

Private Advantage Policy

LIBERTY INSURANCE UNDERWRITERS INC.

(A Stock Insurance Company, hereinafter the “Insurer”)

LIBERTY PRIVATE ADVANTAGE POLICY

GENERAL TERMS AND CONDITIONS

In consideration of the payment of the premium and in reliance on all statements made and information furnished by the **Insureds** to the Insurer in the **Application**, which is hereby made a part hereof, and subject to the foregoing Declarations and to all other terms of this **Policy**, the **Insureds**, and the Insurer agree as follows:

1. TERMS AND CONDITIONS

Unless stated to the contrary in any Coverage Part, the terms and conditions of each Coverage Part of this **Policy** apply only to that Coverage Part and shall not apply to any other Coverage Part of this **Policy**. Any term referenced in these General Terms and Conditions which is defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that 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, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

These General Terms and Conditions do not apply to the Crime Coverage Part, if purchased; all terms and conditions applicable to coverage under the Crime Coverage Part are set forth solely in such Coverage Part.

2. DEFINITIONS

When used in this **Policy**:

- A. **Application** means all signed applications, including attachments and materials submitted therewith, for this **Policy** or for any policy issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement. All such applications, attachments and materials are deemed attached to and incorporated into this **Policy**.
- B. **Company** means, collectively, the **Parent Company** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- C. **Defense Costs** means reasonable costs, charges, fees (including but not limited to attorneys’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company** or other overhead of the **Company**) incurred by the **Insureds** in defending a **Claim** against such **Insured** and the premium for appeal, attachment or similar bonds although the Insurer has no obligation to apply for or secure such bond.
- D. **Discovery Period** means the period for the extension of coverage, if purchased, described in Subsection 4 of these General Terms and Conditions.
- E. **Domestic Partners** means any natural person qualifying as a domestic partner under any federal, state or local law or under the provisions of any formal program established by a **Company**.
- F. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended, any similar state or local common or statutory law and any rules and regulations promulgated thereunder.
- G. **Executive Officers** means with respect to any **Company** its former, current or future chairperson, president, chief executive officer, chief financial officer, in-house general counsel and, solely with respect to the Employment Practices Liability Coverage Part if purchased, the director of human resources or equivalent position.

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- H. **Financial Impairment** means the status of the **Company** resulting from (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or (2) the **Company** becoming a debtor in possession.
- I. **Insureds** means, with respect to any Coverage Part, all organizations, plans and natural persons defined as **Insureds** thereunder.
- J. **Insured Persons** means, with respect to any Coverage Part, all natural persons defined as **Insureds** thereunder.
- K. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- L. **Managers** means any natural persons who were, now are or shall become a manager, member of the board of managers or equivalent executive of a **Company** that is a limited liability company.
- M. **Parent Company** means the organization first named in Item I of the Declarations.
- N. **Policy** means, collectively, the Declarations, the **Application**, this policy form (including all attached Coverage Parts) and any endorsements hereto.
- O. **Policy Period** means the period of time specified in Item III of the Declarations, subject to prior termination in accordance with Subsection 12 of these General Terms and Conditions.
- P. **Policy Period Premium** means the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the **Policy Period**.
- Q. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, and electric or magnetic or electromagnetic field.
- R. **Subsidiary**, either in the singular or plural, means:
1. any corporation or limited liability company in which more than 50% of the outstanding voting securities or voting rights representing the present right to elect, appoint or designate directors, **Managers**, or equivalent executives is owned, directly or indirectly, in any combination, by one or more **Companies**;
 2. any corporation or limited liability company in which 50% of the outstanding voting securities or voting rights representing the present right to elect, appoint or designate directors, **Managers** or equivalent executives is owned, directly or indirectly, in any combination, by one or more **Companies**, provided one or more **Companies** control the management and operations of such organization pursuant to a written agreement with such organization and/or the other owners of such organization; and
 3. any foundation, charitable trust or political action committee sponsored exclusively by one or more **Companies**.



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3. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** under any Coverage Part shall be considered **Insureds** under such Coverage Part; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this **Policy**, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

4. DISCOVERY PERIOD

If the Insurer or the **Insureds** do not renew this **Policy** or if the **Parent Company** terminates this **Policy**, the **Insureds** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Discovery Period** set forth in Item V(B) of the Declarations following the effective date of such nonrenewal or termination, but only with respect to a covered **Wrongful Act** taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within thirty (30) days following the effective date of such termination or nonrenewal. Any **Claim** made during such **Discovery Period** for such prior **Wrongful Acts** shall be deemed to have been made during the **Policy Period**.

The premium due for such **Discovery Period** shall equal to the amount stated in Item V(A) of the Declarations of the **Annual Premium**. The entire premium for such **Discovery Period** shall be deemed fully earned and non-refundable upon payment.

5. LIMIT OF LIABILITY, RETENTION AND PRIORITY OF PAYMENT

For the purposes of this **Policy**, all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against them, regardless of whether such date is before or during the **Policy Period**.

The maximum aggregate liability of the Insurer under all Coverage Parts, combined, other than the Crime Coverage Part (if purchased) for all covered **Loss** resulting from all **Claims** first made during the **Policy Period** shall be the amount stated in Item IV(A) of the Declarations, regardless of the number of **Claims** or the time of payment by the Insurer.

The maximum aggregate liability of the Insurer under each Coverage Part for all covered **Loss** resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit(s) of Liability for such Coverage Part as set forth in the Coverage Schedule in Item IV(B) of the Declarations, regardless of the number of **Claims** or the time of payment by the Insurer.

If the Aggregate Limit of Liability applicable to the Directors, Officers and Company Liability Coverage Part, if purchased, is exhausted by reason of payment by the Insurer of covered **Loss**, then such Coverage Part shall afford up to \$500,000 of additional coverage under Insuring Clause A of such Coverage Part for any covered **Loss** incurred by the **Insured Persons**, provided such additional coverage shall be excess of all other insurance specifically excess of this **Policy**. If available, such additional \$500,000 Limit of Liability shall apply to covered **Loss** resulting from all **Claims** first made during the **Policy Period**, regardless of whether the **Loss** was incurred or the **Claim** was first made before or after such additional Limit of Liability is available.

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The Limit(s) of Liability for the **Discovery Period**, if purchased, shall be part of and not in addition to the Limit(s) of Liability for the **Policy Period**. The purchase of the **Discovery Period** shall not increase or reinstate the applicable Limit of Liability, which shall be the maximum liability of the Insurer for the **Policy Period** and the **Discovery Period**, combined.

Defense Costs shall be part of and not in addition to the applicable Limits of Liability set forth in Item IV of the Declarations, and **Defense Costs** shall reduce such Limit of Liability. If the Limit of Liability with respect to the entire Policy or any Coverage Part is exhausted by payment of **Loss**, the Insurer's obligations under the entire Policy or such Coverage Part, respectively, shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

Except as otherwise provided in this Subsection 5, the Insurer's liability with respect to **Loss** arising from each **Claim** covered under one or more Coverage Parts shall apply to that part of **Loss** which is excess of the applicable Retention for such Coverage Part(s) as set forth in the Coverage Schedule in Item IV(B) of the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

Any Retention for Indemnified **Loss** shall apply only to (i) **Loss** which is incurred by **Insured Persons** and is indemnified by the **Company**, and (ii) **Loss** which is incurred by **Insureds** other than **Insured Persons**. No Retention shall apply to **Loss** which is incurred by **Insured Persons** and is not indemnified by the **Company**. However, the **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law.

If **Loss** is incurred that is acknowledged by the Insurer to be covered under this **Policy** except that such **Loss** exceeds the remaining applicable Limit of Liability, the Insurer shall pay that portion of such **Loss** incurred by **Insured Persons** which is not indemnified by the **Company** before paying any other covered **Loss**.

6. **NOTICE**

The **Insureds** shall, as a condition precedent to their rights under any Coverage Part, give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after any **Executive Officer** or the **Company's** risk manager first learns of such **Claim**, but in no event later than sixty (60) days after expiration of the **Policy Period** or, if purchased, during the **Discovery Period**.

If during the **Policy Period** or the **Discovery Period**, if purchased, the **Insureds** first become aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under a Coverage Part and during such **Policy Period** or **Discovery Period** give written notice to the Insurer of:

- a. the names of the potential claimants and a description of the specific **Wrongful Act** which forms the basis of such potential **Claim**,
- b. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**,
- c. the consequences which have resulted or may result from such specific **Wrongful Act**,
- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
- e. the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**,

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made during the **Policy Period** or **Discovery Period**, if purchased, in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

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All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item II of the Declarations. Notice to the Insurer of any **Claim** or **Wrongful Act** shall be given to the Insurer at the address set forth in Item VI(A) of the Declarations. All other notices to the Insurer under this **Policy** shall be given to the Insurer at the address set forth in Item VI(B) of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

Any notice to the Insurer of any **Claim** or **Wrongful Act** shall designate the Coverage Part(s) under which the notice is being given and shall be treated as notice under only the Coverage Part(s) so designated.

7. **DEFENSE AND SETTLEMENT**

Subject to this Subsection 7, it shall be the right and duty of the Insurer and not the duty of the **Insureds** to defend any **Claim**, other than a **Pollution Claim**, even if such **Claim** is groundless, false or fraudulent. However, an **Insured** shall have the right to assume the duty to defend any such **Claim** by providing written notice thereof to the Insurer, provided the Insurer consents in writing to such assumption. It shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Pollution Claim** under the Pollution Claim Coverage Part, if purchased.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the Insurer all settlement demands or offers received by the **Insureds** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

The Insurer may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the Insurer deems reasonable. If any **Insureds** refuse to consent to the settlement of a **Claim** recommended by the Insurer and acceptable to a claimant, then the Insurer shall not pay **Loss** for such **Claim** in excess of the sum of:

- a. The amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
- b. 70% of **Loss** incurred for such **Claim** in excess of the amount specified in Subsection 7.a. above.

With respect to any **Claim** which an **Insured** is defending, the Insurer shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by the **Insureds** regarding (1) the selection of appropriate defense counsel, (2) substantive defense strategies, including without limitation decisions regarding the filing and content of substantive motions, and (3) settlement negotiations.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

Subject to Subsection 8 of these General Terms and Conditions, if an **Insured** has the duty to defend a **Claim**, the Insurer shall advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** have incurred in connection with such **Claim**, prior to disposition of such **Claim**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this **Policy**, the **Insureds**, severally according to their interests, shall repay the Insurer such **Defense Costs**.

The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this Subsection 7.



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8. ALLOCATION

If in any **Claim** the **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including **Insureds**) who are not afforded coverage for such **Claim**, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss as follows:

- a. 100% of such amount constituting defense costs shall be allocated to covered **Loss**;
- b. all other amounts shall be allocated to covered **Loss** based upon the relative legal exposures of the parties to covered and uncovered matters.

9. OTHER INSURANCE

If any **Loss** under this **Policy** is insured under any other valid and collectible policy(ies), prior or current, then this **Policy** shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this **Policy**.

10. TRANSACTIONS CHANGING COVERAGE

- a. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Company**:

- i. acquires securities or other rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**, or
- ii. acquires any organization by merger into or consolidation with the **Company**,

then, subject to all terms and conditions of this **Policy**, such organization and its **Insureds** shall be covered under this **Policy** but only with respect to **Wrongful Acts** taking place after such acquisition or creation unless the Insurer agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Company** for any such acquisition or creation exceeds twenty-five percent (25%) of the total assets of the **Parent Company** as reflected in the **Parent Company's** then most recent consolidated financial statements, the **Parent Company**, as a condition precedent to coverage with respect to such **Insureds** for **Claims** first made more than ninety (90) days after such acquisition, shall give written notice of such acquisition to the Insurer as soon as practicable and shall pay any reasonable additional premium required by the Insurer.

- b. Acquisition of **Parent Company**

If, during the **Policy Period**, any of the following events occurs:

- i. the acquisition of the **Parent Company**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Parent Company** into or with another entity such that the **Parent Company** is not the surviving entity; or
- ii. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors or equivalent executives of the **Parent Company**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for covered **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

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c. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

d. Termination of Plan

If before or during the **Policy Period** a **Plan** is terminated, coverage with respect to such **Plan** and its **Insureds** under the Fiduciary Liability Coverage Part (if purchased) shall continue until termination of this **Policy**. Such coverage continuation shall apply with respect to **Claims** for **Wrongful Acts** taking place prior to or after the date the **Plan** was terminated.

11. REPRESENTATIONS AND SEVERABILITY

The **Insureds** represent and acknowledge that the statements contained in the **Application** (which shall be maintained on file by the Insurer and shall be deemed attached to and incorporated into this **Policy** as if physically attached), are true and (i) are the basis of this **Policy** and are to be considered as constituting a part of this **Policy**; and (ii) shall be deemed material to the acceptance of the risks or the hazards assumed by the Insurer under this **Policy**. This **Policy** is issued in reliance upon the truth of such representation.

In the event the **Application** contains any misrepresentation or omission:

- a. made with the intent to deceive, or
 - b. which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under this **Policy**;
- this **Policy** shall be void as to (i) any **Company** and any **Plan** if any **Executive Officer** knew the facts that were not truthfully disclosed in the **Application**, and (ii) any **Insured Persons** who knew the facts that were not truthfully disclosed in the **Application**, whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission. Such knowledge shall not be imputed to any other **Insured Persons**.

12. TERMINATION OF POLICY

This **Policy** shall terminate at the earliest of the following times:

- a. the effective date of termination specified in a prior written notice by the **Parent Company** to the Insurer, provided this **Policy** may not be terminated by the **Parent Company** (i) after the effective date of an event described in Subsection 10(b) of these General Terms and Conditions, or (ii) if the **Policy Period** is longer than one (1) year;
- b. upon expiration of the **Policy Period** as set forth in Item III of the Declarations;
- c. twenty (20) days after receipt by the **Parent Company** of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such twenty (20) days period; or
- d. at such other time as may be agreed upon by the Insurer and the **Parent Company**.

The Insurer may not terminate this **Policy** prior to expiration of the **Policy Period**, except as provided above for non-payment of a premium. The Insurer shall refund any unearned premium computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

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13. 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, including without limitation the **Insured Persons'** rights to indemnification or advancement from the **Company**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

14. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join the Insurer as a party to any action against **Insureds** to determine the **Insureds'** liability nor shall the Insurer be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of an **Insured** or of the estate of any **Insured Person** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

15. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of the **Insureds** with respect to the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this **Policy**, and the **Insureds** agree that the **Parent Company** shall act on their behalf.

16. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the Insurer.

The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

17. ARBITRATION

Only if requested by the **Insureds**, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

18. NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY, INC.

While this **Policy** is in effect, the **Parent Company** is a member of the Liberty Mutual Holding Company Inc. ("LMHC") and is entitled to vote either in person or by proxy at any and all meetings of said **Company**. The Annual Meeting of LMHC is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The **Parent Company** shall participate in the distribution of any dividends declared by LMHC for the **Policy**. The amount of the **Parent Company's** participation is determined by the decision of LMHC's Board of Directors in compliance with any applicable laws.

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19. BANKRUPTCY – WAIVER OF AUTOMATIC STAY

If a liquidation or reorganization is commenced by or against any **Insured** (whether voluntarily or involuntarily) under the United States Bankruptcy Code, as amended, or any similar state, local or foreign law (“Bankruptcy Law”), then with respect to a covered **Claim**, the **Insureds** hereby:

- a. waive and release any automatic stay or injunction which may apply in such proceeding to the proceeds of this **Policy**; and
- b. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this **Policy** as a result of such a proceeding.

20. CONFORMITY TO LAW

Any provision in this Policy that is in conflict with the laws of the state in which this Policy is issued is amended to conform to the laws of that state.

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LIBERTY INSURANCE UNDERWRITERS INC.

(A New York Stock Insurance Company, hereinafter the "Insurer")

LIBERTY PRIVATE ADVANTAGE POLICY

DIRECTORS, OFFICERS AND COMPANY LIABILITY COVERAGE PART

I. INSURING CLAUSES

A. Directors and Officers Liability (Individual)

The Insurer shall pay on behalf of the **Insured Persons Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** by the **Insured Persons** taking place prior to the end of the **Policy Period**.

B. Directors and Officers Liability (Reimbursement)

The Insurer shall pay on behalf of the **Company Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** by the **Insured Persons** taking place prior to the end of the **Policy Period**.

C. Company Liability

The Insurer shall pay on behalf of the **Company Loss** which the **Company** becomes legally obligated to pay by reason of any **Claim** first made against the **Company** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** by the **Company** taking place prior to the end of the **Policy Period**.

D. Shareholder Derivative Demands

The Insurer shall pay on behalf of the **Company Investigation Costs** resulting from a **Shareholder Derivative Demand** first made during the **Policy Period** or the **Discovery Period**, if exercised.

Coverage under this Insuring Clause D. shall be subject to a Sublimit of Liability of \$250,000. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Clause D. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Part. No Deductible shall apply to this Insuring Clause.

II. OUTSIDE POSITION LIABILITY

Subject to their other terms and conditions, Insuring Clauses A and B include coverage for any **Insured Person** who is a current or former director, trustee, **Manager**, officer or in-house general counsel of the **Company** while serving in an **Outside Position**. Any such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this **Policy** with respect to such **Claim**.

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III. DEFINITIONS

For purposes of coverage under this Coverage Part:

Claim means:

1. a written demand against any **Insured** for monetary damages or other relief,
2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding against any **Insured**,
4. a criminal proceeding against any **Insured Person** commenced by a return of an indictment,
5. a formal administrative or regulatory adjudicatory or investigative proceeding against any **Insured Person** commenced by the filing of a notice of charge, formal investigative order or similar document,
6. a formal civil, criminal, administrative or regulatory investigation against an **Insured Person**, commenced by the service upon or other receipt by the **Insured Person** of a written notice or subpoena from the investigating authority identifying the **Insured Person** as an individual against whom a formal proceeding may be commenced,
7. a request to any **Insured Person** by a prospective claimant to toll or waive any statute of limitation, or
8. solely for purposes of Insuring Clause D, any **Shareholder Derivative Demand**, including any appeal therefrom.

Insureds, either in the singular or plural, means:

1. the **Insured Persons**, and
2. solely with respect to Insuring Clauses B, C and D, the **Company**.

Insured Persons, either in the singular or plural, means:

1. any one or more persons who were, now are or shall be duly elected or appointed directors, trustees, **Managers**, officers or in-house general counsel of the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent;
2. any one or more other natural persons not described in subparagraph (1) above who were, now are or shall be full or part-time employees or volunteers of the **Company**; provided such other employees or volunteers shall not be considered **Insured Persons** for purposes of Exclusion A(8) in Subsection IV of this Coverage Part; and
3. solely with respect to Insuring Clauses A and B, any one or more natural persons described in subparagraph (1) above who were, now are or shall be serving in an **Outside Position**.

Investigation Costs means reasonable fees and expenses incurred by the **Company** in the investigation and evaluation of a **Shareholder Derivative Demand** provided that **Investigation Costs** shall not include compensation, benefit expenses, or overhead of any **Insureds**.

Loss means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements, and **Defense Costs**. Solely with respect to Insuring Clause D, **Loss** means **Investigation Costs**. **Loss** does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes, fines or penalties imposed by law, (3) costs otherwise covered under Insuring Clause C to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief, or (4) matters uninsurable under the law pursuant to which this **Policy** is construed. This definition does not exclude punitive,

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exemplary or multiple damages to the extent such damages are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this **Policy** or such **Claim**.

Non-Profit Entity means any non-profit corporation, community chest, fund or foundation that is (i) not included in the definition of **Company**, and (ii) exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Outside Entity means:

1. any **Non-Profit Entity**, and
2. any other entity, if such coverage is specifically granted by endorsement to this **Policy**.

Outside Position means the position of director, officer, manager, trustee or other equivalent executive position held by any duly elected or appointed director, trustee, **Manager**, partner, officer or in-house general counsel of the **Company** in an **Outside Entity** if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to such **Insured Person** by, the **Company**.

Shareholder Derivative Demand means any written demand by any security holder of a **Company** in their capacity as such, upon the board of directors or **Managers** of such **Company** to bring a civil proceeding on behalf of the **Company** against an **Insured Person** for a **Wrongful Act** by such **Insured Person** if such demand is made without the assistance, participation or solicitation of any **Executive Officer**. A **Shareholder Derivative Demand** shall be deemed commenced by the receipt by the **Company's** board of directors or **Managers** of such demand.

Wrongful Act means:

1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons** in their capacity as such, or in an **Outside Position** or, with respect to Insuring Clause C, by the **Company**, or
2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Position**.

IV. EXCLUSIONS

- A. The Insurer shall not be liable under any Insuring Clause in this Coverage Part for **Loss** on account of any **Claim** made against any **Insured**:
 1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement;
 2. based upon, arising out of, or attributable to any written demand or proceeding against any **Insured** which was made or pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item IV(B) of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 3. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, but this exclusion shall not apply with respect to any actual or alleged mental anguish or emotional distress in any employment-related **Claim**;
 4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any

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- Claim** by or on behalf of the **Company**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion;
5. for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary** or its **Insured Persons** before the date such **Subsidiary** became an **Insured**;
 6. based upon, arising out of, or attributable to any deliberately fraudulent or criminal act or omission or any willful violation of law by such **Insured** if a judgment or other final adjudication in such **Claim** or another proceeding establishes that such act, omission or violation occurred;
 7. based upon, arising out of, or attributable to such **Insured** gaining in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled;
 8. brought or maintained by or on behalf of the **Company** or any **Insured Person** in any capacity except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the active assistance, participation or solicitation of the **Company** or any **Insured Person**, unless the only such assistance, participation or solicitation is protected pursuant to any whistleblower statute;
 - b. an employment-related **Claim**;
 - c. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this **Policy**;
 - d. a **Claim** by an **Insured Person** who has not served as an **Insured Person** for at least four years prior to such **Claim** being made, provided that such **Claim** is made without the active assistance, participation or solicitation of any current **Insured Person** or any former **Insured Person** who has served as an **Insured Person** during the four years prior to such **Claim** being made; or
 - e. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, creditors committee or similar official or committee for such **Company** or any assignee of such trustee, examiner, receiver, committee or similar official or committee;
 9. for a **Wrongful Act** by an **Insured Person** in an **Outside Position** if such **Claim** is brought or maintained by or on behalf of the **Outside Entity** in which the **Insured Person** serves or by or on behalf of any director, officer, manager or trustee of such entity except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of such entity by one or more persons who are not directors, officers, managers or trustees of such entity and who bring and maintain the **Claim** without the active assistance, participation or solicitation of such entity or such directors, officers or trustees;
 - b. an employment-related **Claim**; or
 - c. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, creditors committee or similar official or committee for such **Outside Entity** or any assignee of such trustee, examiner, receiver, committee or similar official or committee;
 10. for a **Wrongful Act** actually or allegedly committed or attempted by **Insured Persons** in their capacity as a director, officer, manager, trustee or employee of any organization other than an **Outside Entity** or the **Company**, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**;

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11. for an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Company**; or
 12. based upon, arising out of, or attributable to any public offering of securities of a **Company** or the purchase or sale of such securities subsequent to such public offering; provided that this exclusion shall not apply to any **Claim**:
 - a. for a **Wrongful Act** in an offering of securities of a **Company** that is exempt from registration under the Securities Act of 1933;
 - b. based upon, arising out of, or attributable to any attempted public offering of securities of a **Company** if no securities are actually purchased or sold in connection with such attempted public offering, including without limitation any **Claim** alleging misrepresentations or omissions during the “road show” for such attempted public offering; or
 - c. made by any security holders of a **Company** for the failure of the **Company** to undertake or complete an initial public offering of securities of such **Company**.
- B. The Insurer shall not be liable under Insuring Clause C for **Loss** on account of any **Claim** made against the **Company**:
1. based upon, arising out of, or attributable to any actual or alleged liability under or breach of any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
 2. for any employment-related **Wrongful Act**;
 3. based upon, arising out of, or attributable to the rendering of, or failure to render, any professional services for others, including, without limitation, services performed by the **Insureds** for or on behalf of a customer or client;
 4. based upon, arising out of, or attributable to any actual or alleged defamation, invasion of privacy, wrongful entry or eviction, false arrest or imprisonment, malicious prosecution, abuse of process, assault, battery or loss of consortium;
 5. based upon, arising out of, or attributable to any actual or alleged infringement of any intellectual property rights, including, without limitation, copyrights, patents, trademarks, trade names, trade dress, service marks, or trade secrets;
 6. based upon, arising out of, or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Anti-Trust Act, Clayton Act, or any similar law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;
 7. based upon, arising out of, or attributable to any actual or alleged discrimination of any kind; or
 8. based upon, arising out of, or attributable to the payment by a **Company** of any actual or alleged inadequate consideration in connection with a **Company’s** purchase of securities issued by any **Company**, provided that this exclusion shall not apply to **Defense Costs**.

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C. Severability of Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this Section IV:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
2. only the **Wrongful Act** of any **Executive Officer** shall be imputed to the **Company**.

V. PUBLIC OFFERING OF SECURITIES

If during the **Policy Period** a **Company** conducts a public offering of its securities that is not exempt from registration under the Securities Act of 1933, the Insurer shall furnish the **Insureds** with a quote for directors and officers liability insurance coverage with respect to such offering, provided that:

- A. at least 30 days prior to the effective date of such offering, the **Insureds** shall give the Insurer written notice of such offering together with all information requested by the Insurer; and
- B. such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its sole discretion, chooses.

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LIBERTY INSURANCE UNDERWRITERS, INC.

(A New York Stock Insurance Company, hereinafter the "Insurer")

LIBERTY PRIVATE ADVANTAGE POLICY

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING CLAUSE

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of any past, present or prospective full-time, part-time or leased employee(s) of the **Company**.

II. DEFINITIONS

For purposes of coverage under this Coverage Part:

Claim means:

1. a written demand for monetary damages,
2. a civil proceeding commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding,
4. a criminal proceeding commenced by a return of an indictment,
5. a formal administrative or regulatory adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document, including without limitation any such proceeding before the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance Programs,
6. a formal civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as a person against whom a formal proceeding may be commenced, or
7. a request to the **Insured** by a prospective claimant to toll or waive any statute of limitation,

against any **Insured**, including any appeal therefrom; however, a **Claim** shall not include a labor or grievance proceeding which is subject to a collective bargaining agreement.

Independent Contractor means any natural person working for a **Company** in the capacity of an independent contractor pursuant to an express contract or agreement with a **Company** governing the nature of such person's engagement.

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Insureds, either in the singular or plural, means:

1. the **Insured Persons**, and
2. the **Company**.

Insured Persons, either in the singular or plural, means:

1. any one or more persons who were, now are or shall be duly elected or appointed directors, trustees, **Managers** or officers of, or full-time or part-time employees of, the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent; and
2. any **Independent Contractor**, but only if a **Company** agrees in writing within 30 days after the **Claim** is made to provide indemnification to such **Independent Contractor** for any **Loss** arising out of such **Claim**.

Loss means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, back pay and front pay, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**. **Loss** does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes, fines or penalties imposed by law, or (3) matters uninsurable under the law pursuant to which this **Policy** is construed. This definition does not exclude punitive, exemplary or multiple damages, or liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Equal Pay Act or Family Medical Leave Act, to the extent such damages are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this **Policy** or such **Claim**.

Wrongful Act means any **Wrongful Employment Practice** actually or allegedly committed or attempted by the **Insured Persons** in their capacity as such or by the **Company**.

Wrongful Employment Practice means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (whether common law or statutory) concerning employment or discrimination in employment;
4. sexual harassment or other unlawful harassment in the work place;
5. wrongful deprivation of a career opportunity or failure to employ, promote or grant tenure;
6. wrongful discipline of employees;
7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;

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8. wrongful evaluation, supervision, training or retention of employees;
9. failure to adopt, comply with or enforce adequate workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation or invasion of privacy;
11. employment-related wrongful infliction of emotional distress; or
12. wrongful reference.

III. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement;
 2. based upon, arising out of, or attributable to any written demand, proceeding or investigation against any **Insured** which was made or pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item IV(B) of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 3. for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, but this exclusion shall not apply to mental anguish or emotional distress;
 4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; but this exclusion shall not apply with respect to any **Claim** for retaliatory treatment of the claimant by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described in (a) or (b) of this exclusion;
 5. for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary** or its **Insured Persons** before the date such **Subsidiary** became an **Insured**;
 6. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (ii) **ERISA**, (except Section 510 thereof), (iii) the Fair Labor Standards Act (except the Equal Pay Act), (iv) the National Labor Relations Act, (v) the Worker Adjustment and Retraining Notification Act, (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985, (vii) the Occupational Safety and Health Act, or (viii) rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state or local statutory law or common law; but this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the

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- Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation;
7. based upon, arising out of, or attributable to any actual or alleged breach of any contract or agreement specifying the terms of the **Company's** engagement of an **Independent Contractor**;
 8. if such **Loss** constitutes:
 - a. the cost of any non-monetary relief including without limitation (i) any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;
 - b. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days, sick days, prerequisites, stock options or similar rights; but this exclusion shall not apply to any back pay or front pay or any additional compensation allegedly due as a result of alleged discrimination or wrongful dismissal, discharge or termination of employment;
 - c. damages determined to be owing under an express written contract with or express written severance obligation of the **Company**; but this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of the written contract with or obligation of the **Company**; or
 - d. medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance;

but this exclusion shall not apply to **Defense Costs**.

B. Severability of Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this Section III:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to the other **Insured Persons**; and
2. only the **Wrongful Act** of any **Executive Officer** shall be imputed to the **Company**.

IV. COORDINATION AMONG COVERAGE PARTS

That portion of any **Loss** covered by both this Coverage Part and either the Directors, Officers and Company Liability Coverage Part, if purchased, or the Fiduciary Liability Coverage Part, if purchased, shall be first covered as provided in, and subject to the Limit of Liability and Retention (if any) applicable to, this

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Coverage Part. If the Limit of Liability applicable to this Coverage Part is exhausted, any remaining portion of such **Loss** shall be then covered as provided in, and subject to the Limit of Liability and Retention (if any) applicable to, such other Coverage Part(s), if purchased.

V. OTHER INSURANCE

Without limiting any provision in Section 9 of the General Terms and Conditions of this Policy, coverage under this Coverage Part for an **Independent Contractor** shall be specifically excess of, and not contribute with, any other applicable insurance insuring the **Independent Contractor**, regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise.

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LIBERTY INSURANCE UNDERWRITERS, INC.

(A New York Stock Insurance Company, hereinafter the "Insurer")

LIBERTY PRIVATE ADVANTAGE POLICY

FIDUCIARY LIABILITY COVERAGE PART

I. INSURING CLAUSES

A. Fiduciary Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Acts** by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible, if such **Wrongful Acts** take place prior to the end of the **Policy Period**.

B. Voluntary Settlement Programs

The Insurer shall pay on behalf of the **Insureds** a **Voluntary Settlement** and **Defense Costs** which the **Insureds** become legally obligated to pay resulting from a **Settlement Program Notice** first given to the Insurer during the **Policy Period** or the **Discovery Period**, if exercised, provided such **Voluntary Settlement** and **Defense Costs** are incurred after such **Settlement Program Notice** is first given to the Insurer.

This Insuring Clause B shall be subject to a Sublimit of Liability of \$100,000. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Clause B. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Part. No Retention shall apply to this Insuring Clause.

II. DEFINITIONS

For purposes of coverage under this Coverage Part:

Administration means (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plans**, (ii) providing interpretations with respect to any **Plan**, (iii) handling records in connection with any **Plan**, and (iv) enrolling, terminating or canceling employees, beneficiaries or participants under any **Plan**.

Claim means:

1. a written demand for monetary damages or other relief,
2. a civil proceeding commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding,
4. a criminal proceeding commenced by a return of an indictment,

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5. a formal administrative or regulatory adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document,
6. a formal administrative or regulatory investigation (including a fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as a person against whom a formal proceeding may be commenced, or
7. a request to the **Insured** by a prospective claimant to toll or waive any statute of limitation,

against any **Insured**, including any appeal therefrom.

Solely with respect to Insuring Clause B, **Claim** means a **Settlement Program Notice**.

Insureds, either in the singular or plural, means:

1. the **Insured Persons**,
2. the **Company**, and
3. the **Plans**.

Insured Person, either in the singular or plural, means:

1. any one or more persons who were, now are or shall be duly elected or appointed directors, trustees, **Managers** or officers of, or full-time or part-time employees of, the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent; and
2. any one or more other natural persons who were, now are or shall be duly elected or appointed trustees, directors, officers or employees of any **Plan**.

Loss means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**. Solely with respect to Insuring Clause B, **Loss** means **Voluntary Settlements** and **Defense Costs**. **Loss** does not include:

1. any amount for which the **Insureds** are absolved from payment;
2. taxes, fines or penalties imposed by law other than:
 - a. the 5% or less or the 20% or less civil penalties imposed under § 502(i) or (1) of **ERISA**;
 - b. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, provided that the Insurer's maximum aggregate liability for all such civil money penalties under this Coverage Part shall be subject to a sublimit of \$25,000 that shall be the maximum

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aggregate amount that the Insurer shall pay for all such penalties and shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Part; or

- c. solely with respect to Insuring Clause B, **Voluntary Settlements**;
3. the multiple portion of any multiplied damage award,
4. costs to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief, or
5. matters uninsurable under the law pursuant to which this **Policy** is construed.

This definition does not exclude punitive or exemplary damages to the extent such damages are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this **Policy** or such **Claim**.

Plan means:

1. any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each is defined in **ERISA**, which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**;
2. any other employee benefit plan or program not subject to **ERISA** sponsored solely by the **Company** for the benefit of the employees of the **Company**, including any fringe benefit, excess benefit plan or voluntary employees' beneficiary association;
3. any employee benefit plan or program otherwise described in paragraphs 1. or 2. above while such plan or program is being actively developed, formed or proposed by any **Company** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this Coverage Part for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program; and
4. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**.

Plan shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by **ERISA**, unless such plan is specifically included as a **Plan** by endorsement to this **Policy**.

Settlement Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

Settlement Program Notice means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter into a **Settlement Program**.

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Voluntary Settlement means any fees, fines, or penalties paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, or penalties relating to a **Plan** which, as of the earlier of inception date of this **Policy** or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Wrongful Act means:

1. any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by the **Insureds** in the discharge of their duties in their capacities, or solely by reason of their status, as fiduciaries of any **Plan**, or
2. any negligent act, error or omission actually or allegedly committed or attempted by the **Insureds** solely in the **Administration** of any **Plan**.

III. EXCLUSIONS

A. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement;
2. based upon, arising out of, or attributable to any written demand, proceeding or investigation against any **Insured** which was made or pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item IV(B) of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof;
4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; but this exclusion shall not apply to any **Claim** by or on behalf of a beneficiary or participant in a **Plan** for diminution in value of any securities owned by the **Plan** in any organization other than the **Company**;
5. for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary**, **Plan** or their **Insureds** before the date such **Subsidiary** or **Plan** became an **Insured**;
6. based upon, arising out of, or attributable to any deliberately fraudulent or criminal act or omission or willful violation of law by such **Insured** if a judgment or other final adjudication in such **Claim** or another proceeding establishes that such act, omission or violation occurred;
7. based upon, arising out of, or attributable to such **Insured** gaining in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled;

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8. for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement, but this exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established;
9. based upon, arising out of, or attributable to any actual or alleged obligation of any **Insured** pursuant to any government-mandated insurance for worker's compensation, unemployment, social security or disability benefits; but this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or Health Insurance Portability and Accountability Act of 1996, as amended;
10. for discrimination in violation of any law other than **ERISA**; or
11. if such **Loss** constitutes:
 - a. (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (iii) that portion of any settlement or judgment which constitutes such benefits; but this exclusion shall not apply to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**;
 - b. contributions owed by the **Company** to any **Plan** for which any of the **Insureds** failed to collect from the **Company**; or
 - c. the return or reversion to an employer of any contribution or asset of a **Plan**;

but this exclusion shall not apply to (i) **Defense Costs**, or (ii) that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with the participants investment directions.

B. Severability of Exclusions

For purposes of determining the applicability of any Exclusion set forth in this Section III:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
2. only the **Wrongful Act** of any **Executive Officer** shall be imputed to the **Company** or **Plan**.