



Management Liability Insurance Policy

General Terms and Conditions

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this Policy, the **Insurer** agrees as follows:

I. Terms and Conditions

Except for the terms and conditions appearing in these **General Terms and Conditions**, the terms and conditions of each **Coverage Part** shall only apply to that particular **Coverage Part** and in no way shall be construed to apply to any other **Coverage Part**. If any provision in these **General Terms and Conditions** is inconsistent or in conflict with the terms and conditions of any **Coverage Part**, then any defined term referenced in these **General Terms and Conditions** but defined in a **Coverage Part** shall, for purposes of coverage under that **Coverage Part**, have the meaning set forth in that **Coverage Part**.

II. Definitions

A. **Affiliate** means any:

- (i) entity, other than a **Subsidiary**, which the **Named Organization** or any **Subsidiary** controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, oral or written contract or agreement, membership, charter, articles of incorporation or by-law provisions; or
- (ii) not-for-profit entity, other than a **Subsidiary**, which is granted by oral or written contract the right to control the financial or managerial decisions of the **Named Organization** or any **Subsidiary**;

provided, however, that such coverage as may be provided under this Policy for any entity described in subparagraphs (i) and (ii) of this Definition shall be limited solely to **Wrongful Acts** occurring in the course of the exercise of such control of financial or managerial decisions.

B. **Application** means the signed application for the Policy, including any attachments and other materials or information submitted in conjunction with the signed application. The **Application** shall be deemed attached to and part of this Policy. If this Policy is a renewal or replacement of a previous policy or policies issued by the **Insurer**, all signed applications and other materials that were attached to and part of those previous policies shall also be considered part of the **Application** for this Policy. With respect to the **FLI Coverage Part** (if purchased), **Application** shall also mean any public documents filed by the **Named Organization** or any **Subsidiary** with any federal, state, local or foreign regulatory agency.

C. **Continuity Date** means the date set forth in Item 4. of the Declarations as applicable for each **Coverage Part** purchased.

D. **Coverage Part** means each **Coverage Part** that is purchased by the **Insured** as set forth in Item 4. of the Declarations.

E. **Coverage Part Limit of Liability** means the **Coverage Part Limit of Liability** set forth in Item 4. of the Declarations.

F. **Discovery Period** means **Discovery Period** as that term is defined in Clause VIII. of these **General Terms and Conditions** and as set forth by endorsement to this Policy.



Management Liability Insurance Policy

General Terms and Conditions

- G. **Domestic Partner** means a person legally recognized as a domestic or civil union partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by an **Organization**
- H. **Full Annual Premium** means:
- (i) with regard to a canceled or non-renewed policy, the total annual premium charged for this Policy; or
 - (ii) with regard to a canceled or non-renewed **Coverage Part**, the total annual premium charged for such **Coverage Part**.
- I. **Insurer** means the insurance company set forth in the Declarations.
- J. **Limit of Liability** means any and all of the following (including any sublimit made part thereof) as applicable to this Policy and **Coverage Part** thereof: (i) the **Policy Aggregate Limit of Liability**; (ii) each **Coverage Part Limit of Liability**; (iii) the **Shared Limit(s) of Liability**; and (iv) each **Separate Limit of Liability**.
- K. **Management Control** means: (i) 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 or trustees of an entity; or (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of the board of directors or trustees of an entity.
- L. **Named Organization** means the entity set forth in Item 1. of the Declarations.
- M. **Organization** means: (1) the **Named Organization**; (2) any **Subsidiary** thereof; and (3) any **Affiliate** thereof listed by endorsement to this Policy, but solely with respect to the **Coverage Part** indicated on such endorsement. In the event a bankruptcy proceeding shall be instituted by or against an **Organization**, the term **Organization** shall also mean the resulting debtor-in-possession (or equivalent status outside the United States of America), if any, but only for acts on behalf of an **Organization**.
- Organization** does not include and coverage shall not extend under any **Coverage Part** for any **Subsidiary** or **Affiliate**, or an **Individual Insured** of such **Subsidiary** or **Affiliate**, for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, during any time when such entity was not a **Subsidiary** or **Affiliate**.
- N. **Policy Aggregate Limit of Liability** means the **Policy Aggregate Limit of Liability** set forth in Item 3. of the Declarations.
- O. **Policy Period** means the period of time from the inception date set forth in Item 2. of the Declarations to the earlier of the expiration date set forth in Item 2. of the Declarations or the effective date of cancellation of this Policy.
- P. **Related Wrongful Act(s)** means **Wrongful Act(s)** which are the same, repeated or continuous, or **Wrongful Act(s)** which arise from a common causal connection or cause the same or related damages, or a common nexus or nucleus of facts. **Claims** can allege **Related Wrongful Act(s)** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- Q. **Separate Limit of Liability** means the applicable **Separate Limit of Liability** (to the extent elected for a **Coverage Part**) set forth in Item 4. of the Declarations.



Management Liability Insurance Policy

General Terms and Conditions

- R. **Shared Limit of Liability** means the **Shared Limit of Liability** (to the extent elected for a **Coverage Part**) set forth in Item 4. of the Declarations.
- S. **Subsidiary** means:
- (i) any entity of which the **Named Organization** has **Management Control** ("**Controlled Entity**"), on or before the inception date of the **Policy Period**, either directly or indirectly through one or more **Controlled Entities**;
 - (ii) any not-for-profit entity of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**, and whose assets total less than forty percent (40%) of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**; and
 - (iii) any for-profit entity, whose securities are not publicly traded, of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**, and whose assets total less than twenty five percent (25%) of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**.

With regard to subparagraphs (ii) and (iii) of this Definition, the **Named Organization** shall provide the **Insurer** with full particulars of the **Subsidiary** before the end of the **Policy Period**.

Any entity which becomes a **Subsidiary** during the **Policy Period**, but which exceeds the asset limitations stated in subparagraphs (ii) or (iii) of this Definition, shall be provided coverage under this Policy, but only upon the condition that within ninety (90) days after the date of its becoming a **Subsidiary**, the **Named Organization** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the terms and conditions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, the coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Organization** paying, when due, any additional premium required by the **Insurer** relating to such new **Subsidiary**.

- T. **Wrongful Act** shall have the same meaning set forth in each applicable **Coverage Part**.

III. Spouses, Estates, and Legal Representatives

Subject otherwise to the terms, conditions and limitations of these **General Terms and Conditions** and any applicable **Coverage Part**, coverage shall extend to **Loss** arising from any **Claim** for the **Wrongful Acts** of an **Individual Insured** made against:

- A. the estates, heirs or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of such **Individual Insured's** incompetency, insolvency or bankruptcy, provided such persons were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; or
- B. the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her



Management Liability Insurance Policy

General Terms and Conditions

status as the spouse or **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or **Domestic Partner**, or property transferred from the **Individual Insured** to the spouse or **Domestic Partner**; provided, however, this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or **Domestic Partner**, subject to the Policy's terms, conditions and Exclusions.

IV. Limits of Liability

Regardless of the number of **Claims** made during the **Policy Period** or **Discovery Period** (if applicable), or any **Claim** deemed to be made during the **Policy Period** or **Discovery Period** pursuant to Clause VI.B. or VI.C., the maximum the **Insurer** shall be liable to pay for all covered **Loss** (including **Defense Costs**) under this Policy shall be as follows:

- A. The **Policy Aggregate Limit of Liability** shall be the maximum amount for all **Loss** under the Policy for any and all **Coverage Parts**.
- B. The **Coverage Part Limit of Liability** shall be the maximum amount for all **Loss** under the respective **Coverage Part** for which such amount is designated.

Subject to subparagraphs C. or D. below, a **Coverage Part Limit of Liability** may either be a **Shared Limit of Liability** or a **Separate Limit of Liability**, depending upon how designated in Item 4. of the Declarations.
- C. With respect to each **Coverage Part Limit of Liability** designated in Item 4. of the Declarations as part of a **Shared Limit of Liability**:

The **Shared Limit of Liability** shall be the maximum amount for all **Loss** under any and all **Coverage Parts** set forth in Item 4. of the Declarations as part thereof, regardless of any amounts remaining under a participating **Coverage Part Limit of Liability**. The **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**.
- D. With respect to each **Coverage Part Limit of Liability** designated in Item 4. of the Declarations as a **Separate Limit of Liability**:

The **Separate Limit of Liability** shall be the maximum amount for all **Loss** under the respective **Coverage Part** for which such amount is designated. The **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

V. Retention

The Retentions set forth in the Declarations are separate Retentions pertaining only to the applicable **Coverage Part** for which they are set forth in the Declarations. The application of a Retention under one **Coverage Part** shall not reduce the Retention under any other **Coverage Part**.

In the event a **Claim** triggers a Retention in multiple **Coverage Parts**, then the following shall apply:

- A. with regard to **Loss** which is payable under any **Coverage Part** which is subject to a **Separate Limit of Liability**, the Retention applicable to such **Loss** pursuant to the Retention Clause of such **Coverage Part** (or pursuant to any applicable



Management Liability Insurance Policy

General Terms and Conditions

endorsement) shall apply separately to such **Loss**, and the applicable Retention for such **Coverage Part** shall not be reduced by payments of **Loss** made towards the Retention required under any other **Coverage Part**; and

- B. with regard to **Loss** which is payable under any **Coverage Part** which is subject to a **Shared Limit of Liability**, the highest applicable Retention of any **Coverage Part** triggered under such **Shared Limit of Liability** shall be deemed the Retention applicable to **Loss** arising from such **Claim**.

VI. Reporting and Notice

Notice hereunder shall be given in writing at the address set forth in Item 7. of the Declarations. Notice shall reference the policy number set forth in the Declarations, as well as the **Coverage Part(s)** under which the **Claim** is being noticed. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

With respect to all **Coverage Parts**, the following shall apply:

- A. The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** as soon as practicable.
- B. If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause VI.A. above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged in the **Claim** of which such notice has been given, shall be considered made at the time such notice was originally given pursuant to Clause VI.A. above.
- C. If during the **Policy Period** or the **Discovery Period** (if applicable) the **Insured(s)** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insured(s)** 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 any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was originally reported.
- D. Any matter which could involve the payment of **Reputation Loss** under the **D&O Coverage Part** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause VI.A. above.
- E. Any matter which could involve the payment of **Voluntary Compliance Loss** under the **FLI Coverage Part** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause VI.A. above.

The **Insured(s)** shall, as a condition precedent to exercising any right to coverage under this Policy, give to the **Insurer** such information, assistance and cooperation as the **Insurer** may reasonably require, and shall include in any notice under Clause VI.A, B., C., D. or E. above a description of the **Claim** or circumstances, the nature of any alleged



Management Liability Insurance Policy

General Terms and Conditions

Wrongful Acts, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which such **Insured** first became aware of the **Claim** or circumstances.

VII. Cancellation

This Policy or any individual **Coverage Part** may be canceled by the **Named Organization** at any time by either surrendering or mailing written notice to the **Insurer** or its authorized agent stating: (i) which **Coverage Part(s)** is/are to be canceled; and (ii) when thereafter such cancellation shall be effective. In no event shall such cancellation be effective prior to the **Insurer's** receipt of such notice or such surrender.

This Policy may be canceled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Insured**. In the event of non-payment of premium by the **Insured**, the **Insurer** may cancel this Policy by written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender.

If the Policy or any **Coverage Part** shall be canceled by the **Named Organization**, the **Insurer** shall retain the short rate proportion of the applicable premium herein.

If the Policy is canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the applicable premium herein.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice as set forth above is also set forth in any law controlling the construction thereof, the period set forth above shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

VIII. Discovery Period

A. Cancellation or Non-Renewal

If the Policy or any **Coverage Part** is either cancelled or not renewed for any reason other than non-payment of premium, the **Named Organization** shall have the right to purchase a **Discovery Period** for a length of time indicated by endorsement to this Policy, subject to the following:

- (i) The premium for the purchased **Discovery Period** shall be the **Full Annual Premium** multiplied by the applicable percentage amount set forth by endorsement to this Policy. If no such percentage is set forth, or the percentage is set forth as "to be determined," then the premium for such **Discovery Period** shall be an amount as the **Insurer** may reasonably decide.
- (ii) Unless notice of election and the premium contemplated above are received by the **Insurer** within thirty (30) days of the cancellation or non-renewal date, the **Insured's** rights contained in the Clause shall lapse.
- (iii) The **Insured** shall have the right to give the **Insurer** written notice of **Claims** first made against any **Insured** during the **Discovery Period**, but only for



Management Liability Insurance Policy

General Terms and Conditions

Wrongful Acts occurring prior to the end of the **Policy Period**.

- (iv) Notwithstanding the foregoing, the **Discovery Period** shall not apply to a **Reputation Risk Event** occurring during the **Discovery Period**.

B. Change in Control

If there is a **Change in Control** as defined in Clause IX. of these **General Terms and Conditions**, the **Named Organization** shall have the right within thirty (30) days before the end of the **Policy Period** to request an offer from the **Insurer** of a **Discovery Period** for a length of time that does not exceed those lengths offered by endorsement to this Policy per subparagraph A. above and subject to such terms, conditions and premium as the **Insurer** may reasonably decide.

In the event of a **Change in Control**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this subparagraph B.

C. General

If any premium is owed for the Policy, any premium received from the **Insured** shall first be applied to the premium owing for the Policy with the remainder applied to the premium for the **Discovery Period**. The **Discovery Period** shall not take effect unless the outstanding premium for the Policy is paid in full and the premium for the **Discovery Period** is paid when due.

IX. Change in Control

If during the **Policy Period**:

- A. the **Named Organization** shall consolidate with or 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;
 - B. any person or entity or group of persons or entities acting in concert shall acquire **Management Control** of the **Named Organization**; or
 - C. the **Named Organization** shall change from not-for-profit to for-profit status;
- (any of the above events herein referred to as a "**Change In Control**"),

then coverage under this Policy and any purchased **Coverage Part** shall continue until termination of such Policy or **Coverage Part**, but only with respect to **Claims** alleging **Wrongful Acts** committed, attempted or allegedly committed or attempted by the **Insureds** before such **Change In Control**.

This Policy and any purchased **Coverage Part** may not be canceled after the effective time of the **Change In Control**. The **Named Organization** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause VIII. of these **General Terms and Conditions**.

The **Named Organization** shall give the **Insurer** written notice of the **Change In Control** as soon as practicable, but not later than thirty (30) days after the effective date of the **Change In Control** together with such other information as the **Insurer** may require.

X. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds**



Management Liability Insurance Policy

General Terms and Conditions

shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Individual Insured** under this Policy unless such **Individual Insured** has been convicted of a criminal act, or been determined by a final adjudication to have committed a dishonest or fraudulent act or to have obtained any profit or advantage to which such **Individual Insured** was not legally entitled.

Additionally, in the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Individual Insured**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the Retention, the **Insurer** shall have a direct contractual right under this policy to recover from the **Organization**, or in the event of the bankruptcy of the **Organization**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid within the Retention. Such direct contractual right of recovery against the **Organization** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause X. and any other rights the **Insurer** may have under applicable law.

XI. Other Insurance

With respect to all **Coverage Parts**, other than the **EPLI Coverage Part**, such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable **Limit of Liability** for this Policy or any **Coverage Part**. This Policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

Such insurance as is provided by the **EPLI Coverage Part** shall be primary unless expressly written to be excess over other applicable insurance.

With respect to all **Coverage Parts**, in the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the Definition of **Employee** in the applicable **Coverage Part**, coverage as is afforded by this Policy shall be specifically excess of any: (i) indemnification provided by such **Outside Entity** or leasing company; and (ii) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

XII. Representations and Severability

In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application** for this Policy as being accurate and complete. All such statements and representations are the basis of this Policy and are to be considered as incorporated into this Policy.

The **Insureds** agree that in the event that the particulars and statements contained in the **Application** are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under the Policy, then this Policy shall be void *ab initio* as to any **Insured** who knew as of the inception date of the **Policy Period** of the facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and



Management Liability Insurance Policy

General Terms and Conditions

completely disclosed in the **Application**). Solely for purposes of determining whether this Policy shall be void *ab initio* as to an **Insured**, such aforesaid knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

- XIII. Notice and Authority** It is agreed that the **Named Organization** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving of notice of any **Claim**, the giving and receiving of notice of cancellation and non-renewal, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.
- XIV. Assignment** No change in, modification of or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy which is signed by an authorized representative of the **Insurer**.
- XV. Action Against Insurer** No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by final judgment against the **Insured** or by written agreement of the **Insured**, the claimant and the **Insurer**.
- Any person or entity or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured** or an **Organization** to determine the **Insured's** liability, nor shall the **Insurer** be impleaded by the **Insured** or an **Organization** or their legal representatives.
- XVI. Bankruptcy** Bankruptcy or insolvency of any **Insured** or the **Insured's** estate shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this Policy.
- XVII. Coverage Territory** Where legally permissible, this Policy shall apply to any **Claim** made against any **Insured** anywhere in the world.
- XVIII. Governmental Restrictions** This Policy does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the **Insurer** from providing insurance.
- XIX. Headings** The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this Policy, the **Insurer** agrees as follows:

I. Insuring Agreements

This **D&O Coverage Part** affords the following coverage:

Coverage A: Individual Insurance Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Individual Insured**, except when and to the extent that an **Organization** has indemnified the **Individual Insured** for such **Loss**.

Coverage B: Organization Reimbursement Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Organization** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Organization** has indemnified such **Individual Insured** for such **Loss**.

Coverage C: Organization Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Organization** arising from a **Claim** first made against an **Organization** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of an **Organization**.

Coverage D: Reputation Coverage

This **D&O Coverage Part** shall pay the **Reputation Loss** of an **Organization** solely with respect to a **Reputation Risk Event** that first commences and is reported to the **Insurer** during the **Policy Period** up to the amount of the **Reputation Loss Limit of Liability**. Payment of any **Reputation Loss** under this **D&O Coverage Part** shall not waive any of the **Insurer’s** rights under this Policy or at law. Coverage D shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Reputation Risk Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**.

A **Reputation Risk Event** first commences when an **Organization** or any of its **Executives** first become aware of such **Reputation Risk Event** during the **Policy Period** and shall conclude at the earliest of the time when a risk management, public relations or law firm advises an **Organization** that such **Reputation Risk Event** no longer exists or when the **Reputation Loss Limit of Liability** has been exhausted.



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part ("D&O Coverage Part")

Defense Provision

The **Insurer** does not assume any duty to defend; provided, however, the **Named Organization** may at its sole option tender to the **Insurer** the defense of a **Claim** for which coverage is provided by Clause VII. of this **D&O Coverage Part**. Regardless of whether the defense is so tendered, the **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**.

II. Definitions

A. **Claim** means:

- (i) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
- (ii) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (1) service of a complaint or similar pleading;
 - (2) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (3) receipt or filing of a notice of charges; or
- (iii) a formal civil, criminal, administrative or regulatory investigation of an **Individual Insured** for a **Wrongful Act** once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in subparagraph (ii) of this Definition may be commenced.

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 reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

D. **Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of an **Organization** in his or her capacity as such. An individual who is leased to an **Organization** shall also be an **Employee**, but only if such **Organization** provides indemnification to such leased individual in the same manner as is provided to such **Organization's** own employees.

Employee shall also mean any other individual who is contracted to perform work for an **Organization**, or who is an independent contractor for an **Organization**, but only if such **Organization** provides or is required to provide indemnification to such



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

individual in the same manner as provided to such **Organization’s** own employees, pursuant to a written contract; provided, however, an **Organization** may request that no coverage be provided under this **D&O Coverage Part** for an independent contractor named in a specific **Claim**. Such request must be made in writing and within ninety (90) days of the **Claim** being reported to the **Insurer**. If no such request is made, this **D&O Coverage Part** shall apply as if such **Organization** determined that such independent contractor shall receive coverage.

- E. **Excess Benefit** means an “excess benefit” as defined in Section 4958 of the Internal Revenue Code, 26 U.S.C. §4958.
- F. **Executive** means:
 - (i) any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee);
 - (ii) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (i) of this Definition; or
 - (iii) any past, present or future General Counsel and Risk Manager (or equivalent position).
- G. **Financial Insolvency** means: (i) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (ii) the filing of a petition under the bankruptcy laws of the United States of America; or (iii) as to both (i) or (ii) of this Definition, any equivalent events outside the United States of America.
- H. **Foreign Jurisdiction** means any jurisdiction other than the United States of America or any of its territories or possessions.
- I. **Foreign Policy** means any standard executive management liability insurance policy (including all mandatory endorsements, if any) of the **Insurer** or an affiliate of the **Insurer**, which has been approved for sale within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **D&O Coverage Part**. If more than one such policy exists, then **Foreign Policy** means the standard basic policy form typically offered for sale in that **Foreign Jurisdiction** for comparable risks by the **Insurer** or any other affiliate company of the **Insurer**. The term **Foreign Policy** shall not include any partnership management, pension trust or professional liability coverage.
- J. **Indemnifiable Loss** means **Loss** for which an **Organization** has indemnified or is permitted or required to indemnify an **Individual Insured** pursuant to law, contract or the charter, by-laws, operating agreement or similar documents of such **Organization**.
- K. **Individual Insured** means any:
 - (i) **Executive** of an **Organization**;
 - (ii) **Employee** of an **Organization**; or



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

- (iii) **Outside Entity Executive.**
- L. **Insured** means:
 - (i) an **Organization**; or
 - (ii) an **Individual Insured**.
- M. **Loss** means the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
 - (ii) **Defense Costs**, including those incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following Sections of the Internal Revenue Code of 1986 (as amended): §4911; §4940 (a); §4941; §4942; §4943; §4944; §4945; §6652(c)(1)(A) and (B); §6655 (a)(1); and §6656 (a) and (b);
 - (iii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (iii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
 - (iv) **Excess Benefit** penalty assessed in the amount of ten percent (10%) by the Internal Revenue Service (“**IRS**”) against any **Insured(s)** for an **Executive’s** involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any twenty-five percent (25%) penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any two hundred percent (200%) penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**; and
 - (v) **Reputation Loss**.

Loss shall not include: (i) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (ii) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; (iii) civil or criminal fines or penalties; (iv) taxes or tax penalties (whether imposed by federal, state, local or other governmental authority); or (v) the costs and expenses of complying with any injunctive relief or other form of non-monetary relief. **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (i) through (v) of this subparagraph provided such **Defense Costs** result from a covered **Claim**.

Loss shall also not include any compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**.
- N. **Material Publication** means the publication, broadcast or circulation of unfavorable information regarding an **Organization** which can reasonably be expected to lessen public confidence in the competence of the **Organization** or its products and/or services, received or circulated in the geographic area of an **Organization**.



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

- O. **Non-Indemnifiable Loss** means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, by-laws, operating agreement or similar document of an **Organization**.
- P. **Outside Entity** means:
- (i) any not-for-profit entity, other than a **Subsidiary** or **Affiliate**; or
 - (ii) any other entity listed as an **Outside Entity** by endorsement to this Policy.
- Q. **Outside Entity Executive** means: (i) any **Executive** of an **Organization** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of an **Organization**; or (ii) any other person listed as an **Outside Entity Executive** in an endorsement to this **D&O Coverage Part**. It is understood and agreed that, in the event of a disagreement between an **Organization** and an individual as to whether such individual was acting at the specific request or direction of such **Organization**, this **D&O Coverage Part** shall abide by the determination of the **Named Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the Policy. In the event no determination is made within such period, this **D&O Coverage Part** shall apply as if the **Named Organization** determined that such **Individual Insured** was not acting at such **Organization’s** specific request or direction.
- R. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. “Waste” includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- S. **Reputation Loss** means the following amounts incurred during the pendency of or within ninety (90) days prior to and in anticipation of a **Reputation Risk Event**, regardless of whether a **Claim** is ever made against an **Insured** arising from a **Reputation Risk Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:
- (i) the reasonable and necessary fees and expenses incurred by a risk management, public relations or law firm in the performance of **Reputation Risk Management Services** for an **Organization** arising from a **Reputation Risk Event**; and
 - (ii) the reasonable and necessary fees and expenses incurred in the printing, advertising or mailing of **Reputation Risk Event** materials in the performance of **Reputation Risk Management Services** for an **Organization** arising from a **Reputation Risk Event**.
- T. **Reputation Loss Limit of Liability** means the dollar amount set forth in Item 6(a) of the Declarations.
- U. **Reputation Risk Event** means the public announcement of one of the following events which, in the good faith opinion of an **Organization**, did cause or is reasonably likely to cause a **Material Publication**:



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part ("D&O Coverage Part")

- (i) Management Risk Event: the death, incapacity or criminal indictment of any **Individual Insured** for whom an **Organization** maintains key person life insurance;
 - (ii) Bankruptcy/Debt Default/Downsizing: that: (1) an **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of such **Organization**; (2) an **Organization** has defaulted or intends to default on any debt obligation; or (3) the closing or forced sale of a department/unit/division of an **Organization**;
 - (iii) Regulatory Risk Event: the commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
 - (iv) Bodily Injury/Abuse Risk Event: an accusation that an **Individual Insured** (or an individual an **Insured** is legally responsible for) has intentionally caused bodily injury to or death of any person in the performance of his or her duties with an **Organization**;
 - (v) Workplace Violence: an **Employee** of an **Organization** was the victim of a violent crime while on the premises of such **Organization**;
 - (vi) Child Abduction: a child was abducted or kidnapped while under the care or supervision of an **Organization**; or
 - (vii) Contribution Revocation: the withdrawal or demand for return of any non-governmental grant, contribution or bequest in excess of one hundred thousand dollars (\$100,000).
- V. **Reputation Risk Management Services** means those services performed by a risk management, public relations or law firm retained by the **Insured**, with the prior written consent of the **Insurer**, to advise the **Insured** on minimizing potential harm to an **Organization** arising from a **Reputation Risk Event**, including maintaining and restoring public confidence in such **Organization**.
- W. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable **Limit of Liability** and that is acceptable to the claimant.
- X. **Third Party Violation** means any actual or alleged harassment (including sexual harassment) or unlawful discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability), or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or an applicant for employment with an **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- Y. **Wrongful Act** means:
- (i) with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Individual Insureds** in his/her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his/her status as an **Individual Insured** of an **Organization**;
 - (ii) with respect to an **Organization** under Coverage C, any breach of duty,



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

neglect, error, misstatement, misleading statement, omission or act by or on behalf of such **Organization**;

- (iii) with respect to **Outside Entity Executives**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as an **Outside Entity Executive** of an **Outside Entity**;
- (iv) with respect to all **Insureds**, subject to subparagraphs (i), (ii) and (iii) of this Definition, **Wrongful Act** shall specifically include: (1) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules; (2) libel, slander, defamation or publication or utterance in violation of an 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; and (6) infringement of copyright or trademark or unauthorized use of title.

III. Worldwide Coverage

For **Claims** made and maintained in a **Foreign Jurisdiction** for **Wrongful Acts** committed in such **Foreign Jurisdiction**, the **Insurer** shall apply to such **Claims** the provisions of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to such **Insured** in the **Foreign Jurisdiction**; provided, however, this paragraph shall apply only to provisions more favorable by virtue of insuring clauses, extensions, definitions, exclusions or other defense counsel, discovery or extended reporting period, notice and authority, dispute resolution process or order of payments provisions, if any, of the **Foreign Policy** when compared to the same or similar clauses of this **D&O Coverage Part**. This paragraph shall not apply to excess provisions or Policy provisions that address cancellation and non-renewal, duty to defend, defense within or without limits, taxes, claims made provisions or any other provision of this Policy intended to govern coverage worldwide.

All premiums, limits, Retentions, **Loss** and other amounts under this **D&O Coverage Part** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** due under this **D&O Coverage Part** (subject to the terms, conditions and limitations of this **D&O Coverage Part**) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Organization**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer’s** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

IV. Exclusions

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

- A. arising out of, based upon or attributable to:
 - (i) the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or
 - (ii) the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed;

- B. alleging, arising out of, based upon or attributable to the facts alleged, or the same or **Related Wrongful Act(s)** alleged or contained in any claim or demand which has been reported, or in any circumstances of which notice has been given, under any prior insurer’s policy or policy of which this **D&O Coverage Part** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Continuity Date** for this **D&O Coverage Part**, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
- D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **D&O Coverage Part**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity, other than as an **Executive** or **Employee** of an **Organization**, or as an **Outside Entity Executive** of an **Outside Entity**;
- F. which is brought by or on behalf of an **Organization** against any **Individual Insured**; provided, however, this Exclusion shall not apply to any derivative **Claim** made on behalf of such **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or such **Organization**;
- G. for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive** if such **Claim** is brought by the **Outside Entity** or any **Executive** thereof;
- H. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;
- I. for: (i) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this Exclusion shall not apply to **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**;
- J. for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

- or common law;
- K. alleging, arising out of, based upon or attributable to:
- (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered;
 - (ii) improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
 - (iii) failure to provide or enforce legally required meal or rest break periods;
- L. alleging, arising out of, based upon or attributable to the employment of any individual, a **Third-Party Violation** or any wrongful employment practice, including, but not limited to, wrongful termination, dismissal or discharge, breach of implied contract, harassment, sexual harassment or hostile work environment, discrimination, retaliation, employment-related misrepresentations, libel, slander, humiliation, defamation or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful discipline, demotion, negligent employee evaluation, failure to grant tenure or practice privileges, negligent hiring, training or supervision, or other employment-related claim;
- M. alleging, arising out of, based upon or attributable to any purchase or sale of securities by an **Organization** or **Outside Entity** or **Claims** brought by securities holders of such **Organization** or **Outside Entity** in their capacity as such; provided, however, this Exclusion shall not apply to the issuance by an **Organization** of bond debt or **Claims** brought by bond debt holders;
- N. alleging, arising out of, based upon or attributable to:
- (i) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
 - (ii) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of an **Organization** or any members of their family or any entity with which they are affiliated; or
 - (iii) political contributions, whether domestic or foreign; or
- O. with respect to Coverage C only:
- (i) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, this Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement; or
 - (ii) alleging, arising out of, based upon or attributable to any actual or alleged patent infringement or misappropriation of trade secrets.



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

For the purpose of determining the applicability of the foregoing Exclusions, other than Exclusions B., C., D., F. and O.: (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (2) only facts pertaining to and knowledge possessed by any past, present or future executive director, chief executive officer or chief financial officer (or equivalent positions) of an **Organization** shall be imputed to such **Organization**.

However, Exclusions A. through O. do not apply to **Reputation Loss** or **Reputation Risk Events**.

The **Insurer** shall not be liable to make any payment for such **Reputation Loss**:

- P. arising out of, based upon or attributable to the facts alleged, or the same or related **Reputation Risk Event** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this **D&O Coverage Part** is a renewal or replacement or which it may succeed in time;
- Q. arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Continuity Date** for this **D&O Coverage Part**, or involving any **Reputation Risk Event** which is the same or a related **Reputation Risk Event** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
- R. arising out of, based upon or attributable to any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
- S. arising out of, based upon or attributable to the hazardous properties of nuclear materials.

V. Limits of Liability

The following provision shall apply in addition to the provisions of Clause IV. LIMITS OF LIABILITY of the **General Terms and Conditions**:

Reputation Insurance

The maximum limit of the **Insurer’s** liability for all **Reputation Loss** arising from all **Reputation Risk Events** occurring during the **Policy Period**, in the aggregate, shall be the amount set forth in the Declarations as the **Reputation Loss Limit of Liability**. This **Reputation Loss Limit of Liability** shall be the maximum limit of the **Insurer** under this **D&O Coverage Part** for **Reputation Loss**, regardless of the number of **Reputation Risk Events** occurring during the **Policy Period**; provided, however, the **Reputation Loss Limit of Liability** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to this **D&O Coverage Part** as set forth in the Declarations.

VI. Retention

The following provision shall apply in addition to the provisions of Clause V. RETENTION of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the Declarations for this **D&O**



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

Coverage Part, such Retention to be borne by the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of an **Organization**. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.

In the event an **Organization** is unable to pay an applicable Retention due to **Financial Insolvency**, then the **Insurer** shall commence advancing **Loss** within the Retention; provided, however, that the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Organization** pursuant to Clause X. SUBROGATION of the **General Terms and Conditions**.

No Retention is applicable to **Reputation Loss** or **Non-Indemnifiable Loss** under Coverage A.

VII. Defense Costs, Defense Counsel, Settlements, Judgments (Including the Advancement of Defense Costs)

Defense

The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld.

Insured’s Option to Tender Defense

The **Insureds** shall have the right to tender the defense of the **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Organization** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Clause VI. of the **General Terms and Conditions**. This right shall terminate if 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**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named 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 Clause VII.

In the event the **Insurer** accepts the tender of defense of such **Claim**, the **Insurer** shall be responsible for the retention of defense counsel for such **Claim**.

General Provisions

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause VII., the **Insurer** nevertheless shall advance, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the terms and conditions of this **D&O Coverage Part** to payment of such **Loss**.



Management Liability Insurance Policy Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insured’s** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

Additionally, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs** or **Reputation Loss** or retain risk management, public relations or law firm without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs** and **Reputation Loss** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **D&O Coverage Part**. The **Insurer** shall not unreasonably withhold any consent required under this **D&O Coverage Part**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **D&O Coverage Part**. In addition, the **Insured** shall not take any action, without the **Insurer’s** written consent, which prejudices the **Insurer’s** rights under this **D&O Coverage Part**.

When the **Insurer** has assumed the defense of a **Claim** and the **Insureds** do not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to any applicable **Limit of Liability**, the **Insurer’s** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** (“**Settlement Opportunity Amount**”), plus (2) eighty percent (80%) of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining twenty percent (20%) of such covered **Loss** excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Declarations or to those **Claims** for which the **Insurer** has not assumed the defense.

With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

This Clause VII. shall not be applicable to **Reputation Loss**

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Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

VIII. Allocation

In the event that the **Insured** tenders the defense of a **Claim** in accordance with Clause VII. above, the following allocation provision shall apply:

If both **Loss** covered under this **D&O Coverage Part** and loss not covered under this **D&O Coverage Part** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **D&O Coverage Part** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs:** One hundred percent (100%) of **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss** subject to Clause VII. of this **D&O Coverage Part**; and
- B. **Loss** other than **Defense Costs:** All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of **Loss**:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one (1) arbitrator selected by the **Insureds**, one (1) arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two (2) arbitrators.

IX. Order of Payments

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

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **D&O Coverage Part**, then with respect to whatever remaining **Limit of Liability** is available after payment of such **Loss**;
- B. then pay such **Loss** for which coverage is provided under Coverage B of this **D&O Coverage Part**, and
- C. then pay such **Loss** for which coverage is provided under Coverage C or D of this **D&O Coverage Part**.

In the event of **Loss** arising from a **Claim** for which payment is due under the provisions of this **D&O Coverage Part** (including those circumstances described in the first paragraph of this Clause IX., the **Insurer** shall at the written request of the **Named Organization**:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **D&O Coverage Part**, then
- B. either pay or hold payment for such **Loss** for which coverage is provided under



Management Liability Insurance Policy

Directors & Officers Liability Coverage Part (“D&O Coverage Part”)

Coverage B, C or D of this **D&O Coverage Part**.

In the event that the **Insurer** withholds payment under Coverage B, C or D of this **D&O Coverage Part** pursuant to the above request, then the **Insurer** shall at any time in the future, at the request of the **Named Organization**, release such **Loss** payment to an **Organization**, or make such **Loss** payment directly to the **Individual Insured** in the event of covered **Loss** for any **Claim** covered under this **D&O Coverage Part** pursuant to Coverage A of this **D&O Coverage Part**.

The Financial Insolvency of any Organization or any Individual Insured shall not relieve the Insurer of any of its obligations to prioritize payment of covered Loss under this D&O Coverage Part pursuant to this Clause IX.

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Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this Policy, the **Insurer** agrees as follows:

I. Insuring Agreements

This **EPLI Coverage Part** shall pay the **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Insured**.

Defense Provision

The **Insurer** does not assume any duty to defend; provided, however, the **Named Organization** may at its sole option tender to the **Insurer** the defense of a **Claim** for which coverage is provided by Clause V. of this **EPLI Coverage Part**. Regardless of whether the defense is so tendered, the **Insurer** shall advance **Defense Costs** in excess of the applicable Retention amount on behalf of the **Insured** prior to final disposition of the **Claim**.

II. Definitions

A. **Claim** means:

- (i) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
- (ii) a civil, criminal, administrative or regulatory proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (1) service of a complaint or similar pleading;
 - (2) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (3) receipt or filing of a notice of charges;

including, but not limited to, an Equal Employment Opportunity Commission (“**EEOC**”) or Office of Federal Contract Compliance Program (“**OFCCP**”) (or similar federal, state or local agency) proceeding or investigation; or

- (iii) an arbitration proceeding pursuant to an employment contract, policy or practice of an **Organization** commenced by receipt of a demand for arbitration or similar document.

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

- ##### B. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

C. **Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of an **Organization** in his or her capacity as such. An individual who is leased to an **Organization** shall also be an **Employee**, but only if such **Organization** provides indemnification to such leased individual in the same manner as is provided to such **Organization’s** own employees.

Employee shall also mean any other individual who is contracted to perform work for an **Organization**, or who is an independent contractor for an **Organization**, but only if such **Organization** provides or is required to provide indemnification to such individual in the same manner as provided to such **Organization’s** own employees, pursuant to a written contract; provided, however, an **Organization** may request that no coverage be provided under this **EPLI Coverage Part** for an independent contractor named in a specific **Claim**. Such request must be made in writing and within ninety (90) days of the **Claim** being reported to the **Insurer**. If no such request is made, this **EPLI Coverage Part** shall apply as if such **Organization** determined that such independent contractor shall receive coverage.

D. **Employment Practices Violation** means any actual or alleged:

- (i) wrongful termination of employment (actual or constructive), dismissal or discharge;
- (ii) breach of an implied contract;
- (iii) harassment, sexual harassment or hostile work environment;
- (iv) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
- (v) **Retaliation**;
- (vi) employment-related misrepresentation(s) to an **Employee** of an **Organization** or applicant for employment with an **Organization** or an **Outside Entity**;
- (vii) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (viii) wrongful failure to employ or promote;
- (ix) wrongful deprivation of career opportunity with an **Organization**, wrongful discipline, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
- (x) failure to grant tenure;
- (xi) failure to grant practice privileges; or
- (xii) with respect to subparagraphs (i) through (xi) of this Definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent organizational policies and procedures, or violation of an individual’s civil rights;

but only if the actual or alleged **Employment Practices Violation** relates to an **Employee** of an **Organization** or an **Outside Entity**, or to an applicant for



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

employment with an **Organization** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

- E. **Executive** means:
- (i) any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee);
 - (ii) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (i) of this Definition; or
 - (iii) any past, present or future General Counsel and Risk Manager (or equivalent position).
- F. **Financial Insolvency** means: (i) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (ii) the filing of a petition under the bankruptcy laws of the United States of America; or (iii) as to both (i) or (ii) of this Definition, any equivalent events outside the United States of America.
- G. **Foreign Jurisdiction** means any jurisdiction other than the United States of America or any of its territories or possessions.
- H. **Individual Insured** means any:
- (i) **Executive** of an **Organization**;
 - (ii) **Employee** of an **Organization**; or
 - (iii) **Outside Entity Executive**.
- I. **Insured** means:
- (i) an **Organization**; or
 - (ii) an **Individual Insured**.
- J. **Loss** means the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
- (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
 - (ii) **Defense Costs**;
 - (iii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). The enforceability of this subparagraph (iii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
 - (iv) salary, wages and bonus compensation, including back pay and front pay; and
 - (v) an award of statutory attorneys’ fees.



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

Loss shall not include: (i) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (ii) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; (iii) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (iv) the costs and expenses of complying with any order of injunctive relief or other form of non-monetary relief, including any liability or costs incurred by any **Insured** to modify any building or property in order to make said 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 or seminar; (v) civil or criminal fines or penalties; (vi) taxes or tax penalties or interest thereon (whether imposed by federal, state, local or other governmental authority). **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (i) through (vi) of this subparagraph provided such **Defense Costs** result from a covered **Claim**.

- K. **Outside Entity** means:
- (i) any not-for-profit entity, other than a **Subsidiary** or **Affiliate**; or
 - (ii) any other entity listed as an **Outside Entity** by endorsement to this Policy.
- L. **Outside Entity Executive** means: (i) any **Executive** of an **Organization** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of an **Organization**; or (ii) any other person listed as an **Outside Entity Executive** in an endorsement to this **EPLI Coverage Part**. It is understood and agreed that, in the event of a disagreement between an **Organization** and an individual as to whether such individual was acting at the specific request or direction of such **Organization**, this **EPLI Coverage Part** shall abide by the determination of the **Named Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the Policy. In the event no determination is made within such period, this **EPLI Coverage Part** shall apply as if the **Named Organization** determined that such **Individual Insured** was not acting at such **Organization’s** specific request or direction.
- M. **Retaliation** means an adverse employment act of an **Insured** alleged to be in response to any of the following activities: (i) the disclosure or threat of disclosure by an **Employee** of an **Organization** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** that is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (ii) the actual or attempted exercise by an **Employee** of an **Organization** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker’s compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (iii) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign “whistle-blower” law; or (iv) strikes of an **Employee** of an **Organization** or an **Outside Entity**.
- N. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable **Limit of Liability** and that is acceptable to the claimant.



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

- O. **Third Party Violation** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (iii) and (iv) of the Definition of **Employment Practices Violation**, or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or applicant for employment with an **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- P. **Wrongful Act** means any actual or alleged: (i) **Employment Practices Violation**; or (ii) **Third Party Violation**.

III. Exclusions

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

- A. arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent act if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act was committed;
- B. alleging, arising out of, based upon or attributable to the facts alleged, or the same or **Related Wrongful Act(s)** alleged or contained in any claim or demand which has been reported, or in any circumstances of which notice has been given, under any prior insurer’s policy or policy of which this **EPLI Coverage Part** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit, **EEOC** (or similar state, local or foreign agency) proceeding or investigation or other proceeding pending against any **Insured**, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Continuity Date** for this **EPLI Coverage Part**, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, **EEOC** (or similar state, local or foreign agency) proceeding or investigation or other proceeding in the underlying demand, order, decree or judgment;
- D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **EPLI Coverage Part**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity, other than as an **Executive** or **Employee** of an **Organization**, or as an **Outside Entity Executive** of an **Outside Entity**;
- F. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;
- G. for violation(s) of any of the responsibilities, obligations or duties imposed by 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



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

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 the portion of a **Claim** attributable to **Retaliation**;

- H. alleging, arising out of, based upon or attributable to:
- (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (other than tort-based back pay or front pay damages for non-conversion related torts);
 - (ii) improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
 - (iii) failure to provide or enforce legally required meal or rest break periods;
- provided, however, this Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;
- I. alleging, arising out of, based upon or attributable to any obligation pursuant to any worker’s compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;
- J. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any **Insured** under any express contract or agreement; provided, however, this Exclusion shall not apply to:
- (i) liability which would have attached in the absence of such express contract or agreement; or
 - (ii) **Loss** constituting **Defense Costs**.

For the purpose of determining the applicability of the foregoing Exclusions, other than Exclusions B., C., and D.: (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future executive director, chief executive officer or chief financial officer (or equivalent positions) of an **Organization** shall be imputed to such **Organization**.

IV. Retention

The following provision shall apply in addition to the provisions of Clause V. RETENTION of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the Declarations for this **EPLI Coverage Part**, such Retention to be borne by the **Insureds** and shall remain uninsured. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.

In the event an **Organization** is unable to pay an applicable Retention due to **Financial Insolvency**, then the **Insurer** shall commence advancing **Loss** within the Retention; provided, however, that the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Organization** pursuant to Clause X. SUBROGATION of the **General Terms and Conditions**.



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

V. Defense Costs, Defense Counsel, Settlements, Judgments

Defense

The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld.

Insured’s Option to Tender Defense

The **Insureds** shall have the right to tender the defense of the **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Organization** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Clause VI. of the **General Terms and Conditions**. This right shall terminate if 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**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named 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 Clause V.

In the event the **Insurer** accepts the tender of defense of such **Claim**, the **Insurer** shall be responsible for the retention of defense counsel for such **Claim**.

General Provisions

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause V., the **Insurer** nevertheless shall advance, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled under the terms and conditions of this **EPLI Coverage Part** to payment of such **Loss**.

The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insured’s** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

Additionally, the **Insured** shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

terms of this **EPLI Coverage Part**. The **Insurer** shall not unreasonably withhold any consent required under this **EPLI Coverage Part**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **EPLI Coverage Part**. In addition, the **Insured** shall not take any action, without the **Insurer’s** written consent, which prejudices the **Insurer’s** rights under this **EPLI Coverage Part**.

In the event the **Insureds** do not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to any applicable **Limit of Liability**, the **Insurer’s** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** (“**Settlement Opportunity Amount**”), plus (2) eighty percent (80%) of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining twenty percent (20%) of such covered **Loss** in excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Declarations.

With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

VI. Allocation

In the event that the **Insured** tenders the defense of a **Claim** in accordance with Clause V. above, the following allocation provision shall apply:

If both **Loss** covered under this **EPLI Coverage Part** and loss not covered under this **EPLI Coverage Part** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **EPLI Coverage Part** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs**: One hundred percent (100%) of **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss** subject to Clause V. of this **EPLI Coverage Part**; and
- B. **Loss** other than **Defense Costs**: All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the number of covered and non-covered counts, causes of action or allegations against the **Insured(s)**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of **Loss**:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and



Management Liability Insurance Policy

Employment Practices Liability Coverage Part (“EPLI Coverage Part”)

- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one (1) arbitrator selected by the **Insureds**, one (1) arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two (2) arbitrators.

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