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THIS IS A CLAIMS MADE AND REPORTED POLICY
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY
PLEASE READ THE ENTIRE POLICY CAREFULLY

DIRECTORS, OFFICERS AND PRIVATE COMPANY

LIABILITY INSURANCE POLICY

INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE

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

Section I. Insuring Agreements

A. The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Insured Person** during the Policy **Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII, except for any **Loss** which the **Company** actually pays as indemnification.

B. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against an **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act** reported to the **Insurer** pursuant to Section VII, but only to the extent the **Company** is required or permitted by law, to the fullest extent possible, to indemnify the **Insured Person**.

C. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment**

Practices Claim) first made against the **Company** during the **Policy Period** or the Discovery Period for a **Wrongful Act,** and reported to the **Insurer** pursuant to Section VII.

Section II. Definitions

A. "**Application**" shall mean each and every signed application submitted to the **Insurer** for consideration of insurance together with any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy. "**Application**" shall also mean any public documents filed by the **Company** within the past 36 months with any federal, state, local or foreign governmental entity.

B. **"Claim"** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

C. "**Company**" shall mean the **Corporation** and any **Subsidiary**.

D. "**Corporation**" shall mean the entity named in Item 1 of the Declarations.

E. "**Costs of Defense**" shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim,** including the costs of an appeal bond, attachment bond or similar bond (but the **Insurer** shall not have any obligation to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured**.

F. "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**.

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

H. "**Employee**" shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such. Any person leased to the **Company** shall also be an

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Employee, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees.

I. "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** brought by or on behalf of any customer or client of the **Company** alleging discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment.

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

(1) adverse or unfair reprimand of an **Employee**;

(2) denial of interview or position;

(3) denial of training to an **Employee**;

(4) derogatory or disparaging remarks to an **Employee**;

(5) discrimination;

(6) employment-related misrepresentations

(7) employment-related libel, slander, defamation, or invasion of privacy;

(8) failure to grant tenure;

(9) failure to provide an adequate workplace, or employment policy or procedure for **Employees**;

(10) imposing mandatory arbitration of an **Employment Practices Claim** by an employer;

(11) improper denial of time off or vacation time to an **Employee**;

(12) improper disciplinary action of an **Employee**;

(13) improper performance review of an **Employee**;

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(14) improper transfer, change of position or change of work hours or shift of an **Employee**;

(15) improper treatment of an **Employee** for their actions as a whistleblower;

(16) negligent evaluation of an **Employee**;

(17) negligent release of medical information of an **Employee**;

(18) **Retaliation** against an **Employee**;

(19) sexual or workplace harassment of any kind;

(20) violation of the Equal Pay Act;

(21) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;

(22) wrongful dismissal, discharge or termination of employment, whether actual or constructive, of an **Employee**;

(23) wrongful failure to promote, transfer or employ; and

(24) violation of an **Employee's** civil rights relating to any of the above.

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

L. "**Insured**" shall mean an **Insured Person** and the **Company**.

M. "**Insured Person**" shall mean **Directors**, **Officers** and **Employees**.

N. "**Insurer**" shall mean the company stated in Item 8 of the Declarations.

O. "**Loss**" shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

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

P. "**Management Control**" shall mean: **(1)** owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or **(2)** having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.

Q. "**Outside Entity**" shall mean any not- for- profit entity or any for-profit company but only if such for-profit entity is specifically added by written endorsement to this Policy.

R. "**Policy Period**" shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.

S. "**Pollutants**" shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any 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 and any noise.

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T. "**Pollution**" shall mean the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

U. "**Related Wrongful Acts**" shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.

V. "**Retaliation**" shall mean a **Wrongful Act** of an **Insured** relating to or alleged to be in response to any of the following activities: **(1)** the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; **(2)** the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; **(3)** the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or **(4) Employee** strikes.

W. "**Securities Claim**" shall mean any **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission, or by any similar state or foreign governmental or securities regulatory entity) made against an **Insured** alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

(1) brought by any person or entity alleging, arising out of, based upon or attributable to the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, or

(2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes an uninsurable loss and, subject to all other terms and conditions of the Policy, shall treat that portion of all such settlements, judgments and **Costs of Defense** as constituting **Loss** under the Policy.

X. "**Subsidiary**" shall mean:

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(1) any for-profit organization of which the **Company** has **Management Control** ("Controlled Entity") on or before the inception of the **Policy Period** either directly or indirectly through one or more other Controlled Entities;

(2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy which the **Company** first had **Management Control** during the **Policy Period**, either directly or indirectly, through one or more other Controlled Entities. The **Corporation** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or

(3) an organization which the **Company** first had **Management Control** during the **Policy Period** (other than a for-profit organization described in paragraph (2) above), either directly or indirectly through one or more other Controlled Entities, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Corporation** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.

(4) An organization becomes a **Subsidiary** when the **Company** has **Management Control** of such **Subsidiary**, either directly or indirectly, through one or more of its Controlled Entities. An organization ceases to be a **Subsidiary** when the **Company** ceases to have **Management Control** in such **Subsidiary**, either directly, or indirectly through one or more of its Controlled Entities.

(5) In all events, coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** in their capacity as such with the **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time the **Company** obtained **Management Control** of such **Subsidiary**, and prior to the effective time that the **Company** no longer has **Management Control** over such **Subsidiary**.

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

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(1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Person** in their capacity as such with the **Company**;

(2) any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;

(3) any matter claimed against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**; or

(4) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by the **Company**.

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Section III. Exclusions

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

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

(1) an **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or

(2) the deliberately fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or

(3) any profits in fact made from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provision of any state statutory law; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred.

Provided, however,

(a) Exclusion A(1) shall not apply to any **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations.

(b) For the purpose of determining the applicability of Exclusion A(1), (2) and (3), it is understood and agreed that:

(i) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and

(ii) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.

B. alleging, arising out of, based upon or attributable to any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;

C. alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge;

D. for any actual or alleged:

(1) bodily injury, sickness, disease, or death of any person;

(2) damage to or destruction of any tangible property, including the loss of use thereof; or

(3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander, however, this subsection (D)(3) does not apply to an **Employment Practices Claim.**

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

F. for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services

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rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay Earned Wages, or (ii) any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt";

G. alleging, arising out of, based upon or attributable to a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy;

H. for a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**;

I. which is brought by or on behalf of the **Company** or by any **Insured Person**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**; provided however, this exclusion shall not apply to:

(1) any **Employment Practices Claim** brought by an **Insured Person**, other than an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;

(2) any **Claim** brought by an **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;

(3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;

(4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least four (4) years prior to such **Claim** being first made;

(5) any **Claim** brought by a **Director** or **Officer** (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction against such

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Company or any **Director** or **Officer** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or

(6) any **Claim** brought against an **Insured Person** arising out of or based upon any protected activity specified in any "whistleblower" protection pursuant to any state, local or foreign laws.

J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors;

K. for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** occurring:

(1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;

(2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or

(3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**;

L. which is insured in whole or in part by another valid policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise.

M. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:

(1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Corporation** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;

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(2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the **Corporation** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Corporation** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Corporation** paying when due any such additional premium. In the event the **Corporation** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;

N. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to an **Employment Practice Claim** to the extent liability does not arise under such contract or agreement;

O. alleging, arising out of, based upon or attributable to the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming a **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming a **Subsidiary**, the **Corporation** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to the transaction. Further, coverage as shall be conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;

P. alleging, arising out of, based upon or attributable to emotional distress, or injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, this exclusion shall not apply to any **Employment Practices Claim**;

Q. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;

R. with respect to Insuring Agreement C only:

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(1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;

(2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;

(3) for the rendering or failure to render any service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any:

a. **Claim** alleging **Employment Practices Violations**;
b. **Securities Claim**; or
c. **Claim** for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this Policy by written endorsement attached hereto; or

(4) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.

Section IV. Limit of Liability

A. The **Insurer** shall be liable to pay **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.

B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Costs of Defense** shall serve to reduce the Limit of Liability.

C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** first made and reported pursuant to Section VII of the Policy shall be the amount stated in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and Discovery Period, if applicable, regardless of the time of payment or the number of **Claims**.

Section V. Retention

A. The Retention shall apply to all covered **Loss**, including **Costs of Defense**.

(1) The Retention specified in Item 4 of the Declarations shall apply as follows:

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a. Item 4(a) Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim** or a **Securities Claim**.

b. Item 4(b) Retention is applicable to **Loss** resulting from an **Employment Practices Claim**.

c. Item 4(c) Retention is applicable to **Loss** resulting from a **Securities Claim**.

d. A Retention shall not apply to a Non Indemnifiable Loss, including **Costs of Defense**.

B. One Retention shall apply to **Loss** arising from each **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.

C. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Acts** were reported under this Policy or any other policy providing similar coverage.

D. For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the **Company** is unable to indemnify an **Insured Person** solely by reason of its **Financial Insolvency**, the **Insurer** shall, pursuant to the terms and conditions of Section VI.F., advance **Costs of Defense** incurred by an **Insured Person** without first requiring payment of the Retention applicable to **Claims** covered by Insuring Agreement I.B. The certificate of incorporation, charter or other organization documents of the **Company**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** of an **Insured Person** to the fullest extent permitted by law.

Section VI. Costs of Defense and Settlements

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

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or **Costs of Defense** incurred prior to the consent of the **Insurer**, shall not be covered hereunder.

B. Notwithstanding Section VI.A. above, if all **Insureds** are able to settle all **Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.

C. The **Insured**, and not the Insurer, shall have the duty to defend all **Claims**, provided that the **Insured** shall only retain counsel as is mutually agreed upon with the **Insurer**. The **Company** may at its option tender to the **Insurer** the defense of a **Claim**. Such a tender of the defense of a **Claim** shall not be made more than 90 days following notice of the **Claim** pursuant to Section VII. Upon such a tender of the defense of a **Claim**, the **Insurer** shall assume the duty to defend.

D. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Claim**.

E. If a **Claim** made against an **Insured** includes both covered and uncovered matters, or is made against an **Insured** and others not insured, the **Insured** and the **Insurer** recognize that there must be an allocation between covered and uncovered **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered **Loss**, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insured** and the **Insurer** are not able to come to some agreement regarding the amount of the allocation, then the **Insurer** shall pay only those amounts, excess of the applicable Retention amount, which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and the above standards.

F. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:

(1) the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;

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(2) any amounts advanced by the Insurer shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;

(3) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if no agreement, the **Insurer** shall pay, excess of the retention, what it determines fair and reasonable until such is otherwise established; and

(4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.

Section VII. Notice of Claim

A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery period. Such notice shall be given as soon as practicable but in no event later than thirty (30) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.

B. If during the **Policy Period** or during the Discovery Period the **Company** or an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at the time notice of such circumstances was given. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable.

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

D. Notice to the **Insurer** as provided in Section VII shall be given to the **Insurer** identified in, and at the address set forth in, Item 8 of the Declarations.

Section VIII. Discovery Period

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A. In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.

B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.

C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

Section IX. General Conditions

A. Cancellation or Non-Renewal

(1) This Policy may be cancelled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation by the **Corporation**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D. wherein the entire premium for this Policy shall be deemed earned.

(2) This Policy may only be cancelled by the **Insurer** if the **Corporation** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further

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agreed by the **Company** and the **Directors** and **Officers** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application**, shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.

C. Action Against the Insurer

(1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.

(2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

D. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

(1) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and

(2) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

E. Outside Entity Provision

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

F. Coverage Extensions

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(1) Lawful Spouse or Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

(2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

(3) Estates and Legal Representatives

a. The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

b. In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Agreements I. B. and C.

G. Priority of Payments

(1) In the event of **Financial Insolvency**, or the refusal of the **Corporation** to indemnify or advance the indemnification of an **Insured Person** and there is **Loss** arising from one or more covered **Claims** for which payment is due under this Policy, the **Insurer** shall:

a. first pay such **Loss** for which coverage is provided under Section I.(A) of this Policy; then

b. with respect to whatever remaining amount of the Limit of Liability is available after payment of Section G(1)(a) above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.

(2) Subject to the provisions of paragraph (1) above, the **Insurer** shall, at the written request of the **Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.(A) until such time as the **Corporation** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be

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increased, and shall not include any interest as a result of such delay. The **Corporation** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this Policy with respect to such funds.

H. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Company**.

I. Dispute Resolution

In the event any dispute arises in connection with this Policy that cannot be resolved, the **Insurer** and the **Insured** shall participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the mediation and until at least 90 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or an arbitration, shall be split equally by the parties.

J. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

K. Conformity to Statute

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

L. Entire Agreement

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

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M. Corporation Represents Insured

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

N. Representative of the Insurer

Ironshore Insurance Services, LLC, 1 Exchange Plaza (55 Broadway), New York, NY 10006 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

O. Service of Suit

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

Service of process in any such suit may be made upon Ironshore Insurance Services, LLC, 1 Exchange Plaza (55 Broadway), New York, NY 10006. In any suit instituted against the **Insurer** upon this Policy the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Ironshore Insurance Services, LLC, 1 Exchange Plaza (55 Broadway), New York, NY 10006 as the entity to whom said officer is authorized to mail such process or a true copy thereof.

P. Bankruptcy

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

Q. Headings

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

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