization** or any assignee of such trustee, examiner, receiver or similar official;

H. for 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;

- I. for bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- J. 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;
- K. 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;
- L. alleging, arising out of, based upon, or attributable to based upon, arising from, or in consequence of any actual or alleged infringement or violation of any patent;
- M. alleging, arising out of, based upon or attributable to any purchase or sale of securities by the **Named Insured** or any **Subsidiary, Outside Entity or Affiliate**; or any **Claim** brought by a security holder of the **Organization** in their capacity as such; provided, however, that this Exclusion shall not apply to a **Claim** based upon the issuance by the **Organization** of tax exempt bond debt or brought by a tax exempt bond debt holder.

#### IV. RETENTION

No Retention amount is applicable to Insuring Agreement A. of this Coverage Section.

#### V. DEFENSE AND SETTLEMENT OF A CLAIM

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Coverage Section. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.
- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** with respect to any **Claim**, such consent shall not be unreasonably withheld.
- C. The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, make any settlement offer, 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,



provided that such settlement fully resolves the Claim with respect to all **Insureds** and the **Insurer**.

E. At the request of the **Named Insured**, the **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, 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 **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally and according to their respective interests.

F. **Right to Tender Defense**

(1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**.

(2) This right shall be exercised by the **Named Insured** on behalf of all **Insureds** by providing written notice to the **Insurer**, except in the event that coverage is provided for a **Claim** exclusively against an **Insured Person**. Such **Insured Person** shall have the right to tender the defense of the **Claim** to the **Insurer** at his or her option. The **Insured's** right to tender the defense of a **Claim** shall terminate if it is not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.

(3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation sent thereof to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of the **Claim**, subject to the provisions of this Section V. The **Insurer** shall not be obligated to defend such **Claim** after the applicable Limit of Liability has been exhausted.

(4) When the **Insurer** has assumed the duty to defend, it 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.

(5) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, 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

**Defense Costs** under the terms and conditions of this Policy, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally and according to their respective interests.

Coverage Section V. shall not apply to **Crisis Event Coverage**.

## VI. COOPERATION

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.

## VII. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- B. The **Insureds** agree that in the event that any such statement or representation which is material to the coverage provided hereunder is not accurate and complete, then no coverage shall be available under this Policy with respect to any of the following **Insureds**:
- (1) any **Insured Person** who knew as of the Inception Date set forth in Item 2. of the Declarations, of the facts that were not accurately and completely disclosed in the **Application**;
  - (2) an **Organization**, under Insuring Agreement B., to the extent it indemnifies an **Insured Person** referenced in paragraph (1) above; and
  - (3) an **Organization**, under Insuring Agreement C., if any **Insured Person** who is a past or current Chief Executive Officer, Chief Financial Officer or President, knew as of the Inception Date set forth in Item 2. of the Declarations, of the facts that were not accurately and completely disclosed in the **Application**, whether or not such individual knew that such facts were not accurately and completely disclosed in the **Application**.
- C. Solely with respect to Insuring Agreement A. and B. of this Coverage Section, under no circumstances shall the coverage provided thereunder be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the Policy.
- D. It is understood and agreed that this Section VII. supercedes any inconsistent language contained in the **Application**.

## VIII. ORDER OF PAYMENTS

- A. In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this Coverage Section but which **Loss**, in the aggregate, exceeds the

remaining available Limit of Liability applicable to this Coverage Section, then the **Insurer** shall:

- (1) first, pay such **Loss** for which coverage is provided under Insuring Agreement A. of this Coverage Section;
- (2) then, with respect to whatever remaining amount of the applicable Policy Aggregate Limit of Liability is available after payment of such **Loss**, pay such **Loss** for which coverage is provided under Insuring Agreement B. of this Coverage Section;
- (3) then, pay such **Loss** for which coverage is provided under Insuring Agreement C. of this Coverage Section.

B. In the event of **Loss** arising from a **Claim** for which payment is due under the provisions of this Coverage Section (including those circumstances described in paragraph A. of this Section VIII.), the **Insurer** shall, at the written request of the **Named Insured**:

- (1) first, pay such **Loss** for which coverage is provided under Insuring Agreement A. of this Coverage Section;
- (2) then, either pay or hold payment for such **Loss** for which coverage is provided under Insuring Agreements B. and C. of this Coverage Section.

In the event that the **Insurer** withholds payment under Insuring Agreements B. and C. of this Coverage Section pursuant to the above request, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to the **Organization**, or make such **Loss** payment directly to the **Insured Person** in the event of covered **Loss** under any **Claim** covered under Insuring Agreement A. of this Coverage Section.

C. The **Financial Impairment** of any **Organization** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Coverage Section pursuant to this Section VIII.

**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**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 and Conditions and this Coverage Section, DARWIN NATIONAL ASSURANCE COMPANY (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. 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 Section V. of the General Terms and Conditions.

**B. HIPAA Claim Coverage**

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 Section V. of the General Terms and Conditions. The applicable Sublimit of Liability set forth in Item 4.F. of the Declarations is the **Insurer’s** maximum Limit of Liability 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.

**C. Voluntary Compliance Program Coverage**

The **Insurer** shall reimburse the **Organization** the **Voluntary Compliance Program Loss** incurred by the **Organization** during the **Policy Period**, or within X months following the termination of the **Policy Period**, and reported to the **Insurer** in accordance with Section V. of this Coverage Section.

The Sublimit of Liability set forth in Item 4.F. of the Declarations is the **Insurer’s** maximum Limit of Liability under this Insuring Agreement C. 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** 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 Agreements A. or B. of this Coverage Section.

## II. DEFINITIONS

- A. “**Administration**” means:
- (1) advising, counseling or giving notice to **Employees**, participants or beneficiaries with respect to any **Plan**;
  - (2) providing interpretations to **Employees**, participants or beneficiaries with respect to any **Plan**; or
  - (3) handling of records or effecting enrollment, termination or cancellation of **Employees**, participants or beneficiaries, under any **Plan**.
- B. “**Application**” means: (1) the signed application submitted for this Policy, any attachments to such applications and any other policy issued by the **Insurer**, or any affiliate thereof, of which this Policy is a direct renewal or replacement, including any attachments and other materials submitted with or incorporated into such application; and (2) any publicly available documents filed by the **Named Insured** with any federal, state, local, foreign regulatory agency during the twelve (12) months prior to the inception of the **Policy Period**.
- C. “**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.
- D. “**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:
    - (a) service of a complaint or similar pleading;
    - (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or
    - (c) 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 (“DOL”), 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) written request to toll or waive the applicable statute of limitations, or to waive any contractual time bar, relating to a potential **Claim** against an **Insured** for a **Wrongful Act**.

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

- E. “**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**.
- F. “**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, in connection with a **Claim**; or
  - (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.
- “**Defense Costs**” do not include: (a) amounts incurred by the **Insured** prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Organization** or a **Plan**.
- G. “**Employee**” means any natural person whose labor or service is engaged or directed by the **Organization** or any **Plan**, including any part-time, seasonal, leased or temporary employee or volunteer. **Employee** shall not include any **Independent Contractor**.
- H. “**Employee Benefit Law**” 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 of the United States (“ERISA”), or any similar common or statutory law of any other jurisdiction anywhere in the world, to which a **Plan** is subject.
- I. “**ESOP**” means any: (1) employee stock ownership plan as defined in ERISA; or (2) other **Plan** under which investments are made in securities of or issued by the **Organization**, if scheduled in an Endorsement to this Policy.
- J. “**Financial Impairment**” means the **Organization** 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 **Organization**; or the filing of a petition under the bankruptcy laws of the United States of America or any equivalent event outside the United States of America.
- K. “**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”).

- L. **“HIPAA Penalties”** means civil money penalties imposed upon an **Insured** for the violation of HIPAA’s Privacy Rule.
- M. **“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 **Organization**, which specifies the terms of the **Organization’s** engagement of the **Independent Contractor**.
- N. **“Insured”** means:
- (1) the **Organization**;
  - (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.
- O. **“Insured Person”** 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**.
- P. **“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 C.; and
  - (6) **Defense Costs**.
- “Loss”** does not include:
- (a) any amounts for which the **Insureds** are not legally liable;
  - (b) any amounts which are without legal recourse to the **Insureds**;

- (c) taxes;
- (d) fines and penalties, except:
  - (i) as provided for in Definition P.(4) above;
  - (ii) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502 (i) of ERISA;
  - (iii) the twenty percent (20%) or less civil penalty imposed upon an **Insured** under Section 502 (l) of ERISA;
  - (iv) 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;
  - (v) fines and penalties which are part of **Voluntary Compliance Program Loss**, solely under Insuring Agreement C.; or
  - (vi) **HIPAA Penalties**, solely under Insuring Agreement B.
- (e) the return or reversion to an employer of any contribution or asset of a **Plan**;
- (f) **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**;
- (g) amounts deemed uninsurable under applicable law; or
- (h) amounts paid or incurred by the **Organization** to comply with a judgment or settlement for non-monetary or injunctive relief.

However, this Coverage Section shall provide coverage for **Defense Costs** incurred in a **Claim** seeking amounts specified in paragraphs (a) through (h) above, subject to all other terms, conditions and exclusions of this Policy.

Q. “**Non-Indemnifiable Loss**” means **Loss** for which the **Organization** is permitted or required to indemnify any **Insured Person**, but has not indemnified due to **Financial Impairment**.



- R. **“Non-Qualified Plan”** means any of the following plans for a select group of management or highly compensated directors, officers 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.
- S. **“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 **Organization**, or sponsored jointly by the **Organization** 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 **Organization**, or sponsored jointly by the **Organization** 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 **Organization** 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 **Organization**, or sponsored jointly by the **Organization** and a labor organization, solely for the benefit of **Employees**, subject to the following:
    - (a) if the assets of such pension plan total twenty-five percent (25%) or less of the total consolidated assets of the **Plans** covered by this Policy as of the Inception Date of this Policy, 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 **Organization** shall give written notice of such sponsorship to the **Insurer** prior to the end of the **Policy Period**;
    - (b) if the assets of such pension plan total more than twenty-five percent (25%) of the total consolidated assets of the **Plans** covered by this Policy as of the Inception Date of this Policy, 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 **Organization** 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 pension plan, and the **Organization** shall have paid the premium required for such pension 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 V.(2) by an **Insured Person**;
- (6) an **ESOP** that is included in the definition of **Plan** by written Endorsement attached 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 **Organization**, that is included in the definition of **Plan** by written Endorsement attached to this Policy.

With respect to paragraphs (1) and (2) of this Definition, coverage under this Coverage Section shall apply to any pension or welfare plan that was divested by merger, 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 **Organization** shall give written notice of such transaction to the **Insurer** prior to the Inception Date of this Policy and the **Organization** shall have paid the additional premium required for such **Plan**, as determined by the **Insurer**.

With respect to paragraphs (1) and (2) of this Definition, coverage under this Coverage Section 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 **Organization** shall give written notice of such transaction to the **Insurer** prior to the end of the **Policy Period**.

T. **“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.

U. **“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 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 U.(3) shall not include fines, penalties or sanctions.

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

V. "**Wrongful Act**" means, with respect to any **Plan**, any actual or alleged:

- (1) breach of the responsibilities, obligations or duties imposed upon fiduciaries of a **Plan** by an **Employee Benefits Law**, by an **Insured**;
- (2) negligent act, error or omission by an **Insured** in the **Administration** of a **Plan**;
- (3) matter claimed against an **Insured Person** solely by reason of his or her service as a fiduciary of a **Plan**; or
- (4) negligent hiring of either a third-party administrator of a **Plan**, or a third-party administrator of **Benefits** provided under a **Plan**, by an **Insured**.

### III. EXCLUSIONS

This Policy Coverage Section 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 Person** shall not be imputed to any other **Insured Person**; 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 **Organization** shall be imputed to the **Organization**.

- 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, that this Exclusion shall not apply to: (1) the portion of **Loss** resulting from such **Claim** that is payable as a personal obligation of an **Insured Person**; or (2) the payment of **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: (1) to the extent that an **Insured** would have been liable in the absence of such contract or agreement; (2) if the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which a **Plan** was established; or (3) to the payment of **Defense Costs** in the defense of any such **Claim** against an **Insured Person**;
- E. alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 5. of the Declarations with respect to 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 Acts**, 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 Acts** 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, 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, 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; or seeking any **Cleanup Costs**; provided however, that this Exclusion shall not apply to any **Non-Indemnifiable Loss** constituting damages to a **Plan**, except for **Non-Indemnifiable Loss** constituting **Cleanup Costs**;
- H. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, libel, slander, oral or written publication of defamatory or disparaging material, 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 that portion of a **Claim** alleging a violation of the responsibilities, obligations or duties imposed by ERISA;
- I. for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, social security or disability benefits, or any similar law anywhere in the world, except the Consolidated Omnibus Budget Reconciliation

Act of 1985, HIPAA, or any amendments thereto or any rules or regulations promulgated thereunder;

- J. 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;
- K. alleging, arising out of, based upon or attributable to any **Wrongful Act** with respect to a **Plan**, taking place at any time when the **Organization** 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 **Organization** or, if applicable, the **Plan**;
- L. 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.

#### IV. RETENTION

No Retention amount is applicable to **HIPAA Claims** or **Voluntary Compliance Program Loss**.

#### V. DEFENSE AND SETTLEMENT OF A CLAIM

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Coverage Section. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.
- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** as respects any **Claim**, such consent shall not be unreasonably withheld.
- C. 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, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Insurer**.
- D. At the request of the **Named Insured**, the **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, 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 Fiduciary Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

**E. Right to Tender Defense**

- (1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**; however, the **Insureds** shall not have the right to tender the defense of any **Claim** under; Insuring Agreement C.: Voluntary Compliance Program Coverage of the Policy Coverage Section.
- (2) This right shall be exercised by the **Named Insured** on behalf of all **Insureds** by providing written notice to the **Insurer**. The **Insured's** right to tender the defense of a **Claim** shall terminate if it is not exercised within thirty days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.
- (3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation sent thereof to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Section V. The **Insurer** shall not be obligated to defend or continue to defend a **Claim**, or to pay or reimburse **Defense Costs**, after the applicable Limit of Liability has been exhausted.
- (4) When the **Insurer** has assumed the duty to defend, it 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.
- (5) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, 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 **Defense Costs** 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.

**F. Voluntary Compliance Program Loss Coverage**

- (1) With respect to Insuring Agreement C., Voluntary Compliance Program Coverage, of this Coverage Section, the **Organization**, and not the **Insurer**, has the duty to investigate, evaluate, negotiate and settle any matter which may result in the **Voluntary Compliance Program Loss**.

- (2) The **Insurer** shall have the right to effectively associate with the **Organization** in such process, including the negotiation of any settlement of any matter which may result in **Voluntary Compliance Program Loss**.

## VI. COOPERATION

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** or the settlement of any matter resulting in **Voluntary Compliance Program Loss**, 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.

## VII. NOTICE OF VOLUNTARY COMPLIANCE PROGRAM LOSS

The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this Policy to reimburse **Voluntary Compliance Program Loss**, give written notice to the **Insurer** at either the physical or email address indicated in Item 7. of the Declarations, of any matter which any **Insured** reasonably believes may result in **Voluntary Compliance Program Loss** within thirty (30) days after the **Insureds** become aware of such matter, but in no event later than thirty (30) days after the Expiration Date set forth in Item 2. of the Declarations.

## VIII. RIGHT OF RECOURSE

If this Policy is purchased with plan assets, the **Insurer** shall have a right of recourse against any fiduciary whose breach of a fiduciary obligation, as imposed by ERISA, results in a **Loss** under this Policy paid by the **Insurer**. If, however, it is confirmed on the **Application** that all or a portion of the premium for this **Policy** is paid by or on behalf of the fiduciaries with non-plan assets, the **Insurer** shall have no right of recourse against a fiduciary with respect to any **Claim**, including but not limited to, rights of contribution and subrogation.

## IX. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- B. With respect to the statements and representations contained in the **Application**, no knowledge of any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against such **Insured Person**. 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 **Organization** shall be imputed to the **Organization** for the purpose of determining whether coverage is available under this Policy for any **Claim** made against the **Organization**.

**X. ORDER OF PAYMENTS**

A. 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 paragraph (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 paragraphs (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 **Organization**.



**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**General Terms and Conditions**

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 this General Terms and Conditions and any applicable Coverage Section(s), as indicated in Item 3. of the Declarations, DARWIN NATIONAL ASSURANCE COMPANY (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. TERMS AND CONDITIONS**

The terms and conditions set forth in these General Terms and Conditions shall apply to all purchased Coverage Sections of this Policy, except the Crime and the Kidnap and Ransom/Extortion Coverage Sections. The terms appearing in this General Terms and Conditions, which are defined in a specific Coverage Section, shall have the meaning provided for such terms in such Coverage Section for purposes of determining coverage thereunder. The terms and conditions of each Coverage Section apply only to that particular Coverage Section. If any of the terms or conditions in these General Terms and Conditions are inconsistent or in conflict with the terms and conditions of any specific Coverage Section, the terms and conditions of such Coverage Section shall control.

**II. GENERAL DEFINITIONS**

A. “**Application**” means all 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.

B. “**Management Control**” means:

- (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation 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, to elect, appoint or designate a majority of: the Board of Directors of a corporation or the Management Board of a limited liability company.

C. “**Named Insured**” means the entity named in Item 1. of the Declarations.

D. “**Organization**” means:

- (1) the **Named Insured**;
- (2) any **Subsidiary** of the **Named Insured**; and

- (3) the **Named Insured** or **Subsidiary** as a debtor, a debtor-in-possession or equivalent status.
- E. **“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.
- F. **“Related Claims”** means all **Claims** for **Wrongful Acts** based upon, arising out of, or in consequence of the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.
- G. **“Subsidiary”** means:
- (1) any not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended), or for-profit entity, whose securities are not publicly traded, of which the **Named Insured** has **Management Control** (“Controlled Entity”) before the Inception Date set forth in Item 2 of the Declarations, either directly or indirectly through one or more other Controlled Entities;
  - (2) any not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended), of which the **Named Insured** first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
  - (3) any for-profit entity, whose securities are not publicly traded, of which the **Named Insured** 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 thirty percent (30%) of the consolidated assets of the **Named Insured** as of its latest fiscal year; and
  - (4) any for-profit entity of which the **Named Insured** (except any such entity described in paragraph (3) above) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, but only if the **Named Insured** 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**.

Coverage afforded under this Policy for a **Claim** made against any **Insured** relating to a **Wrongful Act** of a **Subsidiary**, shall only apply to **Wrongful Acts** committed or allegedly committed after the effective date such organization or entity becomes a **Subsidiary** and prior to the effective date that such organization or entity ceases to be a **Subsidiary**.

### III. LIMITS OF LIABILITY

- A. The Limits of Liability for Each Coverage Section, as set forth in Items 4.A. of the Declarations, are the maximum Limits of Liability of the **Insurer** for all **Loss** from all **Claims** first made during the **Policy Period** or Discovery Period if applicable, for each respective Coverage Section.
- B. The Aggregate Limit of Liability, as set forth in Item 4.B. of the Declarations, is the maximum limit of liability of the **Insurer** for all **Loss** from all **Claims** first made during the **Policy Period** or Discovery Period if applicable, for all Coverage Sections listed under Item 4.A. of the Declarations and purchased by the Insured, regardless of whether or not the Limits of Liability for any such Coverage Sections are shared.
- C. Any Sublimit of Liability, whether set forth in Item 4.F. of the Declarations, or as otherwise provided under the terms of this Policy, shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 4.A. of the Declarations. Each Sublimit of Liability is the maximum Limit of Liability of the **Insurer** for all **Loss** from all **Claims** first made during the **Policy Period** or Discovery Period if applicable, to which the Sublimit of Liability applies.
- D. If any Limit of Liability for an individual Coverage Section as set forth in Item 4.A. of the Declarations is exhausted by the payment of **Loss**, all obligations of the **Insurer** under this Policy with respect to the individual Coverage Section will be completely fulfilled and the **Insurer** will have no further obligations under this Policy of any kind with respect to the individual Coverage Section. In such event, the premium for the individual Coverage Section, as set forth in Item 3. of the Declarations, will be fully earned.
- E. Any payment of **Loss** under any Limit of Liability set forth in Item 4.A. or 4.F. of the Declarations shall reduce and may exhaust the Aggregate Limit of Liability as set forth in Item 4.B. of the Declarations. If the Aggregate Limit of Liability is exhausted by the payment of such **Loss**, the **Insurer** will have no further obligations of any kind with respect to this Policy, and the Total Policy Premium set forth in Item 3. of the Declarations will be fully earned.
- F. **Defense Costs** are part of, and not in addition to, the Limits of Liability set forth in Item 4. of the Declarations, and payment by the **Insurer** of **Defense Costs** shall reduce and may exhaust such Limits of Liability.
- G. The purchase of a Discovery Period pursuant to Section VI. of this General Terms and Conditions, shall neither increase nor reinstate any Limit of Liability.

### IV. RETENTION

- A. 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 4.A. of the Declarations for each Coverage Section. A single Retention amount shall apply to all **Loss** from all **Related Claims**. The Retention amount shall be borne by the **Insureds** and remain uninsured.

- B. The application of the Retention to **Loss** under one Coverage Section shall not reduce the Retention that applies to **Loss** under any other Coverage Section. If different Retention amounts apply to different parts of a **sClaim**, the applicable Retention amounts shall be applied separately to each part of the **Claim**, and the sum of such Retention amounts shall not exceed the largest single Retention amount which applies to such **Claim**.
- C. If the **Organization** is legally required or permitted to indemnify its **Insured Person** for any **Loss**, and does not do so for any reason, the **Insurer** shall not require payment of the applicable Retention by the **Insured Person**. However, the **Organization** hereby agrees to reimburse the **Insurer** for the full amount of such Retention immediately upon request, unless the **Organization** is unable to do so solely by reason of **Financial Impairment**.

## V. NOTICE OF CLAIM

- A. The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer**, at the physical or email address indicated in Item 7. of the Declarations, of a **Claim** made against an **Insured** as soon as practicable after the **Organizations's** General Counsel or Risk Manager, or any individual with functionally equivalent responsibilities, becomes aware of the **Claim**.
- B. Notwithstanding the above, in no event shall such notice of any **Claim** be provided to the **Insurer** later than ninety (90) days after the end of the **Policy Period** or Discovery Period if purchased. 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.
- C. If during the **Policy Period** an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall, during the **Policy Period**, give written notice to the **Insurer** at either the physical or email address indicated in Item 7. of the Declarations, of the circumstances, including the **Wrongful Act**, allegations anticipated, and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, any **Claim** that is subsequently made against the **Insured** alleging, arising out of, based upon or attributable to such circumstances, shall be deemed to have been made at the time written notice of such circumstances was first given to the **Insurer**.
- D. All **Related Claims** shall be deemed to be a single **Claim** made on the date on which the earliest **Claim** within such **Related Claims** was first made, or when the earliest **Claim** within such **Related Claims** is treated as having been made in accordance with Section V.B. above, whichever is earlier. In such event, only one Limit of Liability and one Retention shall apply.

## VI. DISCOVERY PERIOD

- A. If this Policy, or one or more Coverage Sections of this Policy, is cancelled by either the **Named Insured** or the **Insurer** for any reason other than non-payment of premium, or the **Insurer** refuses to renew this Policy, the **Insured(s)** shall

have the right to purchase a Discovery Period of up to three (3) years following the effective date of such cancellation or non-renewal. In the event of cancellation or non-renewal of one or more Coverage Sections of this Policy, the **Insured** may purchase a Discovery Period only with respect to the Coverage Sections that have been cancelled or non-renewed.

- B. If an Organizational Change as defined in Section X. occurs, the **Insured(s)** shall have the right to purchase a Discovery Period of up to six (6) years following the effective date of such Organizational Change.
- C. The **Insured's** right to purchase a Discovery Period shall lapse unless written notice of its election to purchase such Discovery Period and the additional premium for such Discovery Period is received by the **Insurer** within sixty (60) days after such cancellation, non-renewal or Organizational Change.
- D. The additional premium for a Discovery Period of one (1) to six (6) years shall be determined by multiplying the applicable percentage set forth in Item 6. of the Declarations by either: the Total Policy Premium, in the event that a Discovery Period is elected for the entire Policy; or by the premium amount(s) for individual Coverage Section(s), in the event that a Discovery Period is elected only for individual Coverage Sections.
- E. During such Discovery Period, the **Insured** may provide the **Insurer** with notice, pursuant to Section V. of this General Terms and Conditions, of **Claims** first made during the Discovery Period, for **Wrongful Acts** occurring prior to the effective date of the cancellation or non-renewal, or the effective date of the Organizational Change, and otherwise covered by this Policy.
- F. The election of a Discovery Period does not increase or reinstate the Limits of Liability set forth in Item 4. of the Declarations.
- G. The premium for the Discovery Period shall be fully earned at the inception of the Discovery Period, and the Discovery Period shall be non-cancellable.

## VII. OTHER INSURANCE

- A. The insurance provided by this Policy, other than the Employment Practices Liability Coverage Section, 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.
- B. With respect to the insurance provided by the Employment Practices Liability Coverage Section, such insurance shall be primary, unless expressly written to be excess over other applicable insurance.

- C. With respect to the insurance provided by the Employed Lawyers Coverage Section, such insurance shall apply excess over any other Directors and Officers Liability insurance, whether available under this Policy or otherwise.
- D. 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 the **Outside Entity Insured Person**, leased employee or **Independent Contractor**. In the event such other insurance coverage is also provided by the **Insurer** or any affiliate thereof (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** 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 applicable Limit of Liability of this Policy; or (2) the applicable limit of liability of such other insurance policy.

#### VIII. COVERAGE EXTENSIONS

- A. 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**.
- B. 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**.
- C. 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 the statutory law or common law of any applicable jurisdiction in the world, or by any formal program established by the **Organization**) 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**.
- D. The coverage extensions set forth in this Section VIII. are subject to all other terms and conditions of this Policy.

## IX. CANCELLATION AND NON RENEWAL

- A. This Policy, or any individual Coverage Section, may be cancelled by the **Named Insured** by sending written prior notice to the **Insurer** stating when thereafter the cancellation of the Policy, or the individual Coverage Section, shall be effective. The Policy, or the individual Coverage Section, terminates at the date and hour specified in such notice. The **Insurer** shall retain the pro rata proportion of the premium for either the Policy, or the individual Coverage Section cancelled, as applicable.
- B. This Policy, or any individual Coverage Section, shall not be cancelled by the **Insurer** except by reason of non-payment of premium by the **Insured**. The **Insurer** may cancel the Policy by delivering or mailing to the **Named Insured**, by registered mail or by courier, at the address set forth in Item 1. of the Declarations, written notice stating when, not less than twenty (20) days thereafter, 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 **Named Insured**.
- C. 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.
- D. The **Insurer** shall have no obligation to renew this Policy or any individual Coverage Section. In the event the **Insurer** decides to non-renew this Policy or any individual Coverage Section, it shall deliver or mail to the **Named Insured** at the address set forth in Item 1. of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

## X. ORGANIZATIONAL CHANGES

- A. If, during the **Policy Period**:
- (1) the **Named Insured** 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 fifty percent (50%) of the assets or voting rights of the **Named Insured**;

(any events described in paragraphs (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 date of the Organizational Change. However, there shall be no coverage afforded by this Policy for any actual or alleged **Wrongful Act** occurring after the effective date of the Organizational Change. This Policy shall be non-cancellable and the entire premium shall be deemed fully earned upon the effective date of the Organizational Change.

- B. The **Insured** shall also have the right to purchase a Discovery Period described in Section VI. of this General Terms and Conditions in the event of an Organizational Change.
- C. The **Named Insured** shall give the **Insurer** written notice of the Organizational Change as soon as practicable, but no later than thirty (30) days after the effective date of the Organizational Change.

#### **XI. AUTHORIZATION AND NOTICES**

The **Named Insured** shall act on behalf of all **Insureds** with respect to all matters as respects this Policy including: (1) giving of notice of **Claim**; (2) the defense or settlement of a **Claim**; (3) giving and receiving of all correspondence and information; (4) giving and receiving notice of cancellation; (5) payment of premiums; (6) receiving of any return premiums; (7) receiving and accepting of any endorsements issued to form a part of this Policy; and (8) the exercising of any right to a Discovery Period.

#### **XII. 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.

#### **XIII. TERRITORY**

This Policy extends to **Wrongful Acts** occurring, or **Claims** made, anywhere in the world, to the extent permitted by law.

#### **XIV. ASSIGNMENT AND CHANGES TO THE POLICY**

- A. This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.
- B. Notice to any agent or knowledge possessed by any agent or person acting on behalf of the **Insurer**, 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**.

#### **XV. 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.



## **XVI. 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**.

## **XVII. CONFORMITY TO STATUTE**

- A. 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.
- B. 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.

## **XVIII. 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.

**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**Kidnap and Ransom/Extortion Coverage Section**

In consideration of payment of the premium and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which shall be deemed to be attached to, incorporated into, and made part of this Policy, and subject to the Declarations and this Coverage Section, the **Named Insured**, on behalf of all **Insureds**, and DARWIN NATIONAL ASSURANCE COMPANY (“the **Insurer**”) agree as follows:

**I. INSURING AGREEMENTS**

Coverage is provided under the following Insurance Agreements, if purchased by the **Named Insured**, and applies only to loss sustained by an **Insured** as a direct result of a **Risk Event** which first occurs during the **Policy Period** and is **Discovered** during the **Policy Period** or within twelve (12) months thereafter.

**A. KIDNAP AND RANSOM/EXTORTION**

The **Insurer** shall reimburse the **Named Insured**, subject to the Limit of Insurance set forth in Item 4.E. of the Declarations, for loss resulting directly from **Kidnapping** or **Extortion**.

**B. IN-TRANSIT/CUSTODY**

The **Insurer** shall reimburse the **Named Insured**, subject to the Limit of Insurance set forth in Item 4.E. of the Declarations, for loss due to the destruction, disappearance, confiscation, wrongful appropriation or seizure of **Ransom Monies**, while being held or delivered, by a person authorized to do so by an **Insured Entity**.

**C. EXPENSES**

Subject to the Limit of Insurance set forth in Item 4.E. of the Declarations, the **Insurer** shall reimburse the **Named Insured** for **Expenses** paid by any **Insured** resulting directly from a covered **Risk Event**.

**D. PERSONAL LOSS**

Subject to the Limit of Insurance set forth in Item 4.E. of the Declarations, the **Insurer** shall reimburse the **Insured Entity**, for loss due to a **Personal Loss**.

**E. LEGAL COSTS**

Subject to the Limit of Insurance set forth in Item 4.E. of the Declarations, the **Insurer** shall reimburse the **Insured Entity** for the amount of **Legal Costs** paid by such **Insured Entity**.

## II. DEFINITIONS

A. “**Bodily Injury Extortion**” means any threat, communicated to an **Insured**, to kill, physically injure or kidnap an **Insured Person**, for the purpose of demanding **Ransom Monies** from an **Insured**.

B. “**Compensation**” means:

(1) the amount of compensation paid by an **Insured Entity** to an **Employee** on an annual basis, including annual salary, bonuses, commissions, incentive payments, cost of living adjustments, foreign tax reimbursements, contributions to pensions and other benefit plans (at the rate in effect on the date of the **Kidnapping, Wrongful Detention or Hijacking**), which the **Insured Entity** continues to pay an **Insured Person** for the duration of the **Kidnapping, Wrongful Detention or Hijacking**.

**Compensation** shall be reimbursed by the **Insurer** to the **Insured Entity** until the earliest of the following dates:

(a) forty-five (45) days immediately after the release of the **Insured Person** from a **Kidnapping, Wrongful Detention or Hijacking**, if such **Insured Person** has not yet returned to work;

(b) the date of the **Discovery** of the **Loss of Life** of the **Insured Person**;

(c) one hundred twenty (120) days after the **Insured Entity** receives the last credible evidence that the **Insured Person** is still alive; or

(d) sixty (60) months after the date of the **Kidnapping, Wrongful Detention or Hijacking**.

(2) **Compensation** shall also include the amount of compensation paid by the **Insured Entity**, at an annual rate, to retain a temporary replacement for the **Employee** to conduct the specific duties of the **Employee** while he or she is held or detained. Such **Compensation** shall be reimbursed by the **Insurer** to the **Insured Entity** for the duration of the **Kidnapping, Detention or Hijacking**, plus sixty (60) days thereafter. Provided however, that the total amount payable by the **Insurer** to the **Insured Entity** for such temporary replacement shall not exceed the total compensation paid by the **Insured Entity** to the **Employee** as described in paragraph B.(1) above.

C. “**Discovered**” or “**Discovery**” means the point in time in which knowledge is acquired by an **Executive** that an occurrence has taken place which would cause a reasonable person to believe that it may subsequently result in a covered loss under this Coverage Section, even though the exact amount of such loss or details of such occurrence are unknown.

- D. “**Employee**” means any:
- (1) natural person regularly performing services for an **Insured Entity** in the ordinary course of such **Insured Entity's** business, who is compensated by the **Insured Entity** directly by salary, wages or commissions, and whose performance is controlled and directed by such **Insured Entity**, including any full-time, part-time, seasonal, leased or temporary employee, volunteer, or a former employee while retained as a consultant by an **Insured Entity**;
  - (2) student or intern of an **Insured Entity**, while engaged in studies or duties and under the control and direction of such **Insured Entity**; or
  - (3) **Executive**, while performing acts within the scope of the usual duties of an employee for an **Insured Entity**.
- E. “**Executive**” means any natural person who is a duly elected or appointed director, officer, general counsel, risk manager, partner, general partner, owner (in the case of a sole proprietorship), member of the board of managers or a management committee member of the **Insured Entity**; or any natural person holding a functionally equivalent position in any **Insured** chartered in any other jurisdiction anywhere in the world. **Executive** shall also include any **Employee** designated to represent the **Insured Entity** in obtaining or maintaining insurance coverage.
- F. “**Expenses**” means reasonable costs and expenses incurred by an **Insured Entity** as a direct result of a **Risk Event**, including:
- (1) an amount paid to:
    - (a) an **Informant** as a reward for information;
    - (b) an independent security consultant;
    - (c) an independent public relations consultant;
    - (d) an interpreter;
    - (e) an independent negotiator;
    - (f) an attorney or law firm, for legal services necessary to secure the release of an **Insured Person**;
    - (g) an independent forensic analyst; and
    - (h) independent security guards for security services, retained at the recommendation of the independent security consultant, for a period of time no greater than sixty (60) days;

- (2) an amount paid by the **Insured Entity** for:
- (a) advertising, communication equipment and recording equipment;
  - (b) interest for a loan taken from a financial institution by the **Insured** for the purpose of paying **Ransom Monies**;
  - (c) travel and accommodations incurred by an **Insured Person**;
  - (d) **Compensation**;
  - (e) personal financial loss incurred by an **Insured Person** due to such **Insured Person's** inability to attend to personal financial matters, including but not limited to, failure to renew insurance contracts, failure to exercise stock options, failure to respond to margin or loan calls by financial institutions and failure to pay off personal loans or a mortgage, as a direct result of such **Insured Person** being the victim of a **Kidnapping, Wrongful Detention or Hijacking**;
  - (f) medical services, psychiatric care, or cosmetic or plastic surgery which is deemed required by a medical professional to correct any permanent disfigurement sustained by an **Insured Person** during a **Kidnapping, Wrongful Detention or Hijacking**, provided that such services are provided within thirty-six (36) months immediately following the release of such **Insured Person** from the **Kidnapping, Wrongful Detention or Hijacking**;
  - (g) travel costs, to return any **Insured Person**, and his or her spouse and children, to their resident country (the country of which the **Insured Person** is a national or resident alien) following the **Insured Person's** release from a **Kidnapping, Wrongful Detention or Hijacking**;
  - (h) travel costs, to relocate a temporary replacement for an **Employee**, and such temporary replacement's spouse and children, to conduct the specific duties of the **Employee** while he or she is held or detained because of a **Kidnapping, Wrongful Detention or Hijacking**;

provided however, that the costs described in paragraphs (g) and (h) shall apply only once per covered **Risk Event**;

- (i) reasonable expenses, including the cost of meals, accommodations and recreation, for the rest and recovery of an **Insured Person** who was a victim of a **Kidnapping, Wrongful Detention or Hijacking**, and his or her spouse and children, for a period no greater than thirty (30) days following the release of such **Insured Person**, as long as such expenses are incurred within six (6) months immediately following the release of such

**Insured Person**; provided that the amount payable by the **Insurer** for such expenses shall not exceed the amount stated in Item 4.E. of the Declarations Page; or

(j) other reasonable costs or expenses incurred by an **Insured**, with the prior written consent of the **Insurer**.

G. “**Extortion**” means **Bodily Injury Extortion, Property Damage Extortion, Products Extortion and Trade Secret Extortion**.

H. “**Guest**” means;

(1) any natural person visiting the **Premises** of an **Insured**; or

(2) any natural person traveling in a motor vehicle, aircraft or waterborne vessel, owned, leased or rented by an **Insured Entity**;

for social or business purposes.

I. “**Hijacking**” means the illegal holding of an **Insured Person** under duress, for a period in excess of four (4) hours, while traveling in a motor vehicle, aircraft, train or waterborne vessel, for any reason other than **Kidnapping**.

J. “**Informant**” means any person, other than **Insured Person**, providing information not otherwise obtainable by an **Insured** and relevant to a **Risk Event**, solely in return for a reward offered by the **Insured Entity**.

K. “**Insured**” means any **Insured Entity** or **Insured Person**.

L. “**Insured Entity**” means:

(1) the **Named Insured**; and

(2) any **Subsidiary** of the **Named Insured**.

M. “**Insured Person**” means an:

(1) **Employee**;

(2) **Relative**;

(3) **Guest**;

(4) any natural person who is a resident of, or employed in, the household of an **Employee**, while in the home of such **Employee**;

(5) any natural person who is authorized by the **Insured Entity** to hold or deliver **Ransom Monies**.

N. “**Kidnapping**” means any event or connected series of events resulting in the seizing, abducting, detaining or carrying away by force or fraudulent means, of one or more **Insured Persons** (except a minor, by the parent thereof) for the purpose of demanding **Ransom Monies** from an **Insured Entity**.

O. “**Legal Costs**” means the following amounts paid by an **Insured Entity**:

- (1) awards or judgments;
- (2) settlements;
- (3) reasonable attorneys fees; and
- (4) court costs and fees;

provided that such amounts are incurred by the **Insured Entity** with the prior written consent of the **Insurer**, in a legal proceeding seeking damages brought by or on behalf of an **Insured Person** or their legal representatives, heirs or estate, for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured** with respect to:

- (a) a negotiation or hostage retrieval operation, in connection with a **Kidnapping, Wrongful Detention or Hijacking**; or
- (b) the prevention of, any attempt to prevent, or the failure to prevent, a **Risk Event**.

P. “**Loss of Hearing or Speech**” means the permanent total loss of the capability of speech or hearing.

Q. “**Loss of Extremity**” means the permanent total loss of function of an entire finger, toe, ear, nose or genital organ, or part thereof by deliberate mutilation.

R. “**Loss of Life**” means:

- (1) death, inclusive of clinical death, determined by a medical examiner or similar governing medical authority; or
- (2) the absence of communication from an **Insured Person** or those responsible for the **Kidnapping, Wrongful Detention or Hijacking** of such **Insured Person**, for the period of one (1) year following the later of:
  - (a) the date of such **Kidnapping, Wrongful Detention or Hijacking**;
  - (b) the date of the last communication from such **Insured Person**;  
or
  - (c) the date of the last communication from those responsible for such **Kidnapping, Wrongful Detention or Hijacking**.

S. “**Loss of Sight**” means the permanent loss of sight in one or both eyes, to the extent of legal blindness.

- T. “**Loss of Use**” means the total permanent loss of function of a foot, hand or thumb and index finger.
- U. “**Management Control**” means any person, entity or affiliated group of persons or entities with the right to owning interests representing more than fifty percent (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.
- V. “**Named Insured**” means the entity named in Item 1. of the Declarations.
- W. “**Personal Loss**” means **Loss of Life, Loss of Sight, Loss of Hearing or Speech, Loss of Use or Loss of Extremity of an Insured Person**, but only when such **Personal Loss**:
- (1) is unexpected, unanticipated and independent of any illness, disease or other bodily malfunction of such **Insured Person**;
  - (2) arises from a source outside of such **Insured Person**; and
  - (3) is a direct result of a **Risk Event**.
- X. “**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 or Coverage Section.
- Y. “**Premises**” means that portion of any building which is owed or leased by an **Insured Entity** for the purpose of conducting its business, or a residence occupied by any **Employee**.
- Z. “**Products Extortion**” means any threat communicated to an **Insured** to alter, contaminate, pollute or render substandard any goods or products handled, manufactured or distributed by the **Insured Entity**, for the purpose of demanding **Ransom Monies** from an **Insured Entity**.
- AA. “**Property Damage Extortion**” means any threat communicated to an **Insured** to physically damage, contaminate or pollute any **Premises**, including fixtures, livestock, fine art, machinery or equipment (fixed or mobile) which is owned or leased by such **Insured Entity**, for the purpose of demanding **Ransom Monies** from an **Insured Entity**.
- BB. “**Ransom Monies**” means cash, monetary instruments, bullion or the fair market value of any securities, property or services that an **Insured** shall have paid or surrendered in direct response to **Kidnapping** or **Extortion**.
- CC. “**Relative**” means spouses, domestic partners, child, step-child, adopted child, adopted stepchild, foster child, spouse of married children, grandchild, sister, brother, parent, parent-in-law, step-parent, grandparent, or grandparent-in-law of any **Employee**.



DD. “**Risk Event**” means any one of the following:

- (1) **Kidnapping;**
- (2) **Extortion;**
- (3) **Wrongful Detention;** or
- (4) **Hijacking.**

A single **Risk Event** shall include one or more events as set forth above, or series of related events arising out of the same or related facts and circumstances or conducted by the same individual or affiliated individuals, acting alone or in collusion with others, regardless of the number of **Insureds** involved.

EE. “**Subsidiary**” means:

- (1) any for-profit entity, whose securities are not publically traded, in which the **Insured Entity** has **Management Control** (“Controlled Entity”) before the Inception Date set forth in Item 2. of the Declarations;
- (2) any for-profit entity, whose securities are not publicly traded, of which the **Insured Entity** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more Controlled Entities; or
- (3) any not-for-profit entity under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by an **Insured Entity** prior to or during the **Policy Period**.

FF. “**Trade Secret Extortion**” mean any threat communicated to an **Insured** to disseminate, utilize or divulge confidential and proprietary information, including formulas, patterns, compilations or data, programs, devices, methods, techniques or processes, or other confidential and proprietary information which is specific to the **Insured Entity** in the conduct of its business (provided that the **Insured Entity** makes constant and conscious efforts in the normal course of business not to disclose such information to any third party) for the purpose of demanding **Ransom Monies** from an **Insured Entity**.

GG. “**Wrongful Detention**” means the involuntary confinement of an **Insured Person**, other than **Kidnapping**, for a consecutive period of not less then twenty-four (24) hours.

### III. EXCLUSIONS

No coverage is available under this Coverage Section for loss of:

- A. **Ransom Monies**, due to any fraudulent, dishonest or criminal act committed by an **Insured**, or by any person authorized by an **Insured** to have custody of or deliver such **Ransom Monies**.

- B. monies or property surrendered away from the **Premises** in any face-to-face encounter involving the use of, or threat to use, force or violence, unless surrendered by a person in lawful possession of such monies or property at the time of such surrender for the sole purpose of delivering it to pay an **Extortion** or a demand for **Ransom Monies** that was previously communicated to an **Insured**.
- C. monies or property surrendered on the **Premises**, unless brought onto the **Premises** in direct response to an **Extortion** or a demand for **Ransom Monies** that was previously communicated to an **Insured**.
- D. loss resulting from the **Wrongful Detention** of an **Insured Person**:
  - (1) arising out of the activities of such **Insured Person** as an active member of, or in direct employment of, a government organization or agency, government affiliated security force or agency, military organization or armed forces, or law enforcement agency;
  - (2) due to any actual or alleged violation of the laws of the host country by the **Insured Person**, or the actual or alleged failure of the **Insured Person** to maintain and possess legally required travel documents, including any immigration, work, residency or other visa, permit or other required documentation; unless the **Insurer** determines that such allegations were intentionally false, fraudulent and malicious and made solely and directly to achieve political, propaganda or coercive effect upon or at the expense of an **Insured**; or
  - (3) due to such **Insured Person** traveling to or remaining in a country after the U.S. Government provides a directive to leave the country in question.

The **Insureds** agree to reimburse the **Insurer** for any payments the **Insurer** makes under this Coverage Section, which are ultimately determined not to be covered because of the application of this Exclusion D.

## V. LIMITS OF INSURANCE

- A. The maximum amount payable by the **Insurer** for all loss from each single **Risk Event** shall not exceed the Limit of Insurance for the applicable Insuring Agreement as set forth in Item 4.E. of the Declarations, regardless of the number of **Insureds** involved in the **Risk Event** or incurring loss.
- B. The maximum amount payable by the **Insurer** for all loss from all covered events shall not exceed the “Kidnap and Ransom/Extortion Policy Annual Aggregate Limit of Insurance” as set forth in Item 4.E. of the Declarations. The “Kidnap and Ransom/Extortion Coverage Section Aggregate Limit of Insurance” shall be reduced and may be exhausted by the amount of any payment by the **Insurer** made under the terms of this Coverage Section.
- C. If no Annual Aggregate Limit of Insurance is shown in Item 4.E. of the Declarations, then, with the exception of coverage for **Personal Loss** under Insuring Agreement D., payment of loss under one Insuring Agreement shall not

reduce or exhaust any applicable Limit of Insurance available for other losses sustained or **Risk Events** which occur during the **Policy Period**.

- D. With regard to coverage under Insuring Agreement D., the most the **Insurer** shall pay under this Coverage Section for **Personal Loss** shall be the Limit of Insurance for Insuring Agreement D. shown in Item 4.E. of the Declarations. Upon exhaustion of such Limit of Insurance, the **Insurer** will have no further obligation to pay **Personal Loss** under Insuring Agreement D. In the event that more than one **Insured Person** suffers a **Personal Loss** as a direct result of a covered **Risk Event**, then subject to the maximum Limit of Insurance set forth in Item 4.E. of the Declarations for Insuring Agreement D., the **Insurer** shall provide coverage for such **Personal Loss** on an allocated basis which shall be an equal percentage based upon the number of **Insured Person's** who have suffered such **Personal Loss**.
- E. Regardless of the number of years this Coverage Section remains in effect and the total premium amounts due or paid, neither the Limits of Insurance nor the amount the **Insurer** shall pay or reimburse for loss shall be cumulative from year to year or from **Policy Period** to **Policy Period**.

#### IV. RETENTION

Subject to all other terms and conditions of this Policy, the **Insurer** shall only be liable for the amount of loss resulting directly from a single **Risk Event**, or for other expenses or amounts payable under this Coverage Section, which is in excess of the applicable Retention amount as set forth in Item 4.E. of the Declarations. The Retention amount shall be borne by the **Insureds** and shall be uninsured.

#### VI. INSURED'S DUTIES

As a condition precedent to the **Insurer's** obligation to make any payment of loss hereunder for any **Risk Event** or any other matter relating to coverage under this Coverage Section:

- A. The **Insured** must provide, to both the independent security consultant and the **Insurer**, written or oral notice to the address or contact information set forth in Item 7. of the Declarations, as soon practicable, of such **Risk Event**.
- B. The **Insured** must make every reasonable effort to determine that the **Risk Event** actually occurred.
- C. The **Insured** must provide periodic and timely updates concurrent with all significant events relating to such **Risk Event**.
- D. The **Insured** must make every reasonable effort to notify the appropriate law enforcement agency having jurisdiction over such **Risk Event**, and comply with their recommendations and instructions, with due regard for the safety of any **Insured Person**.
- E. The **Insured** must make every reasonable effort to not disclose the existence of this Coverage Section.

- F. The **Insured** must approve the payment of **Ransom Monies** prior to the transit, delivery or payment thereof.

The **Insured** shall furnish to the **Insurer** Proof of Loss, duly sworn to, with full particulars of all loss, as soon as practicable after the date of such loss.

## VII. GENERAL CONDITIONS

### A. LOSS SUSTAINED

A covered loss shall be deemed to have been sustained by the **Insured** under this Coverage Section:

- (1) under Insuring Agreement A., at the time of the surrender of the **Ransom Monies** by the **Insured** to the third party who demanded payment of such **Ransom Monies**;
- (2) under Insuring Agreement B., at the time of the actual destruction of the **Ransom Monies**, or at the time of the actual disappearance, wrongful appropriation or seizure of the **Ransom Monies** from the possession of the **Insured** or of the person authorized to hold or deliver the **Ransom Monies** on behalf of the **Insured Entity**;
- (3) under Insuring Agreement C., on the date of the actual payment of **Expenses** by the **Insured**;
- (4) under Insuring Agreement D., at the time of the actual **Personal Loss**; and
- (5) under Insuring Agreement E., on the date of the actual payment of **Legal Costs** by the **Insured Entity**.

### B. ACTION AGAINST INSURER

The **Insured** may not bring any legal action against the **Insurer** involving loss:

- (1) unless the **Insured** has complied with all the terms of this Coverage Section and policy;
- (2) until ninety (90) days after the **Insured** has filed a sworn Proof of Loss with the **Insurer**; and
- (3) unless brought within two (2) years from the date the **Insured Discovered** the loss.

If any limitation in this Condition is deemed to be inconsistent with the state law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

C. APPRAISAL

If the **Named Insured** and the **Insurer** fail to agree on the amount of loss as set forth in the sworn Proof of Loss, either party may initiate the following process:

- (1) Either party may send a written demand to the other, within sixty (60) days after the **Insurer's** rejection of a sworn Proof of Loss submitted by the **Named Insured**, to select a competent and disinterested appraiser. The appraisers will appraise the loss stated in the sworn Proof of Loss.
- (2) If the appraisers selected by the parties fail to agree on the amount of loss, they will select a competent and disinterested umpire, and failing for fifteen (15) days to agree upon such umpire, then, on the request of the **Named Insured** or the **Insurer**, such umpire will be selected by a judge of any competent court in the United States. The appraisers will submit their differences to the umpire.
- (3) An award in writing of any two appraisers will determine the amount of loss. The **Named Insured** and the **Insurer** will each pay its chosen appraiser, and will bear equally the other expenses of the appraisal and umpire. The **Insurer** will not be held to have waived any of the **Insurer's** rights by any act relating to the appraisal.

D. ASSIGNMENT

This Coverage Section and any and all rights hereunder shall not be assigned or transferred without the written consent of the **Insurer**, which shall be in the sole and absolute discretion of the **Insurer**.

E. AUTHORIZATION AND NOTICES

The **Named Insured** shall act on behalf of all **Insureds** with respect to all matters regarding this Coverage Section, including: (1) giving of notice of a **Risk Event** or claim; (2) submission of any Statement of Loss or sworn Proof of Loss; (3) participation in any Appraisal; (4) the defense or settlement of any legal proceeding; (4) giving and receiving of all correspondence and information; (5) giving and receiving notice of cancellation; (6) payment of premiums; (7) receiving of any return premiums; and (8) receiving and accepting of any endorsements issued to form a part of this Coverage Section.

F. CANCELLATION AND NON RENEWAL

- (1) This Coverage Section may be cancelled by the **Named Insured** by sending written prior notice to the **Insurer** stating when thereafter the cancellation of this Coverage Section, shall be effective. This Coverage Section, terminates at the date and hour specified in such notice. The **Insurer** shall retain the pro rata proportion of the premium for this Coverage Section.
- (2) This Coverage Section shall not be cancelled by the **Insurer** except by reason of non-payment of premium by the **Insured**. The **Insurer** may

cancel this Coverage Section by delivering to the **Named Insured** or by mailing to the **Named Insured**, by registered mail or by courier, at the **Named Insured's** address set forth in Item 1. of the Declarations, written notice stating when, not less than twenty (20) days thereafter, cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, this Coverage Section will be deemed terminated as of the date indicated in the **Insurer's** written notice of cancellation to the **Named Insured**.

- (3) 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.
- (4) The **Insurer** shall have no obligation to renew this Coverage Section. In the event the **Insurer** decides to non-renew this Coverage Section, it shall deliver or mail to the **Named Insured**, at the address set forth in Item 1. of the Declarations, written notice of such decision at least sixty (60) days prior to the expiration of the **Policy Period**.

#### G. CHANGES

This Coverage Section contains all the agreements between the **Insured** and the **Insurer** concerning the insurance afforded. The **Named Insured** shown in Item 1. of the Declarations is authorized to make changes to the terms of this Coverage Section with the **Insurer's** consent. This Coverage Section's terms can be amended or waived only by endorsement issued by the **Insurer** and made a part of this Coverage Section.

#### H. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Section is void in any case of fraud by the **Insured** as it relates to this Coverage Section at any time. This Coverage Section is also void if the **Insured**, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) this Coverage Section or the procurement thereof, in the Application for this Coverage Section or in any materials submitted therewith; or
- (2) any **Insured Person**; or
- (3) a claim under this Coverage Section.

#### I. COOPERATION

Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the investigation, defense and settlement of any matter or legal proceeding for which coverage is provided under this Coverage Section.

J. HEADINGS

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

K. INSPECTION AND AUDIT

The **Insurer** may examine and audit the **Insured's** books and records at any time during the **Policy Period** and extensions thereof and within three years after the termination of this Coverage Section, as far as they relate to the coverage provided by this Coverage Section.

L. LIBERALIZATION

In the event the **Insurer** introduces a new Kidnap and Ransom/Extortion Coverage Section during the **Policy Period**, then the **Named Insured** shall have the right to any broader coverage available under such new Coverage Section, if allowed by law, as of the date that such new Coverage Section is made available to all insureds, but only with respect to **Risk Events** which occur and/or claims reported to the **Insurer** after such date.

M. ORGANIZATIONAL CHANGES

(1) If during the **Policy Period** an **Insured Entity** shall consolidate with, merge into, purchase, or acquire the assets or liabilities of another entity, this Coverage Section will provide coverage for that merged, purchased or acquired entity, subject to all other terms and conditions herein, but only for **Risk Events** which first occur after the effective date of such merger, purchase, or acquisition; provided that the **Insured Entity** provides written notice of such merger, purchase, or acquisition to the **Insurer** with full particulars of such merger, purchase, or acquisition, within ninety (90) days after the effective date of such merger, purchase, or acquisition. Coverage for the merged, purchased, or acquired entity shall not be afforded following such ninety (90) day period unless the **Insurer** agrees to provide such coverage, subject to any additional terms and conditions and any additional premium that may be required by the **Insurer**.

(2) The ninety (90) notice requirement described above shall be waived subject to the following:

- (a) the assets of the merged, purchased, or acquired entity do not exceed forty percent (40%) of the total assets of the **Insured Entity** as of one (1) day prior to the effective date of the transaction; or
- (b) the merger, purchase, or acquisition occurs less than ninety (90) days prior to the end of the **Policy Period**.

- (3) The **Insured Entity** must provide written notice the **Insurer** of a change in **Management Control** of any **Insured Entity** during the **Policy Period**, within (ninety) 90 days of the effective date of the change in **Management Control**, but no later than the expiration of the **Policy Period**.

N. OTHER INSURANCE

- (1) This Coverage Section shall apply only as excess insurance over, and shall not contribute with: (1) any other valid and collectible insurance available to any **Insured** unless such insurance is written specifically as excess of this Coverage Section by reference in such other policy to the Policy Number of this Coverage Section; and (2) indemnification to which any **Insured** is entitled from any other entity other than an **Insured Entity**.
- (2) As excess insurance, this Coverage Section will not apply or contribute to the payment of any loss or **Expense** until the amount of such other insurance or indemnity has been exhausted by payment of loss or expense covered hereunder. If the limit of the other insurance or indemnity is insufficient to cover the entire amount of loss or **Expenses**, this Coverage Section will apply only to that part of loss or **Expense**, not recoverable or recovered under the other insurance or indemnity. This Coverage Section will not be subject to the terms and conditions of any other insurance.

O. RECOVERIES

In the event of any payment under this Coverage Section, all recoveries, less the actual cost to the **Insurer** of recovery, will be distributed first to the **Insurer** for all amounts paid by the **Insurer** under this Coverage Section, and any remaining monies from such recoveries shall be paid to the **Named Insured**.

P. 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 Coverage Section, 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.

Q. TERRITORY

This Coverage Section applies to **Risk Events** occurring or loss incurred anywhere in the world, to the extent permitted by law, except as set forth in this Coverage Section or an Endorsement hereto.



R. VALUATION AND CURRENCY

All amounts stated in this Coverage Section are expressed in United States dollars and all amounts payable under this Policy are payable in United States dollars. If **Legal Costs** or other amounts covered under this Coverage Section are stated in a currency other than United States dollars, then reimbursement under this Coverage Section shall be made in United States dollars, at the rate of exchange published in the Wall Street Journal on the date that such **Legal Costs** or other amounts are paid by the **Insured Entity**.

Specimen

**DARWIN NATIONAL ASSURANCE COMPANY**

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**Crime Coverage Section**

In consideration of payment of the premium and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which shall be deemed to be attached to, incorporated into, and made part of this Policy, and subject to the Declarations and this Coverage Section, the **Named Insured**, on behalf of all **Insureds**, and DARWIN NATIONAL ASSURANCE COMPANY (“the **Insurer**”) agree as follows:

**I. INSURING AGREEMENTS**

Coverage is provided under the following Insurance Agreements, if purchased by the **Insured**, and applies only to loss first **Discovered** during the **Policy Period**, or during any extended period to **Discover** loss in accordance with Section XVI. of this Coverage Section.

**A. EMPLOYEE AND FIDUCIARY THEFT OR FORGERY COVERAGE**

(1) Employee Theft of Company Property

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss of, or for loss from damage to, **Money, Securities and Property**, resulting directly from **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

(2) Employee Theft of Client Property

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss of, or for loss from damage to, **Money, Securities and Property** sustained by an **Insured’s Client**, resulting directly from **Theft or Forgery** committed by an identified **Employee**.

(3) Fiduciary Theft of Plan Property

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss of, or for loss from damage to, **Money, Securities and Property** that belongs to a **Sponsored Plan**, resulting directly from **Theft or Forgery** committed by a **Fiduciary**, whether identified or not, acting alone or in collusion with other persons.

B. FORGERY OR ALTERATION

- (1) The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss resulting directly from **Forgery** or alteration of, on or in any written **Financial Instruments**, committed by a **Third Party**.
- (2) If the **Insured** is sued for refusing to pay any **Financial Instrument** covered in Insuring Agreement B. (1) above, on the basis that it has been forged or altered, and the **Insured** has the **Insurer's** written consent to defend against the suit, the **Insurer** will reimburse the **Insured** for reasonable legal expenses that the **Insured** incurs and pays in that defense, subject to the Sublimit of Liability set forth in Item 4.F. of the Declarations, which is in addition to the Limit of Liability set forth in Item 4.C. of the Declarations.

C. INSIDE THE PREMISES COVERAGE

- (1) The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss resulting directly from:
  - (a) **Robbery, Safe Burglary**, or unlawful taking of **Money** or **Securities**, committed by a **Third Party**; or
  - (b) actual destruction or disappearance of **Money** or **Securities**;  
within the **Premises** or **Banking Premises** of an **Insured**.
- (2) The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss resulting directly from:
  - (a) loss of or damage to **Property** by **Robbery** or attempted **Robbery** within the **Premises**;
  - (b) loss of or damage to **Property** contained within any safe which results from **Safe Burglary** or attempted **Safe Burglary** within the **Premises**;
  - (c) damage to a locked safe, cash drawer, cash box or cash register within the **Premises** by felonious entry or attempted felonious entry or loss by felonious abstraction of such container from within the **Premises**; or
  - (d) damage to the **Premises** resulting from **Safe Burglary** or **Robbery**;  
committed by a **Third Party**.

D. IN TRANSIT COVERAGE

(1) The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss resulting directly from:

(a) **Robbery**; or unlawful taking of **Money** or **Securities**, committed by a **Third Party**; or

(b) actual destruction or disappearance of **Money** or **Securities**;

while **In Transit**, or while temporarily within the home of an **Employee**.

(2) The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss resulting directly from:

(a) damage to **Property** by **Robbery** while **In Transit**; or

(b) loss by the unlawful taking of **Property** temporarily within the home of an **Employee** or a partner of the **Insured**;

committed by a **Third Party**.

E. COMPUTER FRAUD

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for an **Insured's** loss of, or an **Insured's** loss from damage to, **Money**, **Securities** or **Property**, resulting directly from **Computer Fraud** committed by a **Third Party**.

F. FUNDS TRANSFER FRAUD COVERAGE

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss of **Money** and **Securities** contained in an **Insured's Transfer Account** on deposit at a financial institution resulting directly from **Funds Transfer Fraud** committed by a **Third Party**.

G. MONEY ORDERS AND COUNTERFEIT CURRENCY FRAUD COVERAGE

The **Insurer** shall reimburse the **Insured**, subject to the Sublimit of Liability set forth in Item 4.C. of the Declarations, for loss sustained by an **Insured** resulting directly from **Money Orders and Counterfeit Currency Fraud** committed by a **Third Party**.

H. CREDIT CARD FRAUD COVERAGE

The **Insurer** shall reimburse the **Insured**, subject to the Limit of Liability set forth in Item 4.C. of the Declarations, for loss sustained by an **Insured** resulting directly from **Credit Card Fraud** committed by a **Third Party**.

II. RESTORATION EXPENSES

The **Insurer** shall reimburse the **Insured**, subject to the Sublimit of Liability set forth in Item 4.F. of the Declarations, for **Restoration Expenses** that an **Insured** incurs to **Restore** its **Computer System** if damaged or destroyed by a **Computer Violation**. Such damage or destruction must be **Discovered** during the **Policy Period** and resulting directly from a **Computer Violation** which occurs as part of a **Single Loss** which is otherwise covered under Insuring Agreements A. or E. of this Coverage Section.

Reimbursement of **Restoration Expenses** will be made to the **Insured** once all processes have been completed to **Restore** the **Insured's Computer System**, and the **Insured** has provided the **Insurer**, in writing, of a description and accounting of all **Restoration Expenses**, together with such detail as the **Insurer** may require.

### III. AUTHENTICATION EXPENSES

The **Insurer** shall reimburse the **Insured**, subject to the Sublimit of Liability set forth in Item 4.F. of the Declarations, for **Authentication Expenses**. The amount of covered loss must exceed the **Single Loss** Deductible amount for the Insuring Agreement that is the subject of the claim under this Coverage Section, in order for **Authentication Expenses** to be subject to reimbursement.

**Authentication Expenses** which are reimbursable under this Coverage Section are part of and not in addition to the Single Loss Limit of Liability for the Insuring Agreement that is the subject of the claim.

**Authentication Expenses** are payable to the **Insured** at the same time as the payment of the valid and collectible loss under the Insuring Agreement that is the subject of the claim.

### IV. DEFINITIONS

- A. "**Authentication Expenses**" means reasonable fees, costs and expenses incurred and paid by the **Insured** to retain outside accountants, attorneys, consultants or experts, retained by the **Insured** to establish the existence and amount of covered loss under any Insuring Agreement of this Coverage Section. **Authentication Expenses** shall not include the **Insured's** internal fees, costs (direct or indirect), obligations or any **Employee's** wages, salaries or benefits.
- B. "**Banking Premises**" means the interior portion of a building occupied by, or the night depository chute or safe maintained by any bank, trust company or similar depository institution.
- C. "**Client**" means a customer of an **Insured** to whom an **Insured** provides goods or services under a written contract or for a fee.
- D. "**Computer Fraud**" means the use of any computer to fraudulently cause a transfer of **Money, Securities** or **Property**, from inside the **Premises** or **Banking Premises**:
- (1) to a person (other than a **Messenger**) outside the **Premises** or **Banking Premises**; or
  - (2) to a place outside the **Premises** or **Banking Premises**.

- E. “**Computer Program**” means a set of related electronic instructions which direct the operations and functions of a **Computer System**, which enables the **Computer System** to receive, process, store, retrieve, send, create or otherwise act upon **Electronic Data**.
- F. “**Computer System**” means a computer, including all input, output, processing, storage and communication equipment which is connected to such computer, and which the operating system or application software used by the **Insured** are under the direct operational control of the **Insured**. Off-line libraries are deemed to be part of such **Computer System**.
- G. “**Computer Violation**” means an unauthorized:
- (1) entry into or deletion of **Electronic Data** from a **Computer System**;
  - (2) change to data elements or program logic of a **Computer System**, which is kept in machine readable format; or
  - (3) introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**;
- by a natural person and directed against an **Insured**, designed to damage or destroy a **Computer System**.
- H. “**Counterfeit**” means an imitation of **Money** that is intended to deceive and to be taken as genuine.
- I. “**Credit Card Fraud**” means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card which is issued to any **Employee** of the **Insured** at the request of the **Insured**, other than a credit card issued by any **Insured**.
- J. “**Data**” means facts or information contained in records, accounts, microfilms, tapes or other records, whether or not contained in a **Computer System**.
- K. “**Discover**,” “**Discovers**,” “**Discovery**” or “**Discovered**” means the point in time at which knowledge is acquired by an **Executive**, which would cause a reasonable person to believe that a covered loss has been sustained or an event has occurred that may subsequently result in a covered loss, even though the exact amount or details of such loss or event are unknown; provided that it shall not include knowledge acquired by an **Executive**, acting alone or in collusion with an **Employee**, who is a participant in the **Theft** or **Forgery**.
- L. “**Electronic Data**” means facts or information converted to a form:
- (1) usable in a **Computer System**;
  - (2) which does not provide instructions or directions to a **Computer System**; and

- (3) which is stored on electronic processing media for use by a **Computer Program**.

M. “**Employee**” means any:

- (1) natural person regularly performing services for an **Insured** in the ordinary course of such **Insured's** business, who is compensated by the **Insured** directly by salary, wages or commissions, and whose performance is controlled and directed by such **Insured**, including any part-time, seasonal, leased and temporary employee, or volunteer; or
- (2) **Executive**, while performing acts within the scope of the usual duties of an employee of the **Insured**.

An **Employee** shall not include an independent contractor.

N. “**Executive**” means any natural person who is a duly elected or appointed director, officer, general counsel, risk manager, partner, general partner, owner (in the case of a sole proprietorship), member of the board of managers or a management committee member of the **Insured**; or any natural person holding a functionally equivalent position in any **Insured** chartered in any other jurisdiction anywhere in the world.

**Executive** shall also include any **Employee** designated to represent the **Insured** in obtaining or maintaining insurance coverage.

O. “**Fiduciary**” means any natural person who is a trustee, an officer, or an administrator of any **Sponsored Plan**; and any other natural person, including an **Employee** who is authorized to handle **Money, Securities** or **Property** that belongs to a **Sponsored Plan**.

P. “**Financial Instrument**” means checks, drafts or similar written promises, orders or directions to pay a sum certain in **Money**, that are made, drawn by or drawn upon an **Insured** or by anyone acting as an **Insured's** agent, or that are purported to have been so made or drawn.

Q. “**Forgery**” means the signing of the name of another natural person with the intent to deceive, but does not mean a signature that includes one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated as hand-written signatures.

R. “**Funds Transfer Fraud**” means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by the **Insured** at such institution, without the **Insured's** knowledge or consent. **Funds Transfer Fraud** shall not include a **Forgery**.

S. “**Insured**” means:

- (1) the **Named Insured**;

- (2) any **Subsidiary** of the **Named Insured**; and
  - (3) solely as it pertains to Insuring Agreement A., a **Sponsored Plan**.
- T. “**In Transit**” means being conveyed outside the **Premises**, from one person or place to another, by the **Insured** within the custody of an **Employee** or a partner of the **Insured**, or a person authorized by the **Insured** to have custody of **Money**, **Securities** or **Property**. **In Transit** ends immediately upon delivery to the designated recipient or its agent.
- U. “**Management Control**” means any person, entity or affiliated group of persons or entities with the right to owning interests representing more than fifty percent (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.
- V. “**Messenger**” means any **Executive**, or relative thereof, or any **Employee**, duly authorized, while having care and custody of covered property outside the **Premises**.
- W. “**Money**” means currency, coins, bank notes and bullion.
- X. “**Money Orders and Counterfeit Currency Fraud**” means the good faith acceptance:
- (1) in exchange for merchandise, **Money** or services, of any post office or express money order, issued or purporting to have been issued by any post office or express Insured, if such money order is not paid upon presentation; or
  - (2) in the regular course of business, of **Counterfeit** United States of America or Canadian paper currency.
- Y. “**Named Insured**” means the entity named in Item 1. of the Declarations.
- Z. “**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.
- AA. “**Premises**” means the interior portion of a building which is occupied by the **Insured** in conducting its business.
- BB. “**Property**” means tangible property, other than **Money** or **Securities**, that has intrinsic value.
- CC. “**Restore**” means to complete the restoration or reproduction of **Computer Programs** and **Electronic Data** within the **Insured’s Computer System**, to bring such **Computer System** back to the level of operational capability that existed immediately preceding a **Computer Violation**.
- DD. “**Restoration Expenses**” means reasonable costs incurred by an **Insured** to **Restore** its **Computer System**.



**Restoration Expenses** do not include:

- (1) the **Insured's** internal corporate costs and expenses, including **Employee** remuneration, and any costs related to any legal action;
- (2) expenses incurred as a result of the reconstruction of **Computer Programs** and **Electronic Data** recorded on media, including but not limited to magnetic or optical media, if there are no analyses files, specifications or backups of **Computer Programs** or **Electronic Data** held outside the **Premises**;
- (3) expenses incurred as a result of the reconstruction of **Computer Programs** and **Electronic Data**, if an **Insured** knowingly used illegal copies of programs;
- (4) expenses incurred to render the **Computer Programs** and **Electronic Data** usable by replacement processing equipment;
- (5) expenses incurred to design, update or improve **Computer Programs** or **Electronic Data** or to perfect their operation or performance;
- (6) expenses incurred as a result of an alteration in **Computer Programs** and **Electronic Data** held on magnetic media due to the effect of magnetic fields, incorrect usage of the **Computer Programs** and **Electronic Data**, or the obsolescence of the **Computer System**;
- (7) lost revenue, sales, interest, income or profits; or
- (8) expenses incurred by any **Client**.

**Restoration Expenses** from a **Single Loss** shall include those **Restoration Expenses** incurred by an **Insured** between the time an **Insured** initially **Discovers** the damage or destruction and the time the **Insured's Computer System** is **Restored**. Recurrence of the same or a similar **Computer Violation** after an **Insured's Computer System** has been fully **Restored**, shall constitute a separate **Single Loss**.

Reimbursement of **Restoration Expenses** applies only:

- (a) with respect to **Computer Programs** and **Electronic Data** which an **Insured** owns or for which an **Insured** is legally liable; and
- (b) if an **Insured** is unable to reproduce such **Computer Programs** or **Electronic Data**, either from back-up data copies or from some other form of back-up technology.

EE. "**Robbery**" means the unlawful taking of **Money**, **Securities** or **Property** from the custody of an **Employee**, or other person (except a person acting as a watchman, porter or janitor) authorized by the **Insured** to have custody of such **Money**,

FF. “**Safe Burglary**” means the unlawful taking of **Money, Securities or Property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **Premises**.

GG. “**Securities**” means negotiable and non-negotiable instruments representing either **Money or Property**.

HH. “**Single Loss**” means:

(1) with respect to Insuring Agreement A., all loss resulting from:

- (a) an individual act;
- (b) the combined total of all separate acts, whether or not related; or
- (c) a series of acts whether or not related;

committed by the same **Employee**, or the same **Fiduciary** in the case of Insuring Agreement A.(3), acting alone or in collusion with other persons, and regardless of whether or not such act or acts occurred during or before the **Policy Period**;

(2) with respect to all other Insuring Agreements, all loss resulting from:

- (a) an individual act or event; or
- (b) a series of related acts or events;

committed by the same **Third Party**, acting alone or in collusion with other persons, or in which the same **Third party** is implicated or involved;

whether or not such **Third Party** or **Third Parties** are identified, and regardless of whether or not such act(s) or event(s) occurred during or before the **Policy Period**; and further

with regard to both paragraphs (1) and (2) above, regardless of the amount or number of losses, the number of **Insureds** incurring loss, or the number of **Financial Instruments** or documents or electronic transactions involved over any period of time.

II. “**Sponsored Plan**” means:

- (1) an employee welfare benefit plan or an employee pension benefit plan as more fully set forth in Title 1, Section 3 of the Employee Retirement Income Security Act of 1974 and any amendments thereto (“ERISA”), and which is solely sponsored by the **Insured**;

- (2) an employee welfare benefit plan or an employee pension benefit plan as more fully set forth in Title 1, Section 3 of ERISA, which is operated solely by the **Insured** or jointly by the **Insured** and a labor organization for the benefit of the **Employees** of the **Insured**, located anywhere in the world, and which existed on or before the Inception Date of this Coverage Section or which is created or acquired after the Inception Date of this Coverage Section;
- (3) any other employee benefit plan or program not subject to Title 1 of ERISA, sponsored solely by the **Insured** for the benefit of the **Employees**, including any excess benefit plan located anywhere in the world and which existed on or before the Inception Date of this Coverage Section or which is created or acquired after the Inception Date of this Coverage Section; or
- (4) any other plan, fund, or program specifically included as a **Sponsored Plan** by Endorsement to this Coverage Section.

**Sponsored Plan** shall not include any multi-employer plan.

JJ. “**Subsidiary**” means:

- (1) any for-profit entity, whose securities are not publicly traded, in which the **Insured** has **Management Control** (“Controlled Entity”) before the Inception Date set forth in Item 2. of the Declarations;
- (2) any for-profit entity, whose securities are not publicly traded, of which the **Insured** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more Controlled Entities; or
- (3) any not-for-profit entity under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by an **Insured** prior to or during the **Policy Period**.

Coverage afforded under this Policy for loss sustained any **Subsidiary** or any **Subsidiary’s Client**, shall only apply to loss sustained after the effective date such entity becomes a **Subsidiary** and prior to the effective date that such entity ceases to be a **Subsidiary**.

KK. “**Theft**” means the unlawful taking of **Money**, **Securities** or **Property** to the deprivation of:

- (1) an **Insured**, solely for the purposes of determining coverage under Insuring under Insuring Agreement A. (1);
- (2) a **Client**, solely for the purposes of determining coverage under Insuring under Insuring Agreement A. (2); or
- (3) a **Sponsored Plan**, solely for the purposes of determining coverage under Insuring Agreement A. (3).

- LL. “**Third Party**” means a natural person, other than an **Employee**.
- MM. “**Transfer Account**” means an account maintained by an **Insured** at a financial institution from which an **Insured** can initiate the transfer, payment or delivery of **Money** or **Securities**:
1. by means of electronic, telegraphic, cable, teletype, computer, 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 the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.

## V. **EXCLUSIONS**

- A. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities** or **Property**, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account; provided however, that this Exclusion shall not apply to loss caused by **Theft** or **Forgery** which results in an improper financial gain to an **Employee**. Such improper financial gain shall not include salary, bonuses, commissions, incentive payments, fees or other compensation, including but not limited to promotions and raises associated with employment, earned time off including vacations, and the costs of any health, welfare, pension or retirement benefits.
- B. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from any fraudulent, dishonest or criminal action committed by an **Insured**, or by an owner if the **Insured** is a sole-proprietorship, a partner if the **Insured** is a partnership, or by a member or manager if the **Insured** is a limited liability company or corporation, whether acting alone or in collusion with others; provided however, that this Exclusion shall not apply to loss otherwise provided under Insuring Agreement A. (2).
- C. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from any fraudulent, dishonest or criminal act by any **Employee** or **Fiduciary**, whether acting alone or in collusion with others, unless otherwise covered under Insuring Agreement A.
- D. No coverage is afforded under this Coverage Section for loss sustained by an **Insured’s Client** due to **Theft** or **Forgery** committed by an **Employee** acting in collusion with the **Client** or the **Client’s** employee.
- E. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from the unauthorized use or disclosure of trade secrets, patents or other intellectual property, confidential processing methods, customer lists, or other confidential information of any kind; provided however, that this Exclusion does not apply to loss otherwise covered under Insuring Agreements A. or E.

- F. No coverage is afforded under this Coverage Section for loss due to **Theft** or **Forgery** committed by, an owner if the **Insured** is a sole-proprietorship, a partner if the **Insured** is a partnership, or by a member or manager if the **Insured** is a limited liability company or corporation, whether acting alone or in collusion with others.
- G. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from declared or undeclared war, civil war, insurrection, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incident to any of the foregoing.
- H. No coverage is afforded under this Coverage Section for loss of income, whether or not earned or accrued, including interest and dividends, not realized as the result of a loss covered under this Coverage Section.
- I. No coverage is afforded under this Coverage Section for indirect or consequential loss of any kind, provided however, that this Exclusion shall not apply to otherwise covered **Authentication Expenses** under Section III. or **Restoration Expenses** under Section II.
- J. No coverage is afforded under this Coverage Section for fines or penalties, or for multiplied or punitive damages.
- K. No coverage is afforded under this Coverage Section for expenses incurred:
- (1) as a result of the reconstitution of **Data** if the **Insured** knowingly used or uses illegal copies of programs; or
  - (2) to render the **Data** usable by replacement processing equipment; or
  - (3) to design, update or improve software or programs or to perfect their operation or performance; or
  - (4) as a result of an alteration in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the **Computer System**.
- L. No coverage is afforded under this Coverage Section for loss caused by an **Employee**, which is sustained by an **Insured** after any other **Employee** with managerial or supervisory responsibility, or an **Executive**, not in collusion with the **Employee** becomes aware of a **Theft**, **Forgery**, or other fraudulent or dishonest act committed by such **Employee** while employed with the **Insured** or prior to the inception of the **Employee's** employment with the **Insured**, involving **Money**, **Securities** or **Property** in an amount in excess of one thousand dollars (\$1,000).
- M. No coverage is afforded under this Coverage Section for loss resulting directly or indirectly from fire; provided however, that this Exclusion shall not apply to:
- (1) loss of **Money** or **Securities**; or

- (2) damage to any safe or vault caused by the application of fire thereto for the purposes of **Safe Burglary**.
- N. No coverage is afforded under this Coverage Section for fees, costs or expenses incurred or paid by the **Insured** in defending or prosecuting any legal proceeding or claim; provided however, that this Exclusion shall not apply to the coverage provided under Insuring Agreement B. (2).
- O. No coverage is afforded under this Coverage Section for loss due to the **Insured** knowingly having given or surrendered **Money, Securities or Property** in any exchange or purchase with a **Third Party** not in collusion with an **Employee**; provided however, that this Exclusion shall not apply to **Money Orders** and **Counterfeit Currency Fraud**.
- P. No coverage is afforded under this Coverage Section for loss sustained by one **Insured** to the advantage of any other **Insured**, other than a **Sponsored Plan**.
- Q. No coverage is afforded under this Coverage Section for loss of or damage to **Money, Securities or Property** while in the custody of any bank, trust company, similar recognized place of safe deposit, armored motor vehicle company or any person who is duly authorized by the **Insured** to have custody of the property; provided however, that this Exclusion shall not apply to the extent that coverage under this Coverage Section is excess of the amount recovered or received by the **Insured** under:
- (1) the **Insured's** contract, if any, with, or insurance carried by, any of the foregoing; or
  - (2) any other insurance or indemnity in force which would cover the loss in whole or in part.
- R. No coverage is afforded under this Coverage Section for loss due to the unlawful taking of **Money, Securities or Property**, or due to **Computer Fraud** or any other fraudulent, dishonest or criminal act (other than **Robbery** or **Safe Burglary**), by any representative of the **Insured** other than an **Employee**, provided that such representative is not acting in collusion with any **Employee**.
- S. No coverage is afforded under Insuring Agreement A. for loss resulting directly or indirectly caused by any broker, factor, commission merchant, consignee, contractor, independent contractor or other agent or representative of the same general character, of the **Insured**.
- T. No coverage is afforded under Insuring Agreements C. or D. for:
- (1) loss due to **Forgery, Computer Fraud or Funds Transfer Fraud**; or
  - (2) loss of or damage to **Money, Securities or Property** while in the mail or in the custody of a carrier for hire, other than an armored motor vehicle company.

- U. No coverage is afforded under Insuring Agreements C., D., E. or F. for loss of or damage to **Money, Securities or Property** as a result of a kidnap, ransom or other extortion payment (as distinct from **Robbery**) surrendered to any person as a result of a threat to do bodily harm to any person or a threat to do damage to the **Premises or Property**.
- V. No coverage is afforded under Insuring Agreement B. for loss due to **Forgery** or alteration of:
- (1) any **Financial Instrument** committed by any **Third Party** in collusion with any **Employee**; or
  - (2) any registered or coupon obligations issued or purported to have been issued by the **Insured**, or any coupons whether attached or detached.
- W. No coverage is afforded under Insuring Agreement H. for loss caused by any forgery or alteration of, on or in any written instrument; provided that this Exclusion shall not apply if:
- (1) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
  - (2) the **Insured** is legally liable to the issuer of such credit card for such loss.
- X. No coverage is afforded under this Coverage Section for any loss that the **Insured** is aware of prior to the Inception Date of this Coverage Section.
- Y. No coverage is afforded under this Coverage Section for loss sustained by the **Insured** prior to the termination of this Coverage Section unless such loss is first **Discovered** during the **Policy Period** and the **Insured** provides written notice thereof to the **Insurer** within the time limitations provided in Sections XI. or XVI. of this Coverage Section.
- Z. No coverage is afforded under this Coverage Section for loss, or that portion of any loss, sustained by the **Insured** which results from an unexplained inventory shortage, including loss, the proof of which its existence or amount is dependent upon an inventory computation or a profit and loss computation. Provided however, that if the **Insured** can establish, wholly apart from such computations, that it has sustained a loss, then the **Insured** may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.

## VI. OWNERSHIP

- A. The **Insurer's** liability under this Coverage Section will apply only to the **Money, Securities or Property** owned by the **Insured** or for which the **Insured** is legally liable, or held by the **Insured** in any capacity whether or not the **Insured** is liable; provided that:
- (1) the **Insurer** will not be liable for damage to the **Premises** unless the **Insured** is the owner of the **Premises** or is liable for such damage; or

- (2) except solely with respect to Insuring Agreement A. (2), the **Insurer's** liability will not apply to **Money, Securities** or **Property** of a **Client**.
- B. For the purposes of Insuring Agreement A. (2), the **Insurer's** liability under this Coverage Section will apply only to the **Money, Securities** or **Property** of a **Client**, which is held by the **Insured** in any capacity or for which the **Insured** is legally liable.

## VII. SPONSORED PLAN

- A. Solely with respect to any **Sponsored Plan**, payment by the **Insurer** for covered loss to the **Insured** shall be held by the **Insured** for the use and benefit of the **Sponsored Plan** incurring such loss.
- B. The Limit of Liability applicable to any **Sponsored Plan** shall equal either ten percent (10%) of the **Sponsored Plan's** assets as of the beginning of such **Sponsored Plan's** fiscal year, or five hundred thousand dollars (\$500,000), whichever is less ("Amended Limit of Liability"); provided, however, that the following additional conditions shall also apply with respect to such coverage:
  - (1) Loss Involving One Sponsored Plan:
    - (a) if the applicable Limit of Liability as set forth in Item 4.C. of the Declarations is less than the Amended Limit of Liability, then the applicable Limit of Liability shall be the Amended Limit of Liability; or
    - (b) if the applicable Limit of Liability as set forth in Item 4.C. of the Declarations equals or exceeds the Amended Limit of Liability, then the applicable Limit of Liability shall be the Limit of Liability as set forth in Item 4.C. of the Declarations of this Coverage Section; or
  - (2) Loss Involving More Than One Sponsored Plan:
    - (a) if the applicable Limit of Liability as set forth in Item 4.C. of the Declarations is less than the Amended Limit of Liability as calculated for each **Sponsored Plan**, then the applicable Limit of Liability for each **Sponsored Plan** shall be the Amended Limit of Liability as calculated for each **Sponsored Plan**; or
    - (b) if the applicable Limit of Liability as set forth in Item 4.C. of the Declarations equals or exceeds the Amended Limit of Liability as calculated for all such **Sponsored Plans**, then the applicable Limit of Liability for all such **Sponsored Plans** combined shall be the Limit of Liability as set forth in Item 4.C. of the Declarations.

Solely with respect to loss sustained by a **Sponsored Plan**, no Deductible Amount shall apply to such loss.



## VIII. LIMITS OF LIABILITY

- A. The **Insurer's** maximum liability for a **Single Loss** shall not exceed the Limit of Liability applicable to such loss, as set forth in Item 4.C. of the Declarations, regardless of the number of **Insureds** who have incurred loss.
- B. If a **Single Loss** is covered under more than one Insuring Agreement of this Coverage Section, the maximum amount payable under this Coverage Section shall not exceed the largest applicable Limit of Liability of any one such Insuring Agreement.
- C. If a **Single Loss** is covered under both Insuring Agreement E. and Section II., then only one Deductible and one Limit of Liability shall apply, that being the Deductible and Limit of Liability under Insuring Agreement E.
- D. Aggregate Limit of Liability

If Item 4.D. indicates an Aggregate Limit of Liability for this Crime Coverage Section, then the **Insurer's** maximum aggregate liability for all loss under this Coverage Section which is **Discovered** during the **Policy Period**, all **Restoration Expenses**, and all **Authentication Expenses**, shall not exceed such Aggregate Limit of Liability. If the aggregate Limit of Liability is exhausted by the payment of loss, **Restoration Expenses** or **Authentication Expenses** by the **Insurer**, the **Insurer** will have no further liability to make any payments under this Crime Coverage Section.

If Item 4.D. does not indicate an Aggregate Limit of Liability for this Crime Coverage Section, then the payment of loss under any one Insuring Agreement by the **Insurer** shall not reduce or exhaust the Single Loss Limit of Liability under any other Insuring Agreement. However, in no event shall the **Insurer** be liable to reimburse the **Insured**, in total, more than the amount set forth in Item 4.F. of the Declarations for **Restoration Expenses**, under Section II of this Coverage Section.

## IX. DEDUCTIBLE

- A. The **Insurer** will not reimburse the **Insured** for loss resulting directly from a **Single Loss** unless the amount of loss exceeds the applicable Deductible shown in Item 4.C. of the Declarations. The **Insurer** will then reimburse the amount of loss in excess of the Deductible, up to the applicable Limit of Liability.
- B. If a **Single Loss** is covered under more than one Insuring Agreement of this Coverage Section, then only the highest **Single Loss** Deductible shall be applied.
- C. If a **Single Loss** is covered under both Insuring Agreement E. and Section II., then only one Deductible and one Limit of Liability shall apply, that being the Deductible and Limit of Liability under Insuring Agreement E.

## X. NON-ACCUMULATION OF LIABILITY

- A. When there is more than one **Insured**, the maximum liability of the **Insurer** for loss sustained by one or all **Insureds** shall not exceed the amount for which the **Insurer** would be liable if all losses were sustained by any one **Insured**.
- B. Regardless of the number of years this Coverage Section remains in effect and the total premium amounts due or paid, neither the Limits of Liability nor the amount the **Insurer** shall reimburse for any loss shall be cumulative from year-to-year or from **Policy Period-to-Policy Period**.

## **XI. PROOF OF LOSS AND LEGAL PROCEEDINGS**

- A. It is a condition precedent to coverage hereunder that, upon **Discovery**, the **Insured** shall:
  - (1) provide written notice to the **Insurer** as soon as practicable and in no event later than ninety (90) days after such **Discovery**;
  - (2) furnish sworn Proof of Loss with full particulars to the **Insurer** within six (6) months of such **Discovery**, including:
    - (a) production of all relevant records and documents as the **Insurer** shall request; and
    - (b) submit to examination under oath at the **Insurer's** request; and
  - (3) cooperate completely with the **Insurer** in all matters pertaining to the claim.
- B. The **Insured** may offer a comparison between the **Insured's** inventory records and actual physical count of its inventory to prove the amount of loss, but only where the **Insured** establishes wholly apart from such comparison that it has sustained a covered loss, caused by an identified **Employee**.

## **XII. VALUATION AND FOREIGN CURRENCY**

The **Insurer** shall reimburse:

- A. loss of **Money** but only up to and including its face value, and at the **Insured's** option, reimburse for loss of **Money** issued by any country other the United States of America:
  - (1) at face value in the **Money** issued by that country; or
  - (2) in the United States of America 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 the **Insurer's** option:

- (1) reimburse the market value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the **Insurer** all the **Insured's** rights, title and interest in and to those **Securities**; or
  - (2) reimburse 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 value of the **Securities** at the close of business on the day the loss was **Discovered**.
- C. loss of, or loss from damage to, **Property** or **Premises** including its exterior for the replacement cost without deduction for depreciation; provided the **Insurer** will not reimburse 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 **Insured** must actually spend that is necessary to repair or replace the lost or damaged **Property**; or
  - (3) the Single Loss Limit of Liability applicable to the lost or damaged **Property**.

The **Insurer** will not reimburse the **Insured** on a replacement cost basis for any loss or damage until such **Property** is actually repaired or replaced, and 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 reimburse the **Insured** the actual cash value of the **Property** on the day the loss was **Discovered**.

### **XIII. OTHER INSURANCE**

If the **Insured** or any other party in interest in any loss covered by this Coverage Section has any bond, indemnity or other insurance which would cover such loss in whole or in part in the absence of this Coverage Section, then this Coverage Section shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Section shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount recoverable or received under such other bond, indemnity or insurance.

### **XIV. ORGANIZATIONAL CHANGES**

If during the **Policy Period** the **Insured** shall consolidate with, merge into, purchase, or acquire the assets or liabilities of another entity, this Coverage Section will provide coverage for that merged, purchased or acquired entity, subject to all other terms and

conditions herein, but only for loss **Discovered** by an **Insured** after the effective date of such merger, purchase, or acquisition; provided that the **Insured** provides written notice of such merger, purchase, or acquisition to the Insurer with full particulars of such merger, purchase, or acquisition, within ninety (90) days after the effective date of such merger, purchase, or acquisition. Coverage for the merged, purchased, or acquired entity shall not be afforded following such ninety (90) day period unless the **Insurer** agrees to provide such coverage, subject to any additional terms and conditions and any additional premium that may be required by the **Insurer**. Any **Sponsored Plan** acquired as above shall be included as an **Insured**.

The ninety (90) notice requirement shall be waived subject to the following:

- (1) the assets of the merged, purchased, or acquired entity do not exceed forty percent (40%) of the total assets of the **Insured** as of one (1) day prior to the effective date of the transaction; or
- (2) the merger, purchase, or acquisition occurs less than ninety (90) days prior to the end of the **Policy Period**.

The **Insured** must notice the **Insurer** of a change in **Management Control** during the **Policy Period**, with written notice to the **Insurer** within (ninety) 90 days of the effective date of the change in **Management Control**, but notice must be made to the **Insurer** no later than the last date of the **Policy Period** on the Declarations Page.

#### **XV. TERRITORY**

This Policy extends to acts taking place anywhere in the world, to the extent permitted by law.

#### **XVI. EXTENDED PERIOD TO DISCOVER LOSS**

The **Insurer** will reimburse the **Insured** for loss that the **Insured** sustained prior to the effective date of the cancellation or termination of this Coverage Section, which is **Discovered** by the **Insured**:

- (1) No later than ninety (90) days from the date of that cancellation or termination, with regard to all loss except loss sustained by a **Sponsored Plan**; or
- (2) No later than one (1) year from the date of that cancellation or termination, with regard to loss sustained by a **Sponsored Plan**.

However, this extended period to **Discover** loss terminates immediately upon the effective date of any other insurance obtained by the **Insured** in whole or in part to replace the coverage afforded under this Coverage Section.

#### **XVII. CONCEALMENT, MISREPRESENTATION OR FRAUD**

This Coverage Section is void in any case of fraud by the **Insured** as it relates to this Coverage Section at any time. This Coverage Section is also void if the **Named Insured** or any other **Insured**, or any person authorized to act on its behalf, at any time intentionally conceals or misrepresents a material fact concerning:

- (1) this Coverage Section, in the Application for this Coverage Section or in any materials submitted therewith;
- (2) **Money, Securities or Property**;
- (3) the **Insured's** interest in **Money, Securities or Property**; or
- (4) a claim under this Coverage Section.

#### **XVIII. TRANSFER OF RIGHTS AND DUTIES UNDER THIS CRIME POLICY**

The **Insured's** rights and duties under this Coverage Section may not be assigned or transferred without the **Insurer's** written consent except in the case of death of a natural person **Insured**. If the natural person **Insured** dies, the **Insured's** rights and duties will be transferred to the **Insured's** legal representative but only while acting within the scope of duties as the deceased **Insured's** legal representative. Until a legal representative is appointed, anyone having proper temporary custody of the decedent's property will have all rights and duties but only with respect to that property.

#### **XIX. RECORDS**

The **Insured** must keep records of all **Money, Securities, and Property** under this Coverage Section so the **Insurer** can verify the amount of any loss.

#### **XX. RECOVERIES**

A. All recoveries for payments made under this Coverage Section, whether made by the **Insurer** or the **Insured**, shall be applied net of the expense of such recovery:

- (1) first, to the **Insured** in satisfaction of the **Insured's** covered loss in excess of the amount paid under this Coverage Section;
- (2) second, to the **Insurer** in satisfaction of amounts paid in settlement of the **Insured's** claim;
- (3) third, to the **Insured** in satisfaction of any Deductible; and
- (4) fourth, to the **Insured** in satisfaction of any loss not covered under this Coverage Section.

B. Recoveries do not include any recovery:

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

## **XXI. TRANSFER OF INSURED'S RIGHTS OF RECOVERY AGAINST OTHERS TO INSURER**

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

## **XXII. ACTION AGAINST INSURER**

- A. The **Insured** may not bring any legal action against the **Insurer** involving loss:
- (1) unless the **Insured** has complied with all the terms of this Coverage Section and Policy;
  - (2) until ninety (90) days after the **Insured** has filed Proof of Loss with the **Insurer**; and
  - (3) unless brought within two (2) years from the date the **Insured Discovered** the loss.
- B. The **Insured** may not bring any legal action against the **Insurer** to recover a judgment or settlement against it or its bank resulting from **Forgery** or related legal expenses as set forth in Insuring Agreement B. (2), unless brought within two (2) years from the date upon which such judgment shall become final or upon which such settlement was entered into.

If any limitation in this Condition is deemed to be inconsistent with the state law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

## **XXIII. LIBERALIZATION**

In the event the **Insurer** introduces a new Crime Coverage Section during the **Policy Period**, then the **Named Insured** shall have the right to any broader coverage available under such new Coverage Section, if allowed by law, as of the date that such new Coverage Section is made available to all insureds, but only with respect to loss **Discovered** and/or claims reported to the **Insurer** after such date.

## **XXIV. CANCELLATION AND TERMINATION**

- A. The **Named Insured** may cancel:
- (1) this Coverage Section;
  - (2) a specific Insuring Agreement under this Coverage Section; or
  - (3) coverage for an **Insured**;
- by mailing or delivering written notice of cancellation to the **Insurer**.

B. The **Insurer** may cancel:

- (1) this Coverage Section;
- (2) a specific Insuring Agreement under this Coverage Section; or
- (3) coverage for an **Insured**;

by mailing or delivering to the **Named Insured** written notice of cancellation at least twenty (20) days before the effective date of cancellation, if the **Insurer** cancels for nonpayment of premium; or sixty (60) days before the effective date of cancellation if the **Insurer** cancels for any other reason.

The **Insurer** will mail or deliver the **Insurer's** notice to the **Named Insured's** last known mailing address. Notice of cancellation will state the effective date of cancellation and the **Policy Period** will end on such date. If this Coverage Section or an Insuring Agreement is cancelled, the **Insurer** will send the **Named Insured** a premium refund due. If either the **Insurer** or **Insured** cancel this Coverage Section, the refund will be the pro-rata amount of the annualized premium. If notice is mailed, proof of mailing will be sufficient proof of notice.

C. This Coverage Section terminates:

- (1) in its entirety, immediately upon expiration of the **Policy Period**;
- (2) in its entirety, immediately upon exhaustion of the Policy Aggregate Limit of Liability, if applicable; provided, that no Coverage Section termination under this Condition shall be effective with respect to a **Sponsored Plan** covered under Insuring Agreement A.(2);
- (3) in its entirety immediately upon the voluntary liquidation or dissolution of the **Named Insured**; provided, that no Coverage Section termination under this Condition shall be effective with respect to any **Sponsored Plan** covered under Insuring Agreement A.(2); or
- (4) as to any **Subsidiary**, immediately upon a change in the **Management Control** of such **Subsidiary**.

## XXV. CHANGES

This Coverage Section contains all the agreements between the **Insured** and the **Insurer** concerning the insurance afforded. The **Named Insured** shown on the Declarations is authorized to make changes to the terms of this Coverage Section with the **Insurer's** consent. This Coverage Section's terms can be amended or waived only by endorsement issued by the **Insurer** and made a part of this Coverage Section.

## XXVI. 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.

Specimen



DARWIN NATIONAL ASSURANCE COMPANY

**FORCEFIELD<sup>SM</sup>**  
**NOT-FOR-PROFIT ORGANIZATIONS**  
**MANAGEMENT LIABILITY PACKAGE POLICY**  
**Employed Lawyers 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 and Conditions and this Coverage Section, DARWIN NATIONAL ASSURANCE COMPANY (the “**Insurer**”) and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**I. INSURING AGREEMENTS**

- A. The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** 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 Section V. of the General Terms and Conditions and Section VI. of this Coverage Section, unless the **Organization** is required or permitted to pay such **Loss** to or on behalf of the **Insured Person** as indemnification.
- B. The **Insurer** shall pay on behalf of the **Organization** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against an **Insured Person** for any **Wrongful Act**, and reported to the **Insurer** in accordance with Section V. of the General Terms and Conditions and Section VI. of this Coverage Section, if the **Organization** pays such **Loss** to or on behalf of the **Insured Person** as indemnification.

**II. DEFINITIONS**

- A. “**Claim**” means any:
- (1) written demand for monetary or non-monetary relief;
  - (2) written request to toll or waive a statute of limitations, or to waive any contractual time bar, relating to a potential **Claim** against any **Insured Person**; or
  - (3) judicial, administrative, disciplinary, bar association or other proceeding against any **Insured Person**, alleging professional misconduct in rendering or failing to render **Legal Services**.

A **Claim** shall also include a **Securities Claim**.

A **Claim** shall be deemed first made when any **Insured** first receives notice of the **Claim**.

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. **“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; or
- (3) any fees, costs, charges or expenses incurred by the **Insured** at the specific written request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

**“Defense Costs”** do not include: (a) amounts incurred prior to the date a **Claim** is first made and reported to the **Insurer**; or (b) compensation or benefits of any **Insured Person** or any overhead expenses of the **Organization**.

D. **“Employee”** means any person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Organization**.

E. **“Financial Impairment”** means the **Organization** 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 **Organization**; or the filing of a petition under the bankruptcy laws of the United States of America; or any equivalent event outside the United States of America.

F. **In-House Counsel”** means an **Employee** who works in the capacity of an attorney providing **Legal Services** to the **Organization**.

G. **“Insured”** means the **Organization** and any **Insured Person**.

H. **“Insured Person”** means any:

- (1) **In-House Counsel**;
- (2) **Employee**, solely in their capacity as a person who supports an **In-House Counsel** in providing **Legal Services** to the **Organization**, and only while acting under the supervision of and at the direction of such **In-House Counsel**;
- (3) attorney, provided by an employment agency, under a written agreement between the **Organization** and the employment agency, to provide **Legal Services** to the **Organization**, but only while acting under the supervision of and at the direction of an **In-House Counsel**; and
- (4) attorney, who is not employed with a legal firm or elsewhere, and who has entered into a written agreement with the **Organization** to provide

**Legal Services** to the **Organization**, but only while acting under the supervision of and at the direction of an **In-House Counsel**.

- I. “**Legal Services**” legal advice and services performed by an **Insured Person** as a duly licensed attorney in good standing, or in the support or assistance thereof, including services performed in a fiduciary capacity.

**Legal Services** also includes:

- (1) **Moonlighting**; and
- (2) Pro Bono **Legal Services** performed by an **In-House Counsel**, on a voluntary basis and without compensation, or as mandated by the state bar association which oversees the **In-House Counsel’s** licensing.

- J. “**Loss**” means:

- (1) damages, settlements or judgments;
- (2) pre-judgment or post-judgment interest;
- (3) punitive, exemplary or the multiple portion of any multiplied damages award, subject to any applicable Sublimit of Liability, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages; and
- (4) **Defense Costs**.

“**Loss**” does not include:

- (a) criminal or civil fines or penalties imposed by law;
- (b) taxes;
- (c) amounts deemed uninsurable under applicable law;
- (d) amounts for which the **Insured** are not legally liable
- (e) amounts which are without legal recourse to an **Insured**; or
- (f) amounts paid or incurred by the **Insureds** to comply with a judgment or settlement for non-monetary or injunctive relief.

However, this Coverage Section shall provide coverage for **Defense Costs** incurred in a **Claim** seeking amounts specified in paragraphs (a) through (f) above, subject to all other terms, conditions and exclusions of this Policy.

- K. “**Moonlighting**” means **Legal Service(s)** performed by full-time **In-House Counsel** outside of working hours and outside the scope of **In-House Counsel’s** employment with the **Organization**, including work performed for or on behalf of officers or directors of the **Organization, Employees** and others.

- L. **“Personal Injury”** means:
- (1) wrongful entry or eviction or other invasion of the right of occupancy;
  - (2) malicious prosecution, or abuse of process;
  - (3) libel or slander or other defamatory acts;
  - (4) false arrest, detention or imprisonment; or
  - (5) publication or an utterance in violation of an individual’s right to privacy.
- M. **“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.
- N. **“Securities Claim”** means an administrative or legal proceeding brought 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:
    - (a) 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 **Organization**; or
    - (b) brought by a security holder of the **Organization** with respect to such security holder’s interest in securities of the **Organization**; or
  - (2) brought derivatively on behalf of the **Organization** by a security holder of the **Organization**.

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.

- O. “**Wrongful Act**” means any actual or alleged:
- (1) **Personal Injury**; or
  - (2) act, error, misstatement, misleading statement, omission, neglect or breach of duty;
- committed by an **Insured Person**, solely in the performance of or failure to perform **Legal Services**.

### III. EXCLUSIONS

This Coverage Section 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 by an **Insured** 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 criminal or deliberate fraudulent act or any wilful violation of law by an **Insured** if a final judgment or adjudication establishes that such act 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 Person** shall not be imputed to any other **Insured Person**; 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 **Organization**, or any person in a functionally equivalent position within the **Organization**, shall be imputed to the **Organization**.

- C. alleging, arising out of, based upon or attributable to, as of the **Pending or Prior Date**, 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 Acts**, 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 or essentially the same facts alleged, or to the same or related **Wrongful Acts** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, prior to the Inception Date of this Policy, 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 bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to, loss of use of or destruction of any tangible property;
- F. 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, improper classification of any **Employee**, 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;

- G. for violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA); provided, however, this Exclusion shall not apply to **Claims** arising out of an **In-House Counsel** providing **Legal Services** to an ERISA fiduciary of the **Organization**;
- H. brought, directly or indirectly, by or on behalf the **Organization**, or any parent company, subsidiary, affiliate, receiver, trustee or successor of the **Organization**; provided however, that this Exclusion shall not apply to the payment of **Defense Costs** incurred in the defense of either: (1) a **Claim** brought by the **Organization**, including any parent company, subsidiary or affiliate thereof, against an **Insured Person**; or (2) 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**;
- I. alleging, arising out of, based upon, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, 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; or seeking **Clean-Up Costs**;
- J. alleging, arising out of, based upon or attributable to a demand for the return or reimbursement of legal fees, costs or expenses;
- K. alleging, arising out of, based upon or attributable to the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in or assets of any entity is inadequate; provided however, that this Exclusion shall not apply to the payment of **Defense Costs** incurred in the defense of any such **Claim**;
- L. brought by or on behalf of any **Insured Person**; provided however, that this Exclusion shall not apply to:
  - (1) a **Claim** brought by an **Employee** for employment practices violations or discrimination, but only to the extent that such **Claim** is based upon the provision of **Legal Services** by an **In-House Counsel** to human resource representatives of the **Organization**; or
  - (2) a **Claim** for **Moonlighting**.

#### IV. DEFENSE AND SETTLEMENT OF A CLAIM

- A. The **Insurer** does not assume any duty to defend any **Claim** under this Coverage Section. However, the **Insurer** shall have the right to fully and effectively associate with the **Insured** in the control, investigation, defense and settlement of any **Claim**.

- B. The **Insured(s)** shall defend and contest any **Claim** made against them. The **Insured** shall obtain the **Insurer's** written consent in the selection of defense counsel to represent the **Insured** as respects any **Claim**, such consent shall not be unreasonably withheld.
- C. The **Insured(s)** shall not admit or assume any liability, incur any **Defense Costs**, make any settlement offer, 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, provided that such settlement fully resolves the **Claim** with respect to all **Insureds** and the **Insurer**.
- D. At the request of the **Named Insured**, the **Insurer** shall reimburse **Defense Costs** prior to the final disposition of any **Claim**, 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 **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.
- E. **Right to Tender Defense**
- (1) Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of a **Claim** to the **Insurer**.
  - (2) This right shall be exercised by the **Named Insured** on behalf of all **Insureds** by providing written notice to the **Insurer** except in the event that coverage is provided for a **Claim** exclusively against an **Insured Person**. Such **Insured Person** shall have the right to tender the defense of the **Claim** to the **Insurer** at his or her option. The **Insured's** right to tender the defense of a **Claim** shall terminate if it is not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. In the event the **Insureds** have complied with all of the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent.
  - (3) The **Insurer's** assumption of the defense of the **Claim** shall be effective upon the **Insurer** providing written confirmation sent thereof to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Section IV. The **Insurer** shall not be obligated to defend such **Claim** after the applicable Limit of Liability has been exhausted.

- (4) When the **Insurer** has assumed the duty to defend, it 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.
- (5) When the **Insurer** has assumed the duty to defend, it shall pay **Defense Costs** excess of the applicable Retention, 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 **Defense Costs** under the terms and conditions of this Coverage Section, such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests.

## V. COOPERATION

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.

## VI. NOTICE OF A CLAIM

The following provision shall apply in lieu of Section V.A. of the General Terms and Conditions:

- A. The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer** at either the physical or email address indicated in Item 7. of the Declarations, of a **Claim** made against an **Insured** as soon as practicable after the **Organization's** General Counsel, Chief Financial Officer or Risk Manager, or any individual with functionally equivalent responsibilities, becomes aware of the **Claim**.

## VII. REPRESENTATIONS AND SEVERABILITY

- A. In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application**. All such statements and representations shall be deemed to be the basis of this Policy and are to be considered as incorporated into this Policy.
- A. Solely with respect to Insuring Agreement A. of this Coverage Section, under no circumstances shall the coverage provided thereunder be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of this Policy.
- B. With respect to the statements and representations contained in the **Application**, no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining the availability of coverage under this Policy with respect to any **Claim** made against such other **Insured Person**. 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 **Organization**, or any person in a functionally equivalent position within the **Organization**, shall be imputed to the **Organization**.

### VIII. OTHER INSURANCE

The following provision shall apply in addition to the provisions of Section VII. OTHER INSURANCE of the General Terms and Conditions:

This Coverage Section shall apply specifically as excess to any Directors and Officers Liability insurance available under this Policy or otherwise, and the **Insurer** shall have no duty to defend or obligation to pay **Loss** until the applicable Limits of Liability of all such Directors and Officers Liability insurance have been exhausted by the payment of loss by either the Directors and Officers Liability insurer or the **Insured**.

### IX. ORDER OF PAYMENTS

A. In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this Coverage Section but which **Loss**, in the aggregate, exceeds the remaining available Limit of Liability applicable to this Coverage Section, then the **Insurer** shall:

- (1) first, pay such **Loss** for which coverage is provided under Insuring Agreement A. of this Coverage Section;
- (2) then, with respect to whatever remaining amount of the applicable Policy Aggregate Limit of Liability is available after payment of such **Loss**, pay such **Loss** for which coverage is provided under Insuring Agreement B. of this Coverage Section.

B. In the event of **Loss** arising from a **Claim** for which payment is due under the provisions of this Coverage Section (including those circumstances described in paragraph A. of this Section IX.), the **Insurer** shall, at the written request of the **Named Insured**:

- (1) first, pay such **Loss** for which coverage is provided under Insuring Agreement A. of this Coverage Section;
- (2) then, either pay or hold payment for such **Loss** for which coverage is provided under Insuring Agreement B. of this Coverage Section.

In the event that the **Insurer** withholds payment under Insuring Agreement B. of this Coverage Section pursuant to the above request, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to the **Organization**, or make such **Loss** payment directly to the **Insured Person** in the event of covered **Loss** under any **Claim** covered under this Coverage Section pursuant to Insuring Agreement A. of this Coverage Section.

C. The **Financial Impairment** of any **Organization** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Coverage Section pursuant to this Section IX.