

NOTICE: THE LIABILITY COVERAGE PARTS SCHEDULED IN ITEM 5: COVERAGE ELECTIONS PROVIDES CLAIMS MADE COVERAGE. EXCEPT AS OTHERWISE SPECIFIED HEREIN, COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND PAYMENT OF DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY. NOTICE OF A CLAIM MUST BE GIVEN TO THE INSURER AS SOON AS PRACTICABLE, PROVIDED THAT SUCH NOTICE IS GIVEN NOT LATER THAN 60 DAYS AFTER ANY MANAGER BECOMES AWARE THAT SUCH CLAIM HAS BEEN MADE. DEFENSE COSTS ARE APPLIED AGAINST THE DEDUCTIBLE. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, the Insurer and the **Insureds** agree as follows:

COMMON TERMS AND CONDITIONS

I. TERMS AND CONDITIONS

- (A) All Coverage Parts included in this Policy are subject to the following Common Terms and Conditions. If any provision in these Common 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.
- (B) Except as otherwise provided by specific reference to other Coverage Parts, the terms and conditions of each Coverage Part shall apply only to such Coverage Part.

II. COMMON DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

- (A) “**Affiliate**” means any insurance company controlling, controlled by or under common control with the Insurer.
- (B) “**Application**” means the application for this Policy, including any materials or information submitted therewith, such application shall be on file with the Insurer and deemed a part of and attached hereto, as if physically attached hereto. “**Application**” also means an application for any policy in an uninterrupted series of policies issued by the Insurer, or an **Affiliate**, of which this Policy is a renewal or replacement.
- (C) “**Claim**” shall have the meaning specified for such term in each Coverage Part.
- (D) “**Debtor in Possession**” means a “debtor in possession” as such term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.
- (E) “**Defense Costs**” means reasonable and necessary legal fees and expenses incurred in the investigation, defense or appeal of a **Claim**. **Defense Costs** shall include the costs of appeal, attachment or similar bonds, provided that the Insurer shall have no obligation to furnish such bonds. **Defense Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.
- (F) “**Domestic Partner**” means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- (G) “**Employee**” means any past, present, or future:
 - (1) employee of an **Insured Entity** in such person’s capacity as an employee, including any part time, seasonal, temporary, leased, or loaned employee; or
 - (2) volunteer with an **Insured Entity** in such person’s capacity as a volunteer.

- (H) “**ERISA**” means the Employee Retirement Income Security Act of 1974.
- (I) “**Financial Insolvency**” means the status of an **Insured Entity** as a result of:
- (1) the appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such **Insured Entity**; or
 - (2) such **Insured Entity** becoming a **Debtor in Possession**.
- (J) “**Insured Entity**” means:
- (1) the **Named Entity**; or
 - (2) any **Subsidiary**; and
 - (3) **Insured Entity** shall also include:
 - (a) any such entity as a general partner of a limited partnership in which and so long as the **Named Entity** owns or controls, directly or indirectly, more than 50% of the limited partnership interest and such **Insured Entity** is the sole general partner.
 - (b) any such entity as a **Debtor in Possession**.
- (K) “**Insured Person**” shall have the meaning specified for such term in each Coverage Part.
- (L) “**Insureds**” shall have the meaning specified for such term in each Coverage Part.
- (M) “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- (N) “**Liability Coverage Part**” means the Directors, Officers and Entity Liability, Employment Practices Liability, Fiduciary Liability and Miscellaneous Professional Liability Coverage Parts, if included in ITEM 5 of the Declarations.
- (O) “**Loss**” shall have the meaning specified for such term in each Coverage Part.
- (P) “**Manager**” means any natural person who is a past, present or future:
- (1) duly elected or appointed director, officer, member of the board of managers or management committee member of an **Insured Entity**;
 - (2) in-house general counsel of an **Insured Entity**; or
 - (3) executive of an **Insured Entity** created outside the United States of America to the extent that such executive holds a position equivalent to those described in (1) or (2),
- in such person’s capacity in such position.
- (Q) “**Named Entity**” means the entity named in ITEM 1 of the Declarations.
- (R) “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 3 of the Declarations or any earlier cancellation date.

- (S) “**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalies, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed.
- (T) “**Subsidiary**” means any:
- (1) corporation in which and so long as the **Named Entity** owns or controls, directly or indirectly, more than 50% of the outstanding securities representing the right to vote for the election of the board of directors of such corporation;
 - (2) limited liability company in which and so long as the **Named Entity** owns or controls, directly or indirectly, the right to elect, appoint or designate more than 50% of such entity’s managers;
 - (3) corporation operated as a joint venture in which and so long as the **Named Entity** owns or controls, directly or indirectly, exactly 50% of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such corporation, the **Named Entity** solely controls the management and operation of such corporation; or
 - (4) foundation, charitable trust or political action committee in which and so long as such entity or organization is controlled by the **Named Entity** or any **Subsidiary** as defined (1) through (3) above.
- (U) “**Wrongful Act**” shall have the meaning specified for such term in each Coverage Part.

III. COVERAGE EXTENSIONS

(A) Spousal/Domestic Partner Liability Coverage

Coverage shall apply to the lawful spouse or **Domestic Partner** of an **Insured Person** for a **Claim** made against such spouse or **Domestic Partner**, provided that:

- (1) such **Claim** arises solely out of:
 - (a) such person’s status as the spouse or **Domestic Partner** of an **Insured Person**; or
 - (b) such spouse or **Domestic Partner’s** ownership of property sought as recovery for a **Wrongful Act**;
- (2) the **Insured Person** is named in such **Claim** together with the spouse or **Domestic Partner**; and
- (3) coverage of the spouse or **Domestic Partner** shall be on the same terms and conditions, including any applicable Deductible, as apply to coverage of the **Insured Person** for such **Claim**.

No coverage shall apply to any **Claim** for a **Wrongful Act** of such spouse or **Domestic Partner**.

(B) Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** made against such

Insured Person. No coverage shall apply to any **Claim** for a **Wrongful Act** of such estate, heirs, legal representatives or assigns.

IV. LIMIT OF LIABILITY

Solely with respect to all **Liability Coverage Parts**:

- (A) The Limit of Liability for each Coverage Part in ITEM 5 of the Declarations shall be the maximum aggregate amount that the Insurer shall pay under such Coverage Part for all **Loss** from all **Claims** covered under such Coverage Part.
- (B) Notwithstanding the above, if a Combined Aggregate Limit of Liability For All Coverage Parts is included in ITEM 5 of the Declarations, then:
 - (1) such single Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under all included Coverage Parts combined; and
 - (2) any amount specified as a Limit of Liability for any individual Coverage Part in ITEM 5 of the Declarations shall be subject to, part of, and not in addition to, the amount stated as the Combined Aggregate Limit of Liability For All Coverage Parts.

V. DEFENSE COSTS

Solely with respect to all **Liability Coverage Parts**:

- (A) **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the Insurer shall reduce each Limit of Liability.
- (B) Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then payment of **Defense Costs** shall be in addition to any applicable Limit of Liability, provided that:
 - (1) if a Limit of Liability is specified for any individual Coverage Part in ITEM 5 of the Declarations, then the maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under such Coverage Part shall be 50% of such Limit of Liability;
 - (2) if a Combined Aggregate Limit of Liability For All Coverage Parts is included in ITEM 5 of the Declarations, then:
 - (a) the single maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under all included Coverage Parts combined shall be 50% of such Limit of Liability; and
 - (b) any amount of **Defense Costs** available for any individual Coverage Part shall be subject to, part of, and not in addition to, the single maximum amount of **Defense Costs** available for all included Coverage Parts combined specified in (a) above; and
 - (3) if the amount available for **Defense Costs** in (1) or (2) above is exhausted by the payment of **Defense Costs**, then **Defense Costs** shall be paid by the Insurer out of any remaining applicable Limit of Liability until the exhaustion of the applicable Limit of Liability.

VI. DEDUCTIBLE

Solely with respect to all **Liability Coverage Parts**:

- (A) The Insurer shall pay **Loss** in excess of the Deductible applicable to each **Claim** as specified in ITEM 5 of the Declarations.
- (B) The Deductible shall be borne by the **Insureds** uninsured at the **Insureds'** own risk.
- (C) Any **Defense Costs** incurred by the Insurer shall apply to the Deductible. The **Insureds** shall reimburse the Insurer upon request for any amounts paid regarding a **Claim** that are within the applicable Deductible for such **Claim**.
- (D) If a **Claim** is covered under more than one Coverage Part, the applicable Deductible for each Coverage Part shall be applied separately to such **Claim**, provided that the maximum Deductible applied to such **Claim** shall not exceed the highest of such applicable Deductibles.
- (E) No Deductible shall apply to **Loss** incurred by any **Insured Person** that an **Insured Entity** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is not able to do so by reason of **Financial Insolvency**.
- (F) If an **Insured Entity** is permitted or required by common or statutory law to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on their behalf, and does not do so other than because of **Financial Insolvency**, then such **Insured Entity** and the **Named Entity** shall reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the Deductible that would have applied if such indemnification had been made.
- (G) If a **Subsidiary** is unable to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on their behalf, because of **Financial Insolvency**, then the **Named Entity** shall reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the applicable Deductible that would have applied if such indemnification had been made.

VII. DEFENSE AND SETTLEMENT

Solely with respect to all **Liability Coverage Parts**:

- (A) The Insurer shall have the right and duty to defend any **Claim** for which the **Insureds** give notice to the Insurer, even if such **Claim** is groundless, false or fraudulent. The Insurer may make any investigation it deems appropriate.
- (B) The Insurer's duty to defend any **Claim** shall cease upon exhaustion of any applicable Limit of Liability.

Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then the Insurer's duty to defend any **Claim** shall cease upon exhaustion of the maximum aggregate amount of **Defense Costs** available under Section V. DEFENSE COSTS, and any applicable Limit of Liability.

If any Limit of Liability is exhausted, the premium for this Policy shall be deemed fully earned.

- (C) The **Insureds** shall not admit nor assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** regarding any **Claim** without the prior written consent of the Insurer, such consent not to be unreasonably withheld. The Insurer shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.
- (D) The Insurer may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the Insurer deems reasonable.

- (E) Notwithstanding the above, if Defense Outside the Limit of Liability is included in ITEM 5 of the Declarations, then the Insurer may settle any **Claim** for a monetary amount that the Insurer deems reasonable and the consent of the **Insureds** shall not be required to settle a **Claim**.
- (F) The **Insureds** shall give to the Insurer all information and cooperation as the Insurer may reasonably request.

VIII. NOTICE OF CLAIM

Solely with respect to all **Liability Coverage Parts**:

- (A) As a condition precedent to coverage under this Policy, the **Insureds** shall give the Insurer written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after the termination of the **Policy Period**, or Extended Reporting Period as described in Section IX. Such notice shall specify the Coverage Part under which notice is being given.
- (B) If, during the **Policy Period**, the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and, if written notice of such **Wrongful Act** is given to the Insurer during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice.

IX. EXTENDED REPORTING PERIOD

- (A) If any **Liability Coverage Part** is canceled or non-renewed for any reason other than non-payment of premium, the **Insureds** shall have the right to elect an extension of time to report **Claims** under this Policy (the "Extended Reporting Period").
- (B) To elect the Extended Reporting Period, the **Insureds** shall send a written notice of election of the Extended Reporting Period to the Insurer together with the premium therefor. The right to elect the Extended Reporting Period shall end unless the Insurer receives such notice and premium within sixty (60) days of cancellation or non-renewal. There shall be no right to elect the Extended Reporting Period after such time.
- (C) The premium for the Extended Reporting Period shall be that percentage specified in ITEM 7 of the Declarations of the sum of the original annual premium plus the annualized amount of any additional premium charged by the Insurer during the **Policy Period**. Such premium shall be deemed fully earned at the inception of the Extended Reporting Period.
- (D) The Extended Reporting Period shall be for the duration specified in ITEM 7 of the Declarations following the end of the **Policy Period**.
- (E) Coverage during the Extended Reporting Period shall apply to **Claims** made for **Wrongful Acts** occurring prior to the earlier of the end of the **Policy Period** or the time of any transaction described in Section XIV. CHANGES IN EXPOSURE, (B) Takeover of Named Entity. No coverage shall apply for any **Wrongful Act** occurring after such time.
- (F) There is no separate or additional Limit of Liability for the Extended Reporting Period.

X. INTERRELATIONSHIP OF CLAIMS

Solely with respect to all **Liability Coverage Parts**:

All **Claims** based upon, arising from or in any way related to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earliest date that:

- (A) any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (B) notice of any **Wrongful Act** described above was given to the Insurer under this Policy pursuant to Section VIII. NOTICE OF CLAIM (B); or
- (C) notice of any **Wrongful Act** described above was given under any prior insurance policy.

XI. ALLOCATION

If, in any **Claim** under a **Liability Coverage Section**, the **Insureds** who are afforded coverage for such **Claim** incur an amount consisting of both **Loss** that is covered by this Policy and also **Loss** that is not covered by this Policy because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by such **Insured** from such **Claim** will be considered covered **Loss**; and
- (B) **Loss** other than **Defense Costs**: all remaining **Loss** incurred by such **Insured** from such **Claim** will be allocated between covered **Loss** and uncovered **Loss** based upon the relative legal exposures of the parties to such matters.

XII. OTHER INSURANCE

If **Loss** arising from any **Claim** is insured under any other valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

XIII. CANCELLATION

- (A) The Insurer may cancel this Policy for non-payment of premium by sending not less than 10 days notice to the **Named Entity**. This Policy may not otherwise be canceled by the Insurer.
- (B) Except as provided in Section XIV. CHANGES IN EXPOSURE, (B) Takeover of Named Entity, the **Insureds** may cancel this Policy by sending written notice of cancellation to the Insurer. Such notice shall be effective upon receipt by the Insurer unless a later cancellation time is specified therein.
- (C) If the Insurer cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the Insurer's customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The Insurer shall make payment of any unearned premium as soon as practicable.

XIV. CHANGES IN EXPOSURE

Solely with respect to all **Liability Coverage Parts**:

(A) Mergers and New Subsidiaries

If, before or during the **Policy Period**, any **Insured Entity**:

- (1) merges with another entity such that the **Insured Entity** is the surviving entity; or

(2) acquires a **Subsidiary**,

then such newly merged or acquired entity and its subsidiaries, managers, directors, officers, and employees shall be **Insureds** to the extent such entities and persons would otherwise qualify as **Insureds** under the **Liability Coverage Parts**, but only for a **Wrongful Act** occurring after such merger or acquisition. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring before such transaction or for any **Interrelated Wrongful Acts** thereto.

If the fair value of the assets of any newly merged or acquired entity exceed 25% of the total assets of the **Named Entity** as reflected in its most recent consolidated audited financial statements prior to such merger or acquisition, the **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable and the Insurer shall be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There shall be no coverage under the **Liability Coverage Parts** for any newly merged or acquired entity or any of its subsidiaries, managers, directors, officers, or employees unless the **Insureds** comply with the terms of this provision.

(B) Takeover of Named Entity

If, during the **Policy Period**:

- (1) the **Named Entity** merges into or consolidates with another entity such that the **Named Entity** is not the surviving entity; or
- (2) more than 50% of the securities representing the right to vote for the **Named Entity's** board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert,

then coverage shall continue under the **Liability Coverage Parts**, but only for a **Wrongful Act** occurring before such transaction. No coverage shall be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, this Policy shall not be canceled and the entire premium for this Policy shall be deemed fully earned.

The **Insureds** shall give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

(C) Loss of Subsidiary Status

If, before or during the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage shall be available under the **Liability Coverage Parts** for such **Subsidiary** and its **Insured Persons**, but only for a **Wrongful Act** of such **Insureds** occurring before such transaction. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring after such transaction.

XV. SUBROGATION

The Insurer shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** by the Insurer under this Policy. The **Insureds** shall execute all papers required and do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable the Insurer to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the Insurer's position or any potential or actual rights of recovery.

XVI. APPLICATION

- (A) The **Insureds** represent that the declarations and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application** contains intentional misrepresentations or misrepresentations that

materially affect the acceptance of the risk by the Insurer, no coverage shall be afforded under this Policy for any **Insureds** who knew on the Inception Date of this Policy of the facts that were so misrepresented.

(B) For the purpose of determining coverage:

- (1) knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- (2) knowledge possessed by the **Named Entity's** chairman of the board, chief executive officer, chief operating officer, or chief financial officer or anyone signing the **Application** shall be imputed to all **Insured Entities**. No other person's knowledge shall be imputed to an **Insured Entity**.

XVII. ACTION AGAINST THE INSURER

Solely with respect to all **Liability Coverage Parts**:

- (A) No action shall be taken against the Insurer unless there shall have been full compliance with all the terms and conditions of this Policy.
- (B) No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** nor shall the Insurer be impleaded by the **Insureds** in any such **Claim**.

XVIII. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurer without its consent as specified in a written endorsement issued by the Insurer to form a part of this Policy.

XIX. BANKRUPTCY OR INSOLVENCY

Bankruptcy or insolvency of any **Insureds** shall not relieve the Insurer of any of its obligations under this Policy.

XX. AUTHORIZATION OF NAMED ENTITY

The **Named Entity** shall act on behalf of all **Insureds** with respect to all matters under this Policy, including, without limitation, giving and receiving of notices regarding **Claims**, cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this Policy.

XXI. CHANGES

This Policy shall not be changed or modified except in a written endorsement issued by the Insurer to form a part of this Policy.

XXII. ENTIRE AGREEMENT

This Policy, including the Declarations, Common Terms and Conditions, included Coverage Part(s), **Application** and any written endorsements attached hereto, constitute the entire agreement between the **Insureds** and the Insurer relating to this insurance.

XXIII. NOTICES

- (A) All notices to the **Insureds** shall be sent to the **Named Entity** at the address specified in ITEM 1 of the Declarations.
- (B) All notices to the Insurer shall be sent to the address specified in ITEM 9 of the Declarations.

Any such notice shall be effective upon receipt by the Insurer at such address.

XXIV. HEADINGS

The headings of the various sections of this Policy are intended for reference only and shall not be part of the terms and conditions of coverage.

XXV. REFERENCES TO LAWS

- (A) Wherever this Policy mentions any law, including, without limitation, any statute, Act or Code of the United States of America, such mention shall be deemed to include all amendments of, and all rules or regulations promulgated under, such law.
- (B) Wherever this Policy mentions any law or laws, including, without limitation, any statute, Act or Code of the United States of America, and such mention is followed by the phrase "or any similar law", such phrase shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, statutes and any rules or regulations promulgated under such statutes as well as common law.

XXVI. COVERAGE TERRITORY

Coverage under this Policy applies worldwide.

DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Insured Person Liability

The Insurer shall pay **Loss** on behalf of the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**, except for **Loss** that an **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.

(B) Corporate Reimbursement

The Insurer shall pay **Loss** on behalf of an **Insured Entity** that such **Insured Entity** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

(C) Entity Liability (Elective)

If Entity Liability Coverage is included in Item 5 of the Declarations, the Insurer shall pay **Loss** on behalf of an **Insured Entity** resulting from an **Entity Claim** first made against such **Insured Entity** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Entity**.

This Insuring Agreement shall be subject to the Entity Liability Coverage Deductible and Prior or Pending Date in Item 5 of the Declarations.

(D) Derivative Demands

The Insurer shall pay **Investigation Costs** on behalf of an **Insured Entity** that the **Insured Entity** incurs resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement 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 Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this Coverage Part. No Deductible shall apply to this Insuring Agreement.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) "Claim" means any:

- (1) **Insured Person Claim;**
- (2) **Entity Claim;** or
- (3) **Derivative Demand.**

- (B) “**Derivative Action**” means any civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** made on behalf of, or in the name or the right of, an **Insured Entity** by any security holders of such **Insured Entity**, in their capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Manager**.
- (C) “**Derivative Demand**” means any written demand by any security holders of an **Insured Entity**, in their capacity as such, upon the board of directors or managers of such **Insured Entity** to bring a civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** if such demand is made without the assistance, participation or solicitation of any **Manager**. A **Derivative Demand** shall be deemed commenced by the receipt of such demand.
- (D) “**Entity Claim**” means any:
- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand;
 - (2) civil proceeding, including an arbitration proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or
 - (3) criminal proceeding, or formal administrative or regulatory proceeding commenced by the return of an indictment, filing of a notice of charges, or similar document;

against an **Insured Entity**.

“**Entity Claim**” also means a written request to an **Insured Entity** to toll or waive a statute of limitations regarding a potential **Entity Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

- (E) “**Insured Person**” means any:
- (1) **Manager**; or
 - (2) **Employee**.
- (F) “**Insured Person Claim**” means any:
- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand;
 - (2) civil proceeding, including an arbitration proceeding, commenced by the service of a complaint, filing of a demand for arbitration or similar pleading; or
 - (3) criminal proceeding commenced by the return of an indictment; or
 - (4) formal administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document,

against an **Insured Person**.

“**Insured Person Claim**” also means a formal civil, criminal, administrative, or regulatory investigation commenced by the service upon or other receipt by an **Insured Person** of a written notice from an investigating authority specifically identifying such **Insured Person** as a target individual against whom formal charges may be commenced.

“**Insured Person Claim**” also means a written request to an **Insured Person** to toll or waive a statute of limitations regarding a potential **Insured Person Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

(G) “**Insureds**” means any:

- (1) **Insured Entity**; or
- (2) **Insured Person**.

(H) “**Investigation Costs**” means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand** by an **Insured Entity**, including its board of directors, board of managers, or any committee thereof, provided that **Investigation Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.

(I) “**Loss**” means the amount that the **Insureds** are legally obligated to pay as a result of a **Claim**, including, without limitation, **Defense Costs**, **Investigation Costs**, damages, settlements, judgments, and pre- and post-judgment interest.

Loss shall include punitive and exemplary damages where insurable by law. Regarding the insurability of such damages, the Insurer shall not contend for any reason, unless appropriate to do so as a matter of law or public policy, that such damages are uninsurable. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall not include:

- (1) taxes, fines or penalties imposed by law, the multiple portion of any multiplied damage award, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed; or
- (2) non-monetary relief.

(J) “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of an **Insured Entity**.

(K) “**Outside Entity**” means any:

- (1) not-for-profit corporation, community chest, fund or foundation that is not an **Insured Entity** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) entity organized for a religious or charitable purpose under any not-for-profit statute; or
- (3) entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.

(L) “**Wrongful Act**” means any actual or alleged:

- (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty; or
- (2) matter claimed against an **Insured Person** solely by reason of their serving in

such capacity, including service in an **Outside Capacity**.

III. **COVERAGE EXTENSION FOR OUTSIDE DIRECTORSHIP LIABILITY**

Subject to the terms and conditions of this Policy and Coverage Part, coverage is afforded for **Loss** resulting from any **Insured Person Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer's Limit of Liability available under this Policy for such **Claim**.

IV. **EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS**

The Insurer shall not pay **Loss** for any **Claim**:

- (A) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
- (B) based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;
- (C) based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other directors and officers, management liability, or similar insurance policy;
- (D) based upon, arising from, or in any way related to any:
 - (1) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release or escape; or
 - (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,provided that this exclusion shall not apply to any **Derivative Action** otherwise covered under Insuring Agreement (A);
- (E) based upon, arising from, or in any way related to any violation of **ERISA** or any similar law;
- (F) brought or maintained by or on behalf of any **Insureds** (in any capacity), provided that this exclusion shall not apply to any **Claim**:
 - (1) that is a **Derivative Action** or a **Derivative Demand**;
 - (2) that is an **Insured Person Claim** made by an **Employee** who is not a past or present **Manager** if such **Claim** is made without the assistance, participation or solicitation of any **Manager**;
 - (3) that is an **Insured Person Claim** made by a **Manager** for wrongful termination of such **Manager**;

- (4) by a former **Manager** who has not served in such capacity for at least three years prior to such **Claim** being made, provided that such **Claim** is made without the assistance, participation or solicitation of any current **Manager** or any former **Manager** who has served in such capacity during the three years prior to such **Claim** being made;
 - (5) by an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this Coverage Part;
 - (6) made in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of an **Insured Entity** created in such jurisdiction; or
 - (7) by any bankruptcy trustee, examiner, receiver, liquidator or rehabilitator (or any assignee thereof).
- (G) based upon, arising from, or in any way related to any **Insured Person** serving as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Entity** even if such service is at the direction or request of the **Insured Entity**, provided that this exclusion shall not apply to a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (H) by or on behalf of any **Outside Entity** upon which an **Insured Person** is serving in an **Outside Capacity**, or any director, officer, trustee, regent, governor or equivalent executive of such **Outside Entity**, provided that this exclusion shall not apply to any **Claim**:
- (1) that is a derivative action made on behalf of an **Outside Entity** by any persons who are not:
 - i. **Insured Persons**; or
 - ii. directors, officers, trustees, regents, governors or equivalent executives of the **Outside Entity**,and who make such **Claim** without the solicitation, assistance or participation of any such persons; or
 - (2) by any:
 - i. **Insured Persons**; or
 - ii. directors, officers, trustees, regents, governors or equivalent executives of the **Outside Entity**,for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this Coverage Part;
- (I) based upon, arising from, or in any way related to any public offering of securities of an **Insured Entity** or the purchase or sale of such securities subsequent to such public offering; provided that this exclusion shall not apply to any **Claim**:
- (1) for a **Wrongful Act** in any private placement of an **Insured Entity's** securities exempted from the registration requirements of the Securities Act of 1933; or

- (2) made by any security holders of an **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of such **Insured Entity**;
- (J) based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which the **Insureds** are not legally entitled if a judgment or other final adjudication establishes that such a gain did occur; or
- (K) based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by the **Insureds** if a judgment or other final adjudication establishes such an act, omission or violation.

Regarding exclusions (J) and (K) above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**; and (ii) only a **Wrongful Act** committed by a past, present or future chairman of the board, chief executive officer, chief operating officer or chief financial officer shall be imputed to an **Insured Entity**.

V. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (C)

- (A) The Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim**:
 - (1) based upon, arising from, or in any way related to any liability under 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) based upon, arising from, or in any way related to any employment-related **Wrongful Act**;
 - (3) based upon, arising from, or in any way related to any discrimination or sexual harassment;
 - (4) based upon, arising from, or in any way related to false arrest or imprisonment, abuse of process, malicious prosecution, defamation (including libel and slander), invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium;
 - (5) based upon, arising from, or in any way related to infringement or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property. However, this exclusion shall not apply to any **Claim** brought by a security holder(s) of the **Insured Entity** (unless such security holder(s) is also an **Insured** not expressly exempt from the exclusion found in section IV.(F)) in their capacity as such; or
 - (6) based upon, arising from, or in any way related 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. However, this exclusion shall not apply to any **Claim** brought by a security holder(s) of the **Insured Entity** (unless such security holder(s) is also an **Insured** not expressly exempt from the exclusion found in section IV.(F)) in their capacity as such;
 - (7) where all or any part of the **Claim** is based upon, arising from, or in any way related to price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities. This exclusion, however, shall not apply to **Defense Costs** up to a maximum of the lesser of (1)

the amount shown in the applicable limit of liability on the Declarations or (2) \$1,000,000. In the event that the Defense Outside the Limit of Liability option in Item 5 of the Declarations is selected, **Defense Costs** for all such **Claims** shall be limited to the lesser of (1) the remaining **Defense Costs** available pursuant to section V.(B) of the COMMON TERMS AND CONDITIONS of this Policy or (2) \$1,000,000.

- (B) Other than **Defense Costs**, the Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim** based upon, arising from, or in any way related to the payment by an **Insured Entity** of inadequate consideration in connection with an **Insured Entity's** purchase of securities issued by any **Insured Entity**.

VI. ADDITIONAL LIMIT OF LIABILITY FOR CLAIMS AGAINST MANAGERS

Subject to the terms and conditions of this Policy and Coverage Part, an additional Limit of Liability of \$500,000 shall be available for **Loss** resulting from **Insured Person Claims** against **Managers**, provided that:

- (A) such **Claims** are covered under Insuring Agreement (A);
- (B) such additional Limit of Liability shall be excess of all other insurance available to pay **Loss** for such **Claims**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be exhausted prior to this additional Limit of Liability becoming available to pay **Loss**; and
- (C) such additional Limit of Liability shall be available for the second covered **Claim** made during the **Policy Period** and all subsequent **Claims**. No coverage shall be provided for the first **Claim** made for which coverage is provided under this Policy. The first **Claim** made for which coverage is provided under this Policy shall be determined by the chronological time such **Claim** was made regardless of when coverage is acknowledged by the Insurer for such **Claim**.

The additional Limit of Liability described above shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under this provision.

VII. SECURITIES OFFERINGS

If any public offering of an **Insured Entity's** securities occurs during the **Policy Period** that is not exempt from registration under the Securities Act of 1933, the Insurer shall furnish the **Insureds** with a quote for insurance coverage of 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;
- (B) such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its absolute discretion, chooses;
- (C) any coverage provided shall be on such forms as are in use by the Insurer for public companies at the time of such offering; and
- (D) if the **Insureds** choose to cancel this Policy to accept a coverage form offered in such quote, unearned premium for this Policy shall be calculated on a pro rata basis.

VIII. ORDER OF LOSS PAYMENTS

- (A) If **Loss** is incurred that is acknowledged by the Insurer to be covered under this Coverage Part except that such **Loss** exceeds the remaining available Limit of Liability for this Coverage Part, the Insurer shall first pay **Loss** covered under Insuring Agreement (A) prior to paying **Loss** under any other Insuring Agreements.
- (B) If **Loss** is incurred that is acknowledged by the Insurer to be covered under any Insuring Agreement other than (A), the **Named Entity** shall have the right to direct the Insurer to delay payment of such **Loss** until such time as the **Named Entity** specifies. Any such direction by the **Named Entity** to delay or make payment of **Loss** shall be by written notice to the Insurer. Any such delayed payment of **Loss** shall be available to the Insurer to pay **Loss** covered under Insuring Agreement (A). Any payment of **Loss** under Insuring Agreement (A) out of funds withheld by the Insurer pursuant to this provision shall terminate the Insurer's liability to make a delayed payment of **Loss** under any Insuring Agreement other than (A) by the amount of the payment under Insuring Agreement (A). No interest shall be due regarding any delayed payment of **Loss**. Nothing in this provision shall increase the Insurer's Limit of Liability applicable to this Coverage Part.

IX. DEDUCTIBLE WAIVER

No Deductible shall apply to **Defense Costs** incurred in connection with a **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Deductible otherwise applicable to such **Claim**, if a:

- (A) final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
- (B) complete and final settlement with prejudice;

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.

X. APPLICATION

- (A) Solely with respect to this DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART, GENERAL TERMS AND CONDITIONS Section XVI, APPLICATION, is deleted.
- (B) The **Insureds** represent that the declarations and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the **Application**. The **Insureds** agree that in the event the **Application** contains intentional misrepresentations or misrepresentations that materially affect the acceptance of the risk by the Insurer, no coverage shall be afforded under this Policy for any of the following **Insureds**:
 - (1) any **Insured Persons**, under Insuring Agreement (A), who knew as of the Inception Date of this Policy the facts that were so misrepresented in the **Application**, provided, however, that:
 - (a) knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
 - (b) the Insurer shall not be entitled to rescind coverage afforded by this Policy under Insuring Agreement A.
 - (2) the **Insured Entity**, under Insuring Agreement (B), to the extent it indemnifies any **Insured Person** referenced in (1), above, and

- (3) the **Insured Entity**, under Insuring Agreements (C) and (D), if the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or any one signing the **Application** knew as of the Inception Date of this Policy the facts that were so misrepresented in the **Application**.

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Employment Practices Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for an **Employment Practices Wrongful Act** by the **Insureds**.

(B) Third Party Liability (Elective)

If Third Party Liability Coverage is included in Item 5 of the Declarations, the Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Third Party Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Liability Coverage Sublimit of Liability, Deductible, and Prior or Pending Date in Item 5 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this Coverage Part.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) “**Benefits**” means any form of compensation other than salaries, wages, bonuses, or **Stock Benefits**.

(B) “**Claim**” means any:

(1) **Employment Practices Claim**; or

(2) **Third Party Claim**.

(C) “**Employment Practices Claim**” means any:

(1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand, including, without limitation, a written demand for employment reinstatement;

(2) civil proceeding commenced by the service of a complaint or similar pleading;

(3) formal administrative or regulatory proceeding, including, without limitation, a proceeding before the Equal Employment Opportunity Commission or similar governmental agency, commenced by the filing of a notice of charges, formal investigative order or similar document; or

(4) arbitration proceeding commenced by a demand for arbitration,

by or on behalf of an **Employee**, an applicant for employment with an **Insured Entity**, or an **Independent Contractor**.

“Employment Practices Claim” also means an audit conducted by the United States of America Office of Federal Contract Compliance Programs commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or injunctive relief.

“Employment Practices Claim” also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Employment Practices Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

“Employment Practices Claim” shall not include any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

(D) **“Employment Practices Wrongful Act”** means a **Wrongful Act** involving any:

- (1) wrongful dismissal, discharge or termination of employment (including constructive dismissal, discharge or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
- (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law;
- (4) invasion of privacy, employment-related defamation (including libel and slander) or any employment-related misrepresentation;
- (5) **Retaliation**;
- (6) breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising out of any personnel manual, employee handbook, or policy statement; or
- (7) violation of the Family and Medical Leave Act.

To the extent that an **Employment Practices Claim** alleges an **Employment Practices Wrongful Act** described above, **“Employment Practices Wrongful Act”** also means a **Wrongful Act** related to the above involving any:

- (1) employment-related wrongful infliction of emotional distress or mental anguish;
- (2) failure to create, provide for or enforce adequate or consistent employment-related policies or procedures; or
- (3) negligent retention, supervision, hiring or training.

(E) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to an **Independent Contractor Agreement**.

(F) **“Independent Contractor Agreement”** means any express contract or agreement between an **Independent Contractor** and an **Insured Entity** specifying the terms of the **Insured Entity’s** engagement of such **Independent Contractor**.

(G) “**Insured Person**” means any:

- (1) **Employee**;
- (2) **Manager**; or
- (3) regarding Insuring Agreement (A), an **Independent Contractor** so long that he or she is working solely for the company and only for conduct within his or her duties as such; but only if the **Insured Entity** agrees in writing to indemnify such **Independent Contractor** in the same manner as is provided to the **Insured Entity** employees.

(H) “**Insureds**” means any:

- (1) **Insured Entity**; or
- (2) **Insured Person**.

(I) “**Loss**” means the amount that the **Insureds** are legally obligated to pay as a result of a **Claim**, including, without limitation, **Defense Costs**, damages, settlements, judgments, and pre- and post-judgment interest.

Loss shall include punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act, or the multiple portion of any multiplied damage award where insurable by law. Regarding the insurability of such damages, the Insurer shall not contend for any reason, unless appropriate to do so as a matter of law or public policy, that such damages are uninsurable. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall not include:

- (1) taxes, fines or penalties imposed by law, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
- (2) non-monetary relief;
- (3) future compensation, including **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of an **Employment Practice Claim**;
- (4) **Stock Benefits**; or
- (5) salaries, wages, or bonuses, except as a component of a front or back pay award.

(J) **Retaliation** means negative treatment of an **Employee** or **Independent Contractor** based upon such person:

- (1) exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
- (2) refusing to violate any law;
- (3) assisting, testifying in, or cooperating with a proceeding or investigation

regarding alleged violations of law by an **Insured Entity**;

- (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
 - (5) filing any claim against an **Insured Entity** under the Federal False Claims Act or any similar “whistle blower” laws.
- (K) “**Stock Benefits**” means any offering, plan or agreement between an **Insured Entity** and any **Employee** that grants stock, stock options or stock appreciation rights in the **Insured Entity** to such person, including, without limitation, restricted stock or any other stock grant. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- (L) “**Third Party**” means any natural person who is a customer, vendor, service provider or other business invitee of an **Insured Entity**. **Third Party** shall not include **Employees**.
- (M) “**Third Party Claim**” means any:
- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand;
 - (2) civil proceeding commenced by the service of a complaint or similar pleading;
 - (3) formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or
 - (4) arbitration proceeding commenced by the filing of a demand for arbitration,
- by or on behalf of a **Third Party**.
- “**Third Party Claim**” also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Third Party Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.
- (N) “**Third Party Wrongful Act**” means a **Wrongful Act** involving any:
- (1) discrimination against a **Third Party** based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law; or
 - (2) sexual harassment against a **Third Party**, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature.
- (O) “**Wrongful Act**” means any actual or alleged:
- (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty; or
 - (2) matter claimed against an **Insured Person** solely by reason of their serving in such capacity.

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

- (A) The Insurer shall not pay **Loss** for any **Claim**:

- (1) for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
 - (2) based upon, arising from, or in any way related to any:
 - (a) prior or pending demand, suit or proceeding against any **Insureds** as of; or
 - (b) audit initiated by the Office of Federal Contract Compliance Programs before,

the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit, proceeding, or audit;
 - (3) based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other insurance policy;
 - (4) based upon, arising from, or in any way related to the liability of others assumed under any contract or agreement, provided that this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;
 - (5) for breach of any **Independent Contractor Agreement**; or
 - (6) for violation of the National Labor Relations Act or any similar law.
- (B) Other than an **Employment Practices Claim** for **Retaliation**, the Insurer shall not pay **Loss** for any **Claim**:
- (1) based upon, arising from, or in any way related to any:
 - (a) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release or escape; or
 - (b) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste;
 - (2) based upon, arising from, or in any way related to any workers' compensation, unemployment compensation, disability benefits, or social security law, or any similar law;
 - (3) for violation of **ERISA** (except Section 510), the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, or any similar law; or
 - (4) for violation of the Fair Labor Standards Act (except Equal Pay Act) or any similar law, including, without limitation, any law governing:
 - (a) overtime wages; or
 - (b) minimum wages.

- (C) Other than **Defense Costs**, the Insurer shall not pay **Loss** for any **Claim**:
- (1) for employment termination severance payments, provided that this exclusion shall not apply to the extent that such payments are negotiated with and consented to by the Insurer as part of a settlement;
 - (2) for costs associated with providing any accommodations required by the Americans With Disabilities Act or any similar law;
 - (3) for **Benefits**, provided that this exclusion shall not apply to any **Employment Practices Claim** for wrongful termination, dismissal or discharge of employment; or
 - (4) based upon, arising from, or in any way related to liability incurred for breach of any written employment contract, provided that this exclusion shall not apply to liability that would have been incurred in the absence of such contract.

IV. OTHER INSURANCE

- (A) The coverage provided under this Policy for any **Employment Practices Claim** shall be primary.
- (B) Notwithstanding the above, the coverage provided under this Policy for any **Employment Practices Claim** made against a temporary, leased or loaned **Employee** or an **Independent Contractor** shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such **Claim**, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

V. COORDINATION OF COVERAGE

If this Coverage Part and either the Directors, Officers and Entity Liability Coverage Part or Fiduciary Liability Coverage Part are included under this Policy, and a **Claim** is covered under this Coverage Part and any such other Coverage Part, **Loss** shall be first covered and paid under this Coverage Part.

If notice of a **Claim** has been given under either the Directors, Officers and Entity Liability Coverage Part or Fiduciary Liability Coverage Part and a determination is made by the Insurer that such **Claim** would be covered under this Coverage Part if notice had been given under this Coverage Part, then the **Insureds** shall be deemed to have given notice of such **Claim** under this Coverage Part at the same time that notice was given under such other Coverage Part.

VI. CHANGES IN EXPOSURE

- (A) This section shall supplement, and not replace, Common Terms and Conditions Section XIV. Changes in Exposure.
- (B) In addition to the asset percentage size limit for automatic coverage of any newly merged or acquired entity specified in Common Terms and Conditions Section XIV. Changes in Exposure (A), if the number of employees of a newly merged or acquired entity exceeds 25% of the number of employees of all **Insured Entities** combined prior to such merger or acquisition, the **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable and the Insurer shall be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There shall be no coverage for any newly merged or acquired entity or any of its subsidiaries,

managers, directors, officers, or employees unless the **Insureds** comply with the terms of this provision.