

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

**PRIVATE COMPANY DIRECTORS, OFFICERS, GENERAL PARTNERSHIP  
AND CORPORATE LIABILITY INSURANCE POLICY INCLUDING  
EMPLOYMENT PRACTICES AND SECURITIES CLAIMS COVERAGE**

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

**Section I. Insuring Agreements**

- A. The Insurer shall pay on behalf of the Insured Persons all Loss that such Insured Person is not indemnified by the Company and which the Insured Person is legally obligated to pay as a result of a Claim (including an Employment Practices Claim, Securities Claim or Partnership Claim) for a Wrongful Act first made against the Insured Persons during the Policy Period or the Discovery Period (if purchased) and reported pursuant to Section VII.**
- B. The Insurer shall pay on behalf of the Company all Loss for which the Company does in fact indemnify and is permitted or required by law to indemnify an Insured Person, and for which an Insured Person shall be legally obligated to pay as a result of a Claim (including an Employment Practices Claim, Securities or a Partnership Claim) for a Wrongful Act first made against the Insured Person during the Policy Period or the Discovery Period (if purchased) and reported pursuant to Section VII.**
- C. The Insurer shall pay on behalf of the Company all Loss which the Company shall be legally obligated to pay as a result of a Securities Claim or Partnership Claim for a Wrongful Act first made against the Company during the Policy Period or the Discovery Period (if purchased) and reported pursuant to Section VII.**

**Section II. Definitions**

- A. "Application"** shall mean each and every application submitted to the Insurer for consideration of insurance together with any attachments to such applications, other materials submitted therewith or referenced or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy, including any and all information submitted in connection with any policy of which this Policy is a renewal, press releases and any press releases or public documents filed by the Company with any federal, state, local or foreign regulatory agency (including but not limited to the Securities and Exchange Commission (SEC)) within the 12 months preceding the effective date of this Policy.
- B. "Claim"** shall mean:
  - 1) a written demand for monetary or non-monetary relief made against any Insured (including any request to toll or waive any statute of limitations);
  - 2) a civil, criminal, administrative, arbitration, action or proceeding brought against any Insured seeking monetary or non-monetary relief that is commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, including any proceeding initiated against any Insured before the Equal Employment Opportunity Commission or any similar state or local governmental body;
  - 3) except with respect to an Employment Practices Claim, any civil, criminal, administrative or regulatory investigation of an Insured Person, once such Insured Person is identified in writing as a subject of such investigation;

- 4) a **Securities Claim**; or
- 5) an **Employment Practices Claim**.

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

- 6) **Partnership Claim**.

C. "**Company**" means the **Named Insured** listed on the Declaration Page or any **Subsidiary**, including any such entity as a debtor in possession.

D. "**Costs of Defense**" shall mean reasonable and necessary legal fees, costs and expenses incurred with the **Insurer's** consent in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond, but will not include the obligation to apply for or furnish such bonds. Costs of Defense shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any Insured. **Costs of Defense** shall not include any fees, costs or expenses incurred prior to the date that a Claim is first reported to the **Insurer**.

E. "**Domestic Partner**" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.

F. "**Employee**" shall mean any past, present or future employee of the Company, including any part-time, seasonal or temporary employee or any applicant for employment, solely in his or her capacity as such. Any person leased to the **Company** and any person hired by written contract to perform work for the Company, or who is an independent contractor for the **Company**, shall also be an Employee, but only if the Company indemnifies the person in the same manner as is provided to the **Company's** permanent employees.

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

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

I. "**Employment Practices Wrongful Act**" shall mean:

- 1) adverse or unfair reprimand of an **Employee**;
- 2) denial of interview or position;
- 3) denial of training to an **Employee**;
- 4) derogatory or disparaging remarks to an **Employee**;
- 5) violation of any federal, state or local law concerning discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992; the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto;
- 6) employment-related misrepresentations or omissions;
- 7) employment-related libel, slander, or defamation;
- 8) failure to grant tenure;
- 9) failure to provide an adequate employment policy or grievance procedure for **Employees**;
- 10) failure to provide training, mentoring, or advancement opportunities to an **Employee**;
- 11) improper discipline of an **Employee**;
- 12) improper performance review of an **Employee**;
- 13) improper transfer, change of position or change of work hours or shift of an **Employee**;
- 14) improper treatment of an **Employee** for their actions as a whistleblower;
- 15) negligent evaluation of an **Employee**;
- 16) negligent release of medical information of an **Employee**;
- 17) **Retaliation** against an **Employee**;
- 18) sexual or other workplace harassment of any kind;

- 19) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- 20) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- 21) negligent hiring, discipline, supervision or retention;
- 22) breach of any oral, written, or implied employment contract;
- 23) invasion of privacy;
- 24) false imprisonment;
- 25) infliction of emotional distress;
- 26) failure or refusal to provide equal treatment or opportunities;
- 27) wrongful failure to promote, transfer or employ; or
- 28) violation of an **Employee's** civil rights relating to any of the above.

**J. "Financial Insolvency"** shall mean the **Company** becoming a debtor in possession, or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

**K. "Insured(s)"** shall mean all **Insured Persons** and with respect to coverage provided under Insuring Agreement I.C., the **Company**.

**L. "Insured Person(s)"** shall mean:

- 1) any past, present or future duly elected or appointed director or officer, general counsel, risk manager, trustee, trust manager, managing member, general partner, partnership manager, joint venture manager, or in the case of a limited liability company, member of the management board (or equivalent position) of the **Company**;
- 2) **Employees** of the **Company**, but solely with respect to a Securities Claim, for whom the **Company** requests coverage at the time the **Claim** is made;
- 3) those persons serving in a functionally equivalent role as above for the **Company** or any **Subsidiary** operating or incorporated outside the United States;
- 4) any individual identified above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor, or in an equivalent executive position, of an **Outside Entity**.
- 5) **Employed Lawyer**.

**M. "Insurer"** shall mean the insurance company identified on the Declarations.

**N. "Loss"** shall mean compensatory damages, statutory attorneys' fees, pre- and post-judgment interest, and **Costs of Defense**, in excess of the Retention. Loss shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award, judgments or settlements to the extent insurable under the law of any applicable jurisdiction most favorable to insurability.

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

**O. "Management Control"** shall mean that the **Company** directly or indirectly has the power to control, manage, or direct through one or more of its **Subsidiaries** either by:

- 1) an ownership of voting securities or voting rights in such entity;
- 2) the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization,

- 3) right to elect, appoint or designate directors, officers, trustees, trust managers, managing members, general partners, partnership manager or joint venture managers of such entities.
- P. "Outside Entity" shall mean any not-for-profit entity classified as such by the Internal Revenue Code or any for-profit entity, but only if such for-profit entity is specifically added by written endorsement to this Policy.
- Q. "Partnership Claim" shall mean any Claim against a Company in its capacity as a trustee, trust manager, managing member, general partner, partnership manager, or joint venture manager of a Subsidiary.
- R. "Policy Period" shall mean the policy period as set forth in the Declarations, or its earlier termination if applicable.
- S. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
- 1) smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
  - 2) hazardous, toxic or radioactive matter or nuclear radiation;
  - 3) waste, which includes material to be recycled, reconditioned or reclaimed; or
  - 4) any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- T. "Pollution" shall mean the actual, alleged or threatened discharge, release, migration, escape or disposal of Pollutants into or on real or personal property, water or the atmosphere. Pollution also means any direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so.
- U. "Related Wrongful Acts" shall mean Wrongful Acts which are the same or continuous and which arise from a common nucleus of facts, regardless of whether such Wrongful Acts are alleged by way of a single or multiple Claim(s) under this Policy or any other policy in effect prior to the inception of this Policy Period.
- V. "Retaliation" shall mean a Wrongful Act relating to or alleged to be in response to any of the following activities:
- 1) the disclosure or threat of disclosure by an Employee to a superior or to any governmental agency of any act by an Insured, which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  - 2) the actual or attempted exercise by an Employee of any right that such Employee has under law, including rights under workers compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act, Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the Occupational Safety and Health Act, or any other law relating to employee rights;
  - 3) the filing of any claim under the Federal False Claims Act, the SarbanesOxley Act of 2002 or any other federal, state, local or foreign "whistleblower" law; or
  - 4) Employee strikes.
- W. "Securities Claim" shall mean any Claim for a Wrongful Act (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission or by any similar state or foreign governmental or securities regulatory entity) made against an Insured alleging a violation of any law, regulation or rule, whether statutory or common law, which is:
- 1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the: a) purchase or sale of any securities issued by the Company, or b) offer or solicitation of an offer to purchase or sell, any securities issued by the Company, or
  - 2) brought by a security holder of the Company, arising solely with respect to such security holder's interest in such securities of the Company, whether directly, by class action, or derivatively on behalf of the Company.
- X. "Subsidiary" shall mean any corporation, trust, limited liability company, limited liability partnership, limited partnership, operating partnership, general partner or joint venture that the Company on or before the inception date of this Policy, directly or indirectly has the power to control, manage, or direct through
- 1) ownership of voting securities or voting rights in such entity;
  - 2) right to elect or appoint directors, officers, trustees, trust managers, managing members, general partners, partnership managers or joint venture managers of such entities or

- 3) rights and obligations pursuant to any contract relating to such entities.
- 4) any not for profit entity exclusively sponsored by the **Company**;
- 5) any entity listed as such in a written endorsement issued by the Insurer;
- 6) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** after such date, provided that the created or acquired entity's total assets do not exceed twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy; or
- 7) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** other than as described in (6) above, if the **Company**, within ninety (90) days of such creation or acquisition, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.

**Y. "Wrongful Act"** shall mean:

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

**Section III. Exclusions**

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

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

- 1) an **Insured** gaining any profit, advantage or remuneration that he, she or it was not legally entitled to receive;
- 2) any deliberately fraudulent or dishonest act or any willful violation of any statute, rule or law, or criminal acts of any **Insured**; or
- 3) any profits made from the purchase or sale by any **Insured** of securities of the **Company** within the meaning of

Section 16(b) of the Securities Exchange Act of 1934 or any similar provision of federal, state or foreign law; provided, however, that the above exclusions, A.1), A.2) and A.3) shall only apply if a final adjudication first establishes that such conduct occurred and provided further that exclusion A.1) shall not apply to any **Securities Claim** alleging violations of Sections 11 or 12 of the Securities Act of 1933.

**B.** alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any **Claim** or notice or circumstance reported under any other policy of which this Policy is a renewal, replacement, or which this Policy may succeed in time;

**C.** alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative action or proceeding involving the Company and/or any **Insured Person** as of the Prior and Pending date stated in the PENDING AND PRIOR LITIGATION DATE section of the Declarations, or any fact, circumstance or situation underlying or alleged in such action or proceeding;

**D.** for any actual or alleged;

- 1) bodily injury, sickness, disease, or death of any person;
- 2) damage to or destruction of any property, including the loss of use thereof; or
- 3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander; provided, however, this subsection D.3) shall not apply to any **Employment Practices Claim**;

**E.** for any violation of any of the responsibilities, obligations or duties imposed by any federal, state or local wage and hour law, the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, and any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation** or an alleged violation of the Equal Pay

Act;

- F. alleging, arising out of, based upon, relating to, or attributable to a **Wrongful Act** of any **Insured Person** serving in any capacity for any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy;
- G. for any **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**;
- H. which is brought by or on behalf of the **Company** or by any **Insured Person**, or which is brought by any security holder of the **Company**, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and without solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**; provided however, this exclusion shall not apply to:
- 1) any **Employment Practices Claim** brought by or on behalf of any **Insured Person**;
  - 2) any **Claim** brought by any **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
  - 3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;
  - 4) any **Claim** brought by any past director or officer of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least two (2) years prior to such **Claim** being first made;
  - 5) any **Claim** brought by a director or officer (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction against such **Company** or any director or officer thereof, provided that such **Claim** is brought by the supervisory or any such similar board of a parent company chartered in such foreign jurisdiction; or
  - 6) any **Claim** brought against any **Insured Person** for **Retaliation**.
- I. **alleging, arising out of, based upon**, relating to, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors; provided however, this exclusion shall not apply to **Securities Claims** otherwise covered under Section I.A. of this Policy.
- J. for any **Wrongful Act** of a Subsidiary or any **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** where such **Wrongful Act** first occurred:
- 1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
  - 2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
  - 3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such Subsidiary.
- K. With the exception of **Costs of Defense**, based upon, arising out of directly or indirectly resulting from or in consequence of, or in any way involving amounts actually or allegedly owed under any express written contract with, or express written **severance obligation of, the Company**; provided, however, this exclusion shall not apply if and to the extent that liability would have attached to the **Insured** in the absence of the written contract or obligation of the **Company**.

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above **Exclusions**.

#### Section IV. Limit of Liability

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

#### Section V. Retention

- A. The applicable Retention specified in the RETENTION section of the Declarations shall be the obligation of the Insureds and shall be a condition precedent to coverage, and must be paid by the Company, before the Insurer has any payment obligation, and shall apply to all covered Loss, including Costs of Defense.
- B. The Retention specified in the RETENTION section of the Declarations shall apply as follows:
  - 1) The Each Claim Retention is applicable to Loss as a result of Claims other than an Employment Practices Claim, Securities or Partnership Claim
  - 2) The Each Employment Practices Claim Retention is applicable to Loss resulting from an Employment Practices Claim.
  - 3) The Each Securities Claim or Partnership Claim Retention is applicable to Loss resulting from a Securities Claim or Partnership Claim.
  - 4) No Retention shall apply to Loss under Insuring Agreement I. A., including Costs of Defense.
- C. For the purposes of the application of the Retention, Loss applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the Company is unable to indemnify the Insured Persons solely by reason of its Financial Insolvency, the Insurer shall, pursuant to the terms and conditions of Section VI.F., advance Costs of Defense incurred by the Insured Persons without first requiring payment of the Retention applicable to Claims covered by Insuring Agreement I.B. The certificate of incorporation, charter or other organizational documents of the Company, including by-laws and resolutions, shall be deemed to require indemnification and advancement of Loss to the Insured Persons to the fullest extent permitted by law.
- D. One Retention shall apply to each and every Claim. The Company shall be responsible for, and shall hold the Insurer harmless from, any amount within the Retention, except where the Company is unable to indemnify the Insured Persons solely by reason of its Financial Insolvency.
- E. More than one Claim involving the same Wrongful Act or Related Wrongful Acts of one or more Insureds shall be considered a single Claim, and only one Retention shall be applicable to such single Claim. All such Claims constituting a single Claim shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such Claim was first made; or (2) the earliest date on which any such Wrongful Act or Related Wrongful Act was reported under this Policy or any other policy providing similar coverage.

#### Section VI. Costs of Defense and Settlements

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

- B.** Notwithstanding **Section VI.A.** above, if all **Insureds** are able to settle all **Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C.** The **Insureds**, and not the **Insurer**, shall have the duty to defend all **Claims**, provided that the **Insureds** shall only retain counsel as may be mutually and expressly agreed upon in writing with the **Insurer**.
- D.** The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insureds** in the investigation, defense or settlement of any **Claim** that may implicate coverage under this Policy. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** with such information as it may reasonably require in the investigation, defense or settlement of any **Claim**.
- E.** If a **Claim** made against any **Insured** includes both covered and uncovered matters, or is made against any **Insured** and others, the **Insured** and the **Insurer** recognize that there must be an allocation between insured **Loss** and uninsured loss. The **Insureds** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between insured and uninsured **Loss** taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insureds** and the **Insurer** are unable to agree upon an allocation, then until a final allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law, the **Insurer** will be obligated to make an interim payment of that amount or portion of **Loss**, including **Costs of Defense**, which the parties agree is not in dispute.
- F.** The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
  - 1)** the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
  - 2)** any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations to the extent they are not in fact repaid;
  - 3)** The **Company** and **Insured Persons** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds** however, if no agreement, the **Insurer** shall pay **Costs of Defense** as specified in **VI.E** above; and
  - 4)** in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Company** and **Insured Persons** will repay the **Insurer** upon demand all **Costs of Defense** advanced by virtue of this provision **VI.F**.
- G.** The **Insurer** shall have no obligation to pay **Loss, including Costs of Defense**, or to defend or continue to defend any **Claim** under any Insuring Agreement or endorsement after the Limit of Liability for the Policy as set forth in LIMITS OF INSURANCE section of the Declarations is exhausted by the payment of **Loss, including Costs of Defense**.

## **Section VII. Notice of Claim**

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

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- C.** In addition to furnishing the notice as provided in **Section VII.A.** the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

- D. **Notice** to the **Insurer** as provided in **Section VII** shall be given to the Director of Claims identified in, and at the address set forth in the Notices to **Insurer** section of the Declarations.

#### **Section VIII. Discovery Period**

- A. In the event the **Insurer** refuses to renew this Policy or the **Company** chooses to cancel or not renew this Policy, the **Company** shall have the right, upon payment of one hundred and fifty percent (150%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred and fifty percent (150%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months following the effective date of such non-renewal or termination and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any Wrongful Act committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.
- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days following the effective date of such non-renewal or termination, at which time the premium shall be deemed fully earned.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

#### **Section IX. General Conditions**

##### **A. Cancellation or Non-Renewal**

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

##### **B. Application**

It is agreed by the Company and the **Insured Persons** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Persons** that the statements in the Application or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application** shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.

It is understood and agreed that the **Insurer** shall not be entitled under any circumstances to rescind Insuring Agreement I.A. of this Policy.

##### **C. Separation of Interests**

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

#### D. Action Against the Insurer

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

#### E. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the Company through the ownership of more than fifty percent (50%) of the voting stock of the **Company**, or the Company merges into another entity or consolidates with another entity such that the **Company** no longer possesses Management **Control** then:

- 1) the **Company** must give written notice of such transaction to the Insurer within ninety (90) days after the effective date of such transaction and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
- 2) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- 3) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

#### F. Outside Entity Provision

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

#### G. Other Insurance

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

#### H. Coverage Extensions

- 1) Lawful Spouse or Domestic Partner Provision  
The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.
- 2) Worldwide Provision  
The coverage provided under this Policy shall apply worldwide. The terms **Insured Persons** are deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.
- 3) Estates and Legal Representatives
  - a) The coverage provided 14 this Policy also shall apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.
  - b) In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Agreements I. B. and I.C.

#### I. Priority of Payments

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

- 1) first, pay **Loss** for which coverage is provided under Insuring Agreement I.A. of this Policy; then
- 2) only after payment of **Loss** has been made pursuant to clause I. 1) above, with respect to whatever remaining amount of the **Limit of Liability** is available after such payment, at the written request of the chief executive officer of the **Company**, either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreement I.B. of this Policy; and then

3) only after payment of **Loss** has been made pursuant to clause I. 1) and clause I. 2) above, with respect to whatever remaining amount of the **Limit of Liability** is available after such payment, at the written request of the chief executive officer of the **Company**, either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreement I.C. of this Policy.

In the event the **Insurer** withholds payment pursuant to clause I. 2) and/or clause I. 3) above, then the **Insurer** shall at such time and in such manner as shall be set forth in written instructions of the chief executive officer of the **Company** remit such payment directly to or on behalf of the **Company** or **Insured Persons**. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this Policy with respect to such funds. The liability of the Insurer with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay.

The bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this policy pursuant to this clause I. 1).

#### **J. Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Company's** and the **Insured's** rights of recovery thereof, and the Company and the Insured shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Company** or the **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this Policy unless a final adjudication or binding arbitration adverse to the **Insured Person** in the underlying proceeding establishes that such **Insured Person** committed a deliberate criminal or deliberate fraudulent act, or such **Insured Person** has been determined, upon a final adjudication or binding arbitration adverse to the **Insured Person**, to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.

#### **K. Choice of Law**

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

#### **L. Assignment**

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

#### **M. Conformity to Statute**

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

#### **N. Representative of the Insurer**

American Safety Insurance Services, Inc. (100 Galleria Parkway, Suite 700, Atlanta, GA 30339) shall act on behalf of the Insurer for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to **Section VII.** of the Policy.

#### **O. Bankruptcy**

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

#### **P. Premiums**

The Named Insured shown in the Declarations:

- 1) Is responsible for the payment of all premiums; and
- 2) Will be the payee for any return premiums paid by or on behalf of the **Insurer**.

#### **Q. Headings**

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

## **R. Entire Agreement**

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

## **S. Dispute Resolution**

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