

## GENERAL TERMS AND CONDITIONS

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

### I. DEFENSE OBLIGATIONS

The Insurer has the right and duty to defend any **Claim** against any **Insured** covered under the Liability Coverage Parts of this Policy, even if such **Claim** is false, fraudulent or groundless.

### II. GENERAL DEFINITIONS

A. "**Application**" means:

1. the application attached to and forming part of this Policy; and
2. any materials submitted therewith, which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

B. "**Change in Control**" means:

1. the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity, or
2. the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **Parent Company**.

C. "**Claim**" means:

1. any written notice, including any request to toll or waive a statute of limitations or any such notice seeking monetary or non-monetary relief;
2. any civil proceeding in a court of law or equity, or arbitration; or
3. any criminal proceeding which is commenced by the return of an indictment.

D. "**Company**" means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2. of the Declarations or during the **Policy Period**, and shall include the **Parent Company** and any covered **Subsidiary** as a debtor in possession, as such term is used in Chapter 11 of the United States Bankruptcy Code, subject to GENERAL CONDITIONS F.

E. "**Defense Expenses**" means reasonable legal fees and expenses incurred in the defense of any **Claim** including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, trustees or employees.

F. "**Insured**" shall have the meaning given to that term in each Coverage Part attached hereto.

G. "**Insured Person**" shall have the meaning given to that term in each Coverage Part attached hereto.

H. "**Interrelated Wrongful Acts**" means **Wrongful Acts** which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related or series of related facts, circumstances, situations, transactions or events.

I. “**Loss**” means damages, judgments, settlements or other amounts (including pre- & post-judgment interest, punitive or exemplary damages, or the multiplied portion of any damage award, where insurable by law), and **Compliance Costs**, if applicable, in excess of the Retention that the **Insured** is obligated to pay, including **Defense Expenses**, whether incurred by the Insurer or the **Insured**. **Loss** will not include:

1. matters which are uninsurable under the law pursuant to which this Policy is construed; and
2. fines, penalties or taxes imposed by law; provided that this clause I. 2. will not apply to fines, penalties or taxes that an **Insured Person** is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such **Insured Person’s** service with respect to an entity included within the definition of **Company** that is financially insolvent.

**NOTE:** With respect to judgments in which punitive damages are awarded, the law of the jurisdiction most favorable to the insurability of punitive damages shall control, provided such jurisdiction:

1. is where such punitive damages were awarded;
2. is where the **Parent Company** or any **Subsidiary** is incorporated or otherwise organized or has a place of business, or
3. is where the Insurer is incorporated or has its principal place of business.

J. “**Parent Company**” means the entity named in ITEM 1. of the Declarations.

K. “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 2. of the Declarations or to any earlier cancellation date.

L. “**Subsidiary**” means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity’s directors.

M. “**Wrongful Act**” shall have the meaning given to that term in each Coverage Part attached hereto.

### III. GENERAL CONDITIONS

#### A. LIMITS OF LIABILITY AND RETENTIONS

1. The amounts set forth in ITEM 3 (a) – (c) of the Declarations as the Maximum Aggregate Limit of Liability for each Liability Coverage Part shall be the Maximum Aggregate Limit of Liability of the Insurer under such Coverage Part for all **Loss**, including **Defense Expenses**, from all **Claims** and all **Compliance Requests** made or deemed made under such Coverage Part during the **Policy Period**. Each such amount shall be part of, and not in addition to, the amount set forth in ITEM 3 (d) of the Declarations, which amount is the Maximum Aggregate Limit of Liability of the Insurer under all Coverage Parts for all **Loss**, including **Defense Expenses**, from all **Claims** and all **Compliance Requests** for which such Coverage Parts of this Policy provides coverage.
2. The amounts set forth in ITEM 4.(a)-(i) of the Declarations as the Maximum Limit of Liability for each Insuring Agreement of the Crime Coverage Part shall be the Maximum Limit of Liability of the Insurer under each such Insuring Agreement for all direct loss sustained during the Policy Period and, if applicable, all reasonable court costs and attorneys’ fees covered under Insuring Agreement D. and H.. The amount set forth in ITEM 4. (j) of the Declarations as the Maximum Limit of Liability for all Expense Coverage under the Crime Coverage Part shall be the Maximum Limit of Liability of the Insurer under Insuring Agreement J. for all Investigative Expenses and Computer Violation Expenses resulting from any direct loss covered under the applicable Insuring Agreements.
3. **Defense Expenses** incurred by the Insurer or by the **Insured** in defense of a **Claim** will be part of and not in addition to the Limits of Liability, and payment of **Defense Expenses** by the Insurer will reduce and may exhaust all applicable Limits of Liability.

4. If coverage is available for a **Claim** under more than one Coverage Part, the maximum applicable Limit of Liability for such **Claim** shall be the largest applicable remaining Limit of Liability under only one of the applicable Coverage Parts.
5. If coverage is available under more than one Insuring Agreement under the Crime Coverage Part, the maximum Limit of Liability for any direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, shall be the largest applicable Limit of Liability under such Insuring Agreements..
6. With respect to a **Claim, Compliance Request** or direct loss under any applicable Coverage Part, the Insurer shall only pay **Loss** or direct loss which is in excess of the amount set forth in ITEM 5. of the Declarations as the Retention applicable to each **Claim**, each **Compliance Request** or each direct loss under the applicable Coverage Part. If different Retentions are applicable to different parts of any **Loss** or direct loss under this Policy, the applicable Retention will be applied separately to each part of such **Loss** or direct loss, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 5. of the Declarations.

**B. DEFENSE, ALLOCATION OF LOSS AND SETTLEMENT**

1. Solely with respect to any Liability Coverage Part, if both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against an **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both an **Insured** and others not insured under this Policy, the **Insureds** and the Insurer will allocate such amounts as follows:
  - a. one hundred percent (100%) of **Defense Expenses** incurred will be allocated to covered **Loss**; and
  - b. losses other than **Defense Expenses** will be allocated between covered **Loss** and uncovered loss on the basis of the relative legal exposures of the parties to covered and uncovered matters.
2. In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of **Loss**, as described in clause B. 1. above, then the Insurer shall advance that portion of **Loss** which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.
3. No **Insured** may incur any **Defense Expenses** or admit any liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld. The Insurer will have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the Insurer deems appropriate.
4. The Insurer will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** under any Liability Coverage Part after the Maximum Aggregate Limit of Liability for any applicable Coverage Part and/or the Maximum Aggregate Limit of Liability for the Policy as set forth in ITEM 3. of the Declarations is exhausted by the payment of **Loss**, including **Defense Expenses**.

**C. NOTICE**

1. Solely with respect to any Liability Coverage Part
  - a. As a condition precedent to any right to payment under this Policy with respect to any **Claim** and any **Compliance Request**, the **Insured** shall give written notice to the Insurer of any **Claim** or any **Compliance Request** as soon as practicable after it is first made.
  - b. If, during the **Policy Period**, the **Insured** first becomes aware of a specific **Wrongful Act**, and if, during the **Policy Period**, the **Insured**:
    - (i) provides the Insurer with written notice of the specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages),

the identities of the potential claimants, and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and

- (ii) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**; then any **Claim** subsequently made arising out of such **Wrongful Act** will be treated as if it had been first made during the **Policy Period**.
2. Solely with respect to the Crime Coverage Part, as a condition precedent to any right to payment under the Crime Coverage Part, the **Insureds** must comply with the requirements set forth in Section X. B. of the Crime Coverage Part.
  3. All notices under clause C. 1. and clause C. 2. above must be sent by first class U.S. Mail or the equivalent to the address set forth in ITEM 8. of the Declarations, Attention: Claim Department.

**D. INTERRELATED CLAIMS**

All **Claims** and all **Compliance Requests** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** or **Compliance Request** and shall be deemed to have been made at the earliest time at which the earliest **Claim** or **Compliance Request** is made or deemed to have been made pursuant to GENERAL CONDITIONS C. 1. a. or, if applicable, GENERAL CONDITIONS C. 1. b.

**E. OTHER INSURANCE**

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

**F. MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL)**

1. If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity (an "Acquired Entity"), coverage shall be provided for:
  - a. any **Loss** resulting from **Claims** first made against the Acquired Entity, including its **Insureds** (other than any **Pension Benefit Plan** of such Acquired Entity) after the acquisition and during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts** committed or allegedly committed after such acquisition; or,
  - b. any direct loss Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained after such acquisition. There is no coverage for any **Pension Benefit Plan** of the Acquired Entity under this clause F. 1. unless the Insurer specifically agrees to provide such coverage pursuant to SECTION II. DEFINITIONS J. 4. of the Pension and Welfare Benefit Plan Fiduciary Liability Coverage Part.
2. If, however, by reason of the transaction (or series of transactions) described in F. 1. above, the Acquired Entity exceeds thirty five percent (35%) of the total assets of the **Company** (or 35% of the employee count for Employment Practices Liability Coverage Part only), as represented in the **Company's** most recent audited consolidated financial statements, coverage, as set forth in clause F. 1. above, shall be provided only for a period of ninety (90) days after such transaction (or series of transactions) or until the Policy Expiration Date, whichever is earlier, for:
  - a. any **Loss** resulting from **Claims** first made against the Acquired Entity, including its **Insureds** (other than any **Pension Benefit Plan** of such Acquired Entity) after the acquisition and during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts** committed or allegedly committed after such acquisition; or

- b. direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained after such acquisition. Coverage thereafter will be provided only if:
  - (i) the Insurer receives written notice containing full details of the transaction(s); and
  - (ii) the Insurer specifically agrees by written endorsement to provide coverage with respect to such Acquired Entity, and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.
- 3. If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to such entity and to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained, prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- 4. If, during the **Policy Period**, there is a **Change in Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained prior to the time of the **Change in Control**; and
  - a. no coverage will be available under this Policy for any **Claim** for a **Wrongful Act** committed, or direct loss, Expense Coverage, if applicable, and reasonable court costs and attorneys' fees, if applicable, sustained subsequent to the **Change in Control**; and
  - b. the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change in Control**.

**G. CANCELLATION AND RENEWAL OF COVERAGE**

- 1. Except for the nonpayment of premium, as set forth in clause G. 2. below, the **Parent Company** has the exclusive right to cancel this Policy prior to the Policy Expiration Date set forth in Item 2. of the Declarations. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the date such notice is received by the Insurer. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- 2. The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will deliver or mail written notice stating when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- 3. The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Policy Expiration Date set forth in ITEM 2. of the Declarations.

**H. OPTIONAL EXTENSION PERIOD – LIABILITY COVERAGE PARTS ONLY**

- 1. If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of the applicable additional premium set forth in ITEM 6. of the Declarations, to a one or two year extension of the coverage provided by this Policy with respect only to any **Claim** first made during the one or two year period of time after the Policy Expiration Date, but only with respect to **Wrongful Acts** occurring prior to the Policy Expiration Date.
- 2. As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within sixty (60) days after the Policy Expiration Date.

3. If the **Parent Company** elects to purchase the Optional Extension Period as set forth in clause H. 1. and clause H. 2. above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date of the Optional Extension Period.
4. The purchase of the Optional Extension Period will not in any way increase the Limits of Liability set forth in ITEM 3. of the Declarations, and the Limits of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the applicable Limits of Liability for **Claims** made during the **Policy Period**.
5. If purchased, the Optional Extension Period shall only apply to the applicable Liability Coverage Parts.

**I. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES OF INSURED PERSONS**

The coverage afforded under the Liability Coverage Parts of this Policy shall, subject to all of its terms, conditions and limitations, extend to:

1. the lawful spouse of any **Insured Person**; provided however, that this clause I. will apply only:
  - a. to the extent that the spouse is a party to any **Claim** solely in their capacity as a spouse of such **Insured Person**; and
  - b. for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by such **Insured Person** and spouse, or property transferred from such **Insured Person** to the spouse.
2. the domestic partner of any **Insured Person**, but only to the extent such domestic partner is a party to any **Claim** solely in his or her capacity as a domestic partner of an **Insured Person** and only for the purposes of any **Claim** seeking damages recoverable from community property, from property jointly held by an **Insured Person** and his or her domestic partner, or from property transferred by an **Insured Person** to his or her domestic partner.
3. the estate, heirs, legal representatives or assigns of any **Insured Person** or assigns of any **Insured Person** who is deceased, or against the legal representatives or assigns of any **Insured Person** who is incompetent, insolvent or bankrupt.

**J. ASSISTANCE, COOPERATION AND SUBROGATION**

1. The **Insureds** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that it will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.
2. In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

**K. REPRESENTATION CLAUSE**

The **Insured** represents that the statements and particulars contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth.

**L. ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY**

1. No action may be taken against the Insurer unless, as a condition precedent thereto:
  - a. there has been full compliance with all of the terms and conditions of this Policy; and
  - b. the amount of the obligation of the **Insured** has been finally determined either by judgment against the **Insured** after actual trial, by summary judgment against the **Insured**, or by written agreement of the **Insured**, the claimant and the Insurer.
2. Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured** to determine their liability, nor may the **Insured** implead the Insurer in any **Claim**.
3. Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
4. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the Insurer.

**M. AUTHORIZATION AND NOTICES**

It is understood and agreed that the **Parent Company** will act on behalf of the **Insureds** with respect to:

1. the payment of the premiums;
2. the receiving of any return premiums that may become due under this Policy;
3. the giving of all notices to the Insurer as provided herein, and
4. the receiving of all notices from the Insurer.

**N. APPLICATION OF COVERAGE PARTS**

Except for the GENERAL TERMS AND CONDITIONS or unless specifically stated to the contrary, the provisions of each Coverage Part shall apply only to that particular Coverage Part and shall in no way be construed to apply to any other Coverage Part of this Policy. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part.

**O. PRIORITY OF PAYMENT – LIABILITY COVERAGE PARTS ONLY**

In the event of **Loss**, other than **Defense Expenses**, from any **Claim** made against both an **Insured Person(s)** and the **Company**, then the following shall apply:

1. If such **Loss** exceeds the remaining available Limit of Liability set forth in ITEM 3. of the Declarations:
  - a. the Insurer will first pay **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely by reason of the **Company's** financial insolvency; then
  - b. to the extent that any amount of the applicable Limit of Liability shall remain available, the Insurer shall pay **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is legally permissible and/or made against the **Company, Plan or Sponsor Organization**, as applicable.

2. In all events (including those described in clause O. 1. above), upon the written request of the **Company, Plan or Sponsor Organization**:
  - a. the Insurer will first pay **Loss** from any **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely by reason of the **Company, Plan or Sponsor Organization's** financial insolvency; then
  - b. to the extent that any amount of the applicable Limit of Liability shall remain available, the Insurer shall either pay or withhold payment of **Loss** from such **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is legally permissible and/or made against the **Company, Plan or Sponsor Organization**, as applicable, all as requested by the **Company, Plan or Sponsor Organization**.

If the **Company, Plan or Sponsor Organization** requests that the Insurer withhold payment of **Loss**, as provided in clause 2. b. above, the Insurer shall continue to withhold payment unless and until the **Company, Plan or Sponsor Organization** shall request the Insurer either to release such payment to the **Company, Plan or Sponsor Organization** on account of such **Claim**, or apply such payment to covered **Loss** from any future **Claim** made against the **Insured Person(s)** as to which indemnification by the **Company, Plan or Sponsor Organization** is not legally permissible or is not made solely reason of the **Company, Plan or Sponsor Organization's** financial insolvency.

**P. WORLDWIDE COVERAGE**

Coverage under this policy shall extend anywhere in the world.

**Q. BANKRUPTCY – WAIVER OF AUTOMATIC STAY**

If a liquidation or reorganization proceeding is commenced by any **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code, as amended, or any similar state, local or foreign law ("Bankruptcy Law"), then with respect to a covered **Claim**, the **Insureds** hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Bankruptcy Law; and
2. agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

**R. ENTIRE AGREEMENT**

The **Insured** agrees that the Declarations, Policy, including any endorsements, attachments and the **Application** shall constitute the entire agreement between the Insurer or any of its agents and the **Insured** relating to this insurance.



## PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE PART

**THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES AND COMPLIANCE COSTS INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

**In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:**

### I. INSURING AGREEMENT

- A. The Insurer shall pay on behalf of the **Insureds Loss** resulting from a **Claim** first made against the **Insureds** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**.
- B. The Insurer shall pay on behalf of the **Insureds** all **Compliance Costs** incurred by the **Insureds** as a result of any **Compliance Request** first made by an **Insured** during the **Policy Period**. The Insurer shall have no duty to provide the **Insureds** with legal representation or to conduct any investigation in connection with any **Compliance Request** or any actual or alleged noncompliance of any **Plan** with any statute, rule or regulation.

### II. DEFINITIONS

- A. "**Administration**" means:
  - 1. handling records in connection with **Employee Benefits**;
  - 2. effecting enrollment, termination or cancellation of employees under an **Employee Benefits** program;
  - 3. giving counsel to employees with respect to **Employee Benefits**; or
  - 4. interpreting **Employee Benefits**.
- B. "**Claim**," as defined in the GENERAL DEFINITIONS C., shall include, for purposes of this Coverage Part:
  - 1. a written notice of the commencement of an investigation by the Department of Labor or the Pension Benefit Guaranty Corporation; or
  - 2. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against an **Insured** for a **Wrongful Act**.
- C. "**Compliance Costs**" means:
  - 1. voluntary compliance fees, voluntary correction fees, compliance correction fees or sanctions paid to the Internal Revenue Service by the **Insureds** under any **Voluntary Compliance Program** in connection with the actual or alleged noncompliance of any **Plan** with any statute, rule or regulation; and
  - 2. reasonable costs, charges and expenses of attorneys, accountants and other professionals, if incurred solely in investigating and evaluating the actual or alleged noncompliance of any **Plan** with any statute, rule or regulation and effecting a resolution thereof under a **Voluntary Compliance Program**.

**Compliance Costs** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.

## PRIVATE COMPANY INSURANCE POLICY

- D. “**Compliance Request**” means a request for a compliance statement, correction statement or closing agreement under a **Voluntary Compliance Program**.
- E. “**Employee Benefits**” means any **Plan**, and any workers’ compensation insurance, unemployment insurance, Social Security or disability benefits for employees of the **Company**.
- F. “**Insured**” means the **Insured Persons**, the **Plan** and the **Sponsor Organization**.
- G. “**Insured Person**” means any director, officer, trustee, partner or employee of the **Plan** or of the **Sponsor Organization** while acting in his or her capacity as a fiduciary of the **Plan**.
- H. “**Loss**,” as defined in GENERAL DEFINITIONS I., will not include:
1. fines, penalties or taxes imposed by law, except that **Loss** may include civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) for inadvertent violation of Section 406 of ERISA, and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty; or
  2. benefits due or to become due under the terms of any **Plan**, unless and then only to the extent that recovery for such benefits is based on a **Wrongful Act** and is payable as the adjudicated personal obligation of an **Insured** who is a natural person; provided that **Loss** shall include **Defense Expenses** with respect to any **Claim** seeking benefits due or to become due under the terms of any **Plan**.
- I. “**Pension Benefit Plan**” means any employee pension benefit plan, as such term is defined in ERISA.
- J. “**Plan**” means:
1. any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created before the Inception Date set forth in ITEM 2. of the Declarations by any **Sponsor Organization**, or by any interest owned or controlled by such **Sponsor Organization**, for the employees thereof;
  2. any **Welfare Benefit Plan** which was, is now, or becomes sponsored by any **Sponsor Organization**;
  3. any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created during the **Policy Period** by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization** for the employees thereof, but only if the **Insured** provides the Insurer with written notice of the creation of such **Pension Benefit Plan** within ninety (90) days of the effective date of such **Pension Benefit Plan**; and
  4. any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, of any entity acquired during the **Policy Period** through the merger, consolidation or otherwise by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization**, but only if:
    - a. the **Insured** provides the Insurer such additional information with respect thereto as the Insurer may reasonably require;
    - b. the **Insured** provides the Insurer written notice of such acquisition as soon as practicable after the effective date thereof; and
    - c. the Insurer specifically agrees by written endorsement to provide coverage with respect to such **Plan** and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.

**Plan** shall not include any multi-employer plan or Employee Stock Ownership Plan.

- K. “**Sponsor Organization**” means the **Company** while acting in its capacity as a sponsor of a **Plan** for the benefit of its employees.
- L. “**Voluntary Compliance Program**” means:

1. the Tax Sheltered Annuity Voluntary Correction Program, as described in IRS Rev. Proc. 95-24, as the same may be amended from time to time; and
2. the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program and the Administrative Policy regarding Self-Correction, as consolidated in the Employee Plans Compliance Resolution System described in IRS Rev. Proc. 98-22, as the same may be amended from time to time.

M. "**Welfare Benefit Plan**" means any employee welfare benefit plan, as such term is defined in ERISA.

N. "**Wrongful Act**" means any actual or alleged:

1. breach of the duties, responsibilities or obligations imposed upon fiduciaries of any **Plan** by ERISA or the common law or statutory law of any jurisdiction governing such **Plan**;
2. negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**; or
3. any other matter claimed against an **Insured** solely by reason of their service as a fiduciary of any **Plan**.
4. breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsor Organization** by the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder ("HIPAA") with respect to any **Plan**;
5. other violation of HIPAA claimed against an **Insured** due solely to such **Insured's** services as a fiduciary of any **Plan**; or
6. negligent violation of HIPAA by an **Insured** in the **Administration** of any **Plan**.

### III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** or **Compliance Costs**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** or **Compliance Request** made against an **Insured**:

- A. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;
- C. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the Pending And Prior Proceeding Date set forth in ITEM 7. (c) of the Declarations;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any pension and welfare benefit plan fiduciary liability insurance policy or similar insurance policy;
- E. brought about or contributed to in fact by any:
  1. intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or

2. profit or remuneration gained by any **Insured** to which such is not legally entitled;

as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION E., such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;

- F. arising out of any actual or alleged liability of the **Company** under any express contract or agreement, other than an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**. With respect to this EXCLUSION F., an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION F. will not apply to the extent that an **Insured** would have been liable in the absence of the express contract or agreement;
- G. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged failure by any **Insured** to comply with any workers' compensation, unemployment insurance, Social Security or disability benefits law or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world, except:
  1. the Consolidated Omnibus Budget Reconciliation Act of 1985 and any amendments thereto or any rules or regulations promulgated thereunder; or
  2. HIPAA;
- H. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**, or for the return to any employer of any contributions if such amounts are or could be chargeable to a **Plan**; provided this EXCLUSION H. shall not apply to the Insurer's obligations, subject to the applicable Limit of Liability, to defend such **Claim** and to pay **Defense Expenses** resulting therefrom;
- I. made by or on behalf of a fidelity insurer against a natural person whose conduct has resulted in a **Loss** which has been paid under a fidelity bond; or
- J. based upon, arising out of, directly or indirectly resulting from any discrimination, retaliation or wrongful termination of employment; provided that this EXCLUSION J. will not apply to **Claims** asserted under Section 510 of ERISA.

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

#### IV. RECOURSE

It is agreed that, in the event an **Insured** breaches a fiduciary obligation under ERISA, the Insurer has the right of recourse against any such **Insured** for any amount paid by the Insurer as a result of such breach of fiduciary duty, but the Insurer shall have no such right of recourse if the Policy has been purchased by the fiduciary or by an employer or an employee organization.

## EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds Loss** resulting from a **Claim** first made against the **Insureds** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**.

### II. DEFINITIONS

- A. "**Back Pay**" means unearned wages and/or compensation for wrongful termination or discrimination. **Back Pay** shall not include compensation of any kind earned in the course of employment but not paid by the **Company**.
- B. "**Claim**," as defined in the GENERAL DEFINITIONS C., shall include, for purposes of this Coverage Part, an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") or similar state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**. A **Claim** will not include any labor or grievance arbitration or other proceeding which is subject to a collective bargaining agreement.
- C. "**Insured**" means the **Insured Persons** and the **Company**.
- D. "**Insured Person**" means:
1. any past, present or future executive officer, director, in-house general counsel, member of the Board of Managers or member of a management committee of the **Company**, any natural person who was or is a general partner of any partnership included within the definition of "**Company**," and any person serving in functionally equivalent roles of the **Company** operating or incorporated outside the United States; and
  2. any past, present or future employee of the **Company**; and
  3. any leased employee, volunteer, intern, seasonal or temporary employee; and
  4. any natural person independent contractor acting for or on behalf of the **Company**, but only for conduct within his or her duties as such.
- E. "**Loss**," as defined in the GENERAL DEFINITIONS I., shall include, for purposes of this Coverage Part,
1. damages (including **Back Pay** and front pay) and judgments (including pre-judgment and post judgment interest); and
  2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act, as well as the multiplied portion of any multiple damage award; and
  3. an award of attorney's fees under any applicable federal, state or local law involving employment or discrimination in employment that an **Insured** is obligated to pay as a result of a **Claim** for **Wrongful Acts**.

**Loss** shall not include damages, settlement or judgments that constitute compensation of any kind earned by a claimant in the course of employment but not paid by the **Company**, including but not limited to, any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days.

- F. “**Third Party**” means any person(s), other than an **Insured Person**, with whom an **Insured** interacts within the scope of the **Company’s** business.
- G. “**Third Party Wrongful Act**” means any actual or alleged:
1. discrimination by an **Insured** in his, her or its capacity as such against a **Third Party** based on such **Third Party’s** race, color, religion, age, gender, national origin, disability, pregnancy, sexual orientation or preference, or other status that is protected pursuant to any applicable federal, state or local statute or ordinance, or
  2. sexual or other harassment by an **Insured** in his, her or its capacity as such against a **Third Party**.
- H. “**Wrongful Act**” means:
1. any of the following actually or allegedly occurring in the connection with the claimant’s employment or application for employment with the **Company**:
    - a. discrimination,
    - b. retaliation,
    - c. sexual or any other type of harassment,
    - d. wrongful termination whether actual or constructive,
    - e. wrongful discipline,
    - f. wrongful deprivation of career opportunity,
    - g. wrongful demotion or change in employment status,
    - h. wrongful evaluation,
    - i. negligent hiring, discipline, supervision or retention,
    - j. failure to promote,
    - k. failure to grant tenure,
    - l. employment related misrepresentation,
    - m. failure to adopt or comply with adequate workplace or employment policies or procedures,
    - n. failure to train,
    - o. breach of any oral, written, or implied employment contract,
    - p. invasion of privacy,
    - q. defamation, including but not limited to libel and slander,
    - r. false imprisonment,
    - s. infliction of emotional distress,
    - t. failure or refusal to provide equal treatment or opportunities, or
    - u. any other employment-related tort; and
  2. any **Third Party Wrongful Act** by an **Insured** in his, her or its capacity as such.

## III. EXCLUSIONS

- A. The Insurer shall not be liable to make any payment for **Loss**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** made against any **Insured**:
1. for any actual or alleged bodily injury (other than mental anguish, humiliation or emotional distress), 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 out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation, administrative or regulatory proceeding or arbitration or other alternative dispute resolution proceeding which was brought before the Pending or Prior Proceeding Date set forth in ITEM 7.(B) of the Declarations;
  3. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other employment practices liability policy or similar policy; or
  4. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any provision of a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law; b) the Employee Retirement Income Security Act of 1974 ("ERISA") (except Section 510 thereof); c) the Fair Labor Standards Act (except the Equal Pay Act); d) the National Labor Relations Act; e) the Worker Adjustment and Retraining Notification Act; f) the Consolidated Omnibus Budget Reconciliation Act of 1985; g) the Occupational Safety and Health Act; h) any other federal, state or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or any provision of any federal, state or local statute, regulation or common law that is similar to any provision of any statute or law described in (a) through (g) of this exclusion; or i) rules or regulations promulgated under any of such statutes or laws; provided, that this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of a claimant by an **Insured** on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulation.
- B. The Insurer shall not be liable for that part of **Loss**, other than **Defense Expenses**, in connection with any **Claim** made against an **Insured** which constitutes:
1. amounts owing under or assumed by an **Insured** pursuant to any express written contract or agreement with the **Insured**; provided, that this exclusion shall not apply to the extent an **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
  2. the costs associated with providing any reasonable accommodations required by, or made as a result of or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common law, or the costs associated with providing any reasonable accommodations to any person with a disability or other protected characteristic;
  3. medical or insurance benefits (or the equivalent value thereof) to which a claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance.

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

## MANAGEMENT AND COMPANY LIABILITY COVERAGE PART

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

### I. INSURING AGREEMENTS

- A. The Insurer shall pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**, except for **Loss** which the **Company** is permitted or required to pay on behalf of the **Insured Persons** as indemnification.
- B. The Insurer shall pay on behalf of the **Company Loss**:
1. which the **Company** is required or is permitted to pay as indemnification to the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons**; or
  2. resulting from a **Claim** first made against the **Company**;
- during the **Policy Period**, or, if applicable, the Optional Extension Period, for a **Wrongful Act**.

### II. DEFINITIONS

- A. "**Claim**," as defined in GENERAL DEFINITIONS C. of the General Terms & Conditions of this Policy, shall include, for purposes of this Coverage Part, a formal civil, criminal, administrative, or regulatory investigation of an **Insured Person** which is commenced by the filing or issuance of notice of charges, formal investigative order or similar document specifically identifying in writing such **Insured Person** as a person against whom a proceeding as described in GENERAL DEFINITIONS C. 2. or 3. of the General Terms & Conditions of this Policy may be commenced.
- B. "**Insured**" means the **Insured Persons** and the **Company**.
- C. "**Insured Person**" means:
1. any past, present or future director or officer, or member of the Board of Managers, of the **Company**;
  2. any past, present or future employee of the **Company**;
  3. any managing member or manager of any **Company** organized as a limited liability company; and
  4. those persons serving in a functionally equivalent role as above for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States; and
  5. any individual identified above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor, or in an equivalent executive position, of a **Non-Profit Entity**.
  6. an individual identified in C. 1., 3. or 4., above who, at the specific written request of the **Company** is serving in an elected or appointed position having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager, regardless of the name or title by which such position is designated, of a **Joint Venture**.



## PRIVATE COMPANY INSURANCE POLICY

- D. "**Joint Venture**" means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, during any time in which the **Parent Company**, either directly or through one or more **Subsidiary(s)**:
- owns or controls at least thirty three percent (33%), but not more than fifty percent (50%), in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of a director, officer, member of Board of Managers, managing member or manager of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture**; or
  - has the right, by contract, ownership of securities or otherwise, to elect, appoint or designate at least thirty three (33%) of those persons described in D. 1. above.
- E. "**Non-Profit Entity**" means any corporation or organization, other than the **Company**, which is a non-profit organization.
- F. "**Roadshow Wrongful Act**" means a **Wrongful Act** occurring prior to the effective date of any initial public offering of the **Company's** securities in connection with documents distributed to, and presentations and representations made to lenders, prospective lenders, investors, prospective investors and analysts in conjunction with the initial public offering.
- G. "**Wrongful Act**" means:
- with respect to Insuring Agreement A. or B. 1., any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** solely by reason of his or her status as such; and
  - with respect to Insuring Agreement B. 2., any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Company**.

### III. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** made against an **Insured**:

- A. brought about or contributed to in fact by any:
- intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
  - profit or remuneration gained by any **Insured** to which such **Insured** is not legally entitled;
- as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION A., such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance policy, directors and officers liability insurance policy or any similar insurance policy;
- C. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for,

## PRIVATE COMPANY INSURANCE POLICY

abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste. With respect to a **Claim** made under INSURING AGREEMENT A. only, and other than a **Claim** that is based upon, arising out of directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of nuclear material or nuclear waste, this exclusion D. will not apply;

- E. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the applicable Pending And Prior Proceeding Date set forth in ITEM 7.(a) of the Declarations;
- F. brought by, or on behalf of, or at the direction of any **Insured**, except and to the extent such **Claim** is brought:
1. derivatively by a security holder of the **Company** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, active participation or intervention of any **Insured**;
  2. by the Bankruptcy Trustee or Examiner of the **Company** or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**;
  3. in the form of a cross-claim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
  4. by an **Insured Person** of the **Company** pursuant to any federal or state whistleblower protection statute or any rule or regulation promulgated thereunder;
  5. for the actual or alleged wrongful termination of an **Insured Person** as defined in Section II. Definition C. 1., 3. or 4. only; or
  6. by an **Insured Person**:
    - a. who has not served as a director, officer, member of the Board of Managers of the **Company** for at least three (3) years prior to the date such **Claim** is first made; or
    - b. who is an **Insured Person** solely by reason of his or her status as a current or former employee of the **Company**,  
  
who is acting independently of, and without the solicitation, assistance, participation or intervention of any other **Insured Person** or the **Company**.
- G. for any actual or alleged liability of the **Company** under any express contract or agreement. With respect to this EXCLUSION G., an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION G. will apply only to the coverage available to the **Company** under INSURING AGREEMENT B. 2.;
- H. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured Person** acting in his or her capacity as a director, officer, employee, member of Board of Managers, managing member or manager of, or in an equivalent position with respect to, any entity other than the **Company, Non-Profit Entity** or **Joint Venture**;
- I. for any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty in connection with the rendering of, or actual or alleged failure to render, any services for a fee or commission or on any other compensated basis by any person or entity otherwise entitled to coverage under this Policy; provided that this EXCLUSION I. is not intended, however, nor shall it be construed, to apply to a **Claim** against an **Insured Person** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured Person** in connection with the management or supervision of any division, **Subsidiary** or group of the **Parent Company** offering any of the aforementioned services;

- J. for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" securities law, or any other federal, state or local securities law, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar common law imposing liability in connection with the offering, sale or purchase of securities of the **Company**; provided that this EXCLUSION J. will not apply to **Roadshow Wrongful Acts**;
- K. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA), including any amendments thereto, or any rule or regulation promulgated thereunder or any similar federal, state, local or common law or regulation;
- L. by, on behalf of, at the direction of or in the name or right of any **Non-Profit Entity** or its directors or officers in connection with an **Insured Person's** capacity as a director, officer, trustee, regent or governor of such **Non-Profit Entity**;
- M. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
  - 1. infringement of any patent, copyright or trademark; or
  - 2. unauthorized taking or use of any trade name, trade dress, trade secret, service mark, service name, title, slogan, proprietary process, material or information, other material or information in violation of any right under any patent, copyright or trademark registration or license, or any other intellectual property.

Provided that this EXCLUSION M. will apply only to the coverage available to the **Company** under INSURING AGREEMENT B. 2.; or

- N. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any provision of (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, b) the Employee Retirement Income Security Act of 1974 ("ERISA") (except Section 510 thereof), (c) the Fair Labor Standards Act (except the Equal Pay Act), (d) the National Labor Relations Act, (e) the Worker Adjustment and Retraining Notification Act, (f) the Consolidated Omnibus Budget Reconciliation Act of 1985, (g) the Occupational Safety and Health Act, (h) any other federal, state or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or any provision of any federal, state or local statute, regulation or common law that is similar to any provision of any statute or law described in (a) through (g) of this exclusion, or (i) rules or regulations promulgated under any of such statutes or laws; provided, that this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of a claimant by an **Insured** on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulation.

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

#### IV. INDEMNIFICATION AND RETENTIONS

- A. With respect to the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company** and each **Subsidiary** will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- B. With respect to any **Non-Profit Entity's** indemnification of any **Insured Person**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of such **Non-Profit Entity** will be deemed to provide indemnification to the **Insured Person** to the fullest extent permitted by law.
- C. The Retention applicable to INSURING AGREEMENT B. 1. shall apply to any **Loss** as to which indemnification by the **Company** is legally permissible, whether or not actual indemnification is made unless such indemnification is not made by the **Company** solely by reason of its financial insolvency. In the event of financial insolvency, the Retention applicable to INSURING AGREEMENT A. shall apply.

## PRIVATE COMPANY INSURANCE POLICY

- D. If different Retentions are applicable to different parts of any **Loss**, the applicable Retentions will be applied separately to each part of such **Loss**, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 5. of the Declarations.
- E. With respect to the **Joint Venture** or the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Joint Venture**, will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

### V. OTHER INSURANCE AND SERVICE IN CONNECTION WITH NON-PROFIT ENTITIES

- A. All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** by reason of their service as such.
- B. All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of the **Insured Persons** of the **Company**, regardless of the name or title by which such position is designated, of a **Joint Venture** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Joint Venture** by reason of their service as such.

### VI. DEDICATED EXECUTIVE LIMIT

Notwithstanding anything to the contrary in this Policy, the **Insured Persons** defined in Section II. Definition C. 1., 3. and 4. of the Coverage Part ("Executives") shall have available an additional limit of liability of \$500,000 ("Executive Limit of Liability"), which amount is in addition to and not part of the Limits of Liability set forth in Item 3.(a) and Item 3.(d) of the Declarations. This Executive Limit of Liability is available solely for **Loss**, including **Defense Expenses**, resulting from any **Claim** under this Coverage Part to which Insuring Agreement I. A. of the Coverage Part is applicable. The Executive Limit of Liability shall be excess of any insurance available that is specifically excess of this Policy and such excess insurance must be completely exhausted by payment of loss, damages or defense expenses thereunder before the Insurer shall have any obligation to make any payment on account of the Executive Limit of Liability. Except as set forth in this Section VI., all other terms, conditions and limitations of the Coverage Part shall apply to such Executive Limit of Liability.

### VII. QUOTATION FOR COVERAGE

If, at least thirty (30) days prior to the effective date of any initial public offering of equitable securities of the **Company**, the **Company** gives the Insurer written notice of such initial public offering and provides the Insurer with any and all information requested by the Insurer in connection with such initial public offering, the Insurer shall provide the **Company** with a quotation for coverage of **Claims** arising out of such initial public offering. Such quotation shall contain such terms and conditions, including additional premium, as the Insurer shall determine in its sole discretion. If the **Company** accepts the terms and conditions offered by the Insurer, and pays any additional premium required by the Insurer, such coverage shall be afforded by endorsement to this Policy and shall be subject to all of the terms, conditions, limitations and exclusions contained in this Policy, including such endorsement.