

PRIVATE COMPANY MANAGEMENT LIABILITY DECLARATIONS INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE

Renewal of Number:

 Policy No:

INSURANCE IS PROVIDED BY
ROCKHILL INSURANCE COMPANY
 KANSAS CITY, MISSOURI

1. Named Insured and Mailing Address: Agent:

2. Policy Period: From To 12:01 A.M. Standard Time at your Mailing address shown above. (Unless otherwise Endorsed)

This Policy is issued by the stock insurance company listed above (herein "Insurer").

UNLESS OTHERWISE PROVIDED IN THE FOLLOWED POLICY, THIS POLICY IS A CLAIMS MADE POLICY WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

3. Aggregate Limit Of Liability:	\$	For all Loss under all Coverages combined
4. Premium:	5. Retention:	Each Claim Each Employment Practices Claim Each Securities Claim
	a) \$ b) \$ c) \$	

6. Notices to Insurer:

A. Notice of Claim or Potential Claim: Director of Claims Rockhill Insurance Company 700 W. 47th Street, Suite 350 Kansas City, MO 64112	B. All Other Notices: Director of Underwriting Rockhill Insurance Company 700 W. 47th Street, Suite 350 Kansas City, MO 64112
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7. Pending and Prior Litigation Date:

THESE DECLARATIONS, TOGETHER WITH THE COMPLETED AND SIGNED APPLICATION FOR THIS POLICY INCLUDING INFORMATION FURNISHED IN CONNECTION THEREWITH WHETHER DIRECTLY OR THROUGH PUBLIC FILINGS, AND THE COVERAGE FORM AND ANY ENDORSEMENTS ATTACHED HERETO, CONSTITUTE THE ABOVE NUMBERED INSURANCE POLICY.

Date of Issue: _____ Countersigned By _____
Authorized Representative

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

**PRIVATE COMPANY MANAGEMENT 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 those furnished 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** for which such **Insured Person** is not indemnified by the **Company** and which the **Insured Person** is legally obligated to pay as a result of a **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or the Discovery Period and reported pursuant to Section VII.
- B.** The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to an **Insured Person** as permitted or required by law, and for which the **Insured Person** has become legally obligated to pay on account of a **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or the Discovery Period and reported pursuant to Section VII.
- 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** for a **Wrongful Act** first made against the **Company** during the **Policy Period** or the Discovery Period and reported 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.
- B.** "**Claim**" shall mean
- 1) a civil, administrative or arbitration proceeding, whether formal or informal, against any **Insured Person** or the **Company** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, or the receipt or the filing of a notice of charges or similar document, including any proceeding by or before the U.S. Equal Employment Opportunity Commission ("EEOC") or any similar federal, state or local governmental body;
 - 2) except with respect to an **Employment Practices Claim**, any civil, criminal, administrative or regulatory investigation of an **Insured Person**, once such **Insured Person** is identified in writing by such investigating authority;
 - 3) a written demand for monetary or non-monetary relief made against any **Insured** (including any request to toll or waive any statute of limitations); or
 - 4) a **Securities Claim**.

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 entity or organization identified in Item 1 of the Declarations and any **Subsidiary**, and in the event of a bankruptcy, shall include the **Company** and any **Subsidiary**

as a debtor in possession, if any, as such term is used in Chapter 11 of the United States Bankruptcy Code.

- D. **"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 will not include the obligation to apply for or furnish such bonds. **Costs of Defense** shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**. **Costs of Defense** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- E.. **"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**.
- F. **"Employee"** shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee or any applicant for employment, solely in his or her capacity as such. Any person leased to the **Company** shall also be an **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.
- G. **"Employment Practices Claim"** shall mean any **Claim** brought by or on behalf of any **Employee** alleging an **Employment Practices Wrongful Act** or any **Claim** alleging **Third Party Discrimination**.
- H. **"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) violation of any federal, state or local law concerning discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992; the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto;
 - 6) employment-related misrepresentations or omissions;
 - 7) employment-related libel, slander, or defamation;
 - 8) failure to grant tenure;
 - 9) failure to provide an adequate employment policy or grievance procedure for **Employees**;
 - 10) failure to provide training, mentoring, or advancement opportunities to an **Employee**;
 - 11) improper discipline of an **Employee**;
 - 12) improper performance review of an **Employee**;
 - 13) improper transfer, change of position or change of work hours or shift of an **Employee**;

- 14) improper treatment of an **Employee** for their actions as a whistleblower;
- 15) negligent evaluation of an **Employee**;
- 16) negligent release of medical information of an **Employee**;
- 17) **Retaliation** against an **Employee**;
- 18) sexual or other workplace harassment of any kind;
- 19) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- 20) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- 21) negligent hiring, discipline, supervision or retention;
- 22) breach of any oral, written, or implied employment contract;
- 23) invasion of privacy;
- 24) false imprisonment;
- 25) infliction of emotional distress;
- 26) failure or refusal to provide equal treatment or opportunities;
- 27) wrongful failure to promote, transfer or employ; or
- 28) violation of an **Employee's** civil rights relating to any of the above.

I.. **"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**.

J. **"Insured"** shall mean any **Insured Person** and the **Company**.

K. **"Insured Person"** shall mean:

- 1) any past, present or future duly elected or appointed director or officer, or member of the Board of Managers, of the **Company**;
- 2) **Employees** of the **Company** for whom the **Company** requests coverage at the time the **Claim** is made;
- 3) any managing member or manager of any **Company** organized as a limited liability company;
- 4) those persons serving in a functionally equivalent role as above for the **Company** or any **Subsidiary** operating or incorporated outside the United States;
- 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 an **Outside Entity**.
- 6) any individual identified in K. 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**.

- L. **"Insurer"** shall mean the stock insurance company identified on the Declarations.
- M. **"Joint Venture"** means any corporation, partnership, joint venture, association or other entity, other than a **Subsidiary**, at any time during which the **Company**, either directly or through one or more **Subsidiary(s)**:
- 1) 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
 - 2) 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 M. 1. above.
- N. **"Loss"** shall mean compensatory damages (including back pay and front pay), statutory attorneys' fees, pre- and post-judgment interest, and **Costs of Defense**, in excess of the Retention. **Loss** shall also include punitive or exemplary damages, and the multiple portion of any multiplied damage award, judgments or settlements to the extent insurable under the law of any applicable jurisdiction most favorable to insurability.
- Loss** shall not include: (1) civil or criminal fines or penalties; (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, 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 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 other ownership interest; (7) contractually owed amounts; or (8) matters which are uninsurable under the law pursuant to which this Policy shall be construed.
- O. **"Management Control"** shall mean that the **Company** has either:
- 1) an ownership interest of more than fifty percent (50%) that entitles the **Company**; or
 - 2) 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.
- P. **"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.
- Q. **"Policy Period"** shall mean the period from the Inception Date to the Expiration Date as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- R. **"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 including, but not limited to nuclear material or nuclear waste. Such substances shall include, without limitation, solids, liquids, gaseous, biological, radiological or

thermal irritants, contaminants or smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals or waste materials and any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

- S.** "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.
- T.** "Related Wrongful Acts" shall mean **Wrongful Acts** which are the same, related or continuous and **Wrongful Acts** which arise from a common nucleus of facts.
- U.** "Retaliation" shall mean a **Wrongful Act** 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, Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the Occupational Safety and Health Act, or any other law relating to employee rights;
 - 3) the filing of any claim under the Federal False Claims Act, the Sarbanes-Oxley Act of 2002 or any other federal, state, local or foreign "whistleblower" law; or
 - 4) **Employee** strikes.
- V.** "Securities Claim" shall mean any **Claim** made against an **Insured**, 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, 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**.
- W.** "Subsidiary" shall mean:
- 1) any for-profit organization under the **Management Control** of the **Company**, either directly or indirectly, on or before the inception of the **Policy Period**;
 - 2) automatically, any for-profit organization that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that (1) the organization is not publicly traded, (2) the assets of the organization are less than 25% of those of the **Company** and (3) the **Company** provides the Insurer with full particulars of the new **Subsidiary** before the end of the **Policy Period**;
 - 3) any for-profit organization, other than those described in paragraph (2) above, that comes under the **Management Control** of the **Company**, either directly or indirectly, during the **Policy Period**, provided that the **Company** provides the **Insurer** with the full particulars of the new **Subsidiary** within 90 days of it becoming a **Subsidiary** and the **Company** pays such additional premium and accepts such policy amendments as the **Insurer** may reasonably require.

An organization shall become a **Subsidiary** only when the **Company** has acquired **Management Control**, either directly or indirectly, and shall cease to be a **Subsidiary** when the **Company** ceases to have **Management Control**. In all events, coverage as may be afforded under this Policy with respect to any **Subsidiary** or any **Insured Person**, in their capacity as such with a **Subsidiary**, shall only apply for **Wrongful Acts** that occur while the organization is a **Subsidiary**.

X. **Third Party Discrimination** shall mean any actual or alleged discrimination, including harassment, or civil rights violation by an **Insured** against any non-**Employee**.

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

- 1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act** or **Third Party Discrimination** 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**.

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 if it is finally adjudicated that such conduct occurred; or
 - 2) any deliberately fraudulent or dishonest act or any willful violation of any statute, rule or law, or deliberate criminal acts of an **Insured**; provided however, this exclusion shall only apply if 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 similar state or foreign statutory law; provided, however, this exclusion shall only apply if a final adjudication establishes that such Section 16(b) violation occurred.

Provided, however,

- a) Subject to all other Terms and Conditions of this Policy, 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) as respects coverage afforded under Sections 1 A. and B., the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and

(ii) as respects coverage afforded under Section 1 C., only the **Wrongful Act** of any past, present or future 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 of **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 any alleged violation of any federal, state or local wage and hour law, including but not limited to: the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (herein, "Earned Wages") (as opposed to tort-based or statutory back pay or front pay damages for discrimination), for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, any unfair business practice claim or any tort arising out of the failure to pay Earned Wages, or 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 in any capacity for 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 or on behalf of an **Insured Person**;

- 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 three (3) 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 **Company** or any director or officer thereof, provided that such **Claim** is brought by the supervisory or any such similar board of a parent company chartered in such foreign jurisdiction; 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; provided however, this exclusion shall not apply to **Securities Claims** otherwise covered under Section 1 A of this Policy.
- 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** first 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. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or a **Subsidiary** or arising in connection with a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:
- 1) any offering 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 **Company** 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;
 - 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 **Company** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Company** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Company** paying when due any such additional premium. In the event the **Company** 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;

3) Any **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.

M. With the exception of **Costs of Defense**, based upon, arising out of directly or indirectly resulting from or in consequence of, or in any way involving damages determined to be owing under any express written contract with or express written severance obligation of the **Company**; provided, however, this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of the written contract or obligation of the **Company**;

N. 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 **Company** 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 shall be conditioned upon the **Company** 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;

O. 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 by the **Company**; provided, this exclusion shall not apply to any **Employment Practices Claim**; or

P. 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, medical benefits, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law, including any medical or insurance benefits to which an **Employee** allegedly was entitled or would have been entitled had the **Company** provided the **Employee** with a continuation or conversion of insurance, provided however, this exclusion shall not apply to a **Claim for Retaliation**;

Except as expressly stated in Exclusion A(3)(b), no conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above **Exclusions**.

Q. with respect to Insuring Agreement C only:

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 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:

(i) **Claim** alleging **Third Party Discrimination**;

(ii) **Securities Claim**;

(iii) **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 **Company** offering any of the aforementioned services; or

- (iv) **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;
- 3) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.
- 4) with respect to an **Outside Entity Insured Person**, for any **Claim** made against the **Outside Entity** or **Outside Entity Insured Person** prior to the **Inception Date** if any **Insured**, as of such **Inception Date**, knew or could have reasonably foreseen that such **Claim** existed.

Section IV. **Limit of Liability**

- A. The **Insurer** shall be liable to pay **Loss** in excess of the applicable Retention amount stated in Item 5 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.

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.

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 applicable Retention specified in Item 5 of the Declarations shall be a condition precedent and must be paid by the **Company** before the **Insurer** has any payment obligation, and shall apply to all covered **Loss**, including **Costs of Defense**.
- B. The Retention specified in Item 5 of the Declarations shall apply as follows:
- 1) Item 5(a) Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim** or a **Securities Claim**.
 - 2) Item 5(b) Retention is applicable to **Loss** resulting from an **Employment Practices Claim**.
 - 3) Item 5(c) Retention is applicable to **Loss** resulting from a **Securities Claim**.
 - 4) A Retention shall not apply to **Loss** under Insuring Agreement I A, including **Costs of Defense**.
- C. 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 any amount within the Retention.
- D. 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 and one **Limit of Liability** 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 the notice of circumstance involving any such **Wrongful Act** or **Related Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.
- E. 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, 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**, however in no event shall such tender of the defense relieve the **Company** of its obligation to pay the applicable Retention in connection with the **Claim**. Upon such a tender of the defense of a **Claim**, the **Insurer** shall assume the duty to defend. Such a tender of the defense of a **Claim** may not be made more than 90 days following notice of the **Claim** pursuant to Section VII.
- 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 one hundred percent (100%) of **Costs of Defense** incurred which will be allocated to covered **Loss**; and, as respects **Loss** other than **Costs of Defense** 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**;
 - 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 **Costs of Defense** as specified in Section E above.

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.

G. The **Insurer** will have no obligation to pay loss, including **Costs of Defense**, or to defend or continue to defend any **Claim** under any Insuring Agreement or endorsement after 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 **Costs of Defense**.

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 upon knowledge of the chief executive officer, chief financial officer, general counsel, director of human resources or equivalent position or risk manager, but in no event later than 1) sixty (60) days after the end of the **Policy Period** or 2) the expiration date of the 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** becomes 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 6 of the Declarations.

Section VIII. Discovery Period

A. In the event the **Insurer** or the **Company** refuses to renew this Policy, the **Company** 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 **Company** at any time by written notice to the **Insurer**. Upon cancellation by the **Company**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.E. wherein the entire premium for this Policy shall be deemed earned.
- 2) This Policy may only be cancelled by the **Insurer** if the **Company** does not pay the premium when due.
- 3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Company** 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 agreed by the **Company** and the **Insured Persons** 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**, against whom this policy shall not be rescinded. Only knowledge of the chairman of the board, chief executive officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of a misstatement or omission in the **Application** shall be imputed to the **Company** for purposes of determining coverage under this Policy as respects Section 1 C.

C. Severability

Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the **Company**, this insurance applies as if each **Insured** were the only **Insured** and separately to each **Insured** against whom a **Claim** is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **Insured Person** shall not by itself affect coverage for another **Insured Person** under this Policy. However, this condition shall not apply to the **Company** or any **Insured Person** who is the CEO, Chairman, President, CFO or General Counsel of the **Company** which committed the misrepresentation, act or omission referenced above.

D. 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**.

E. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Company** identified in Item 1 of the Declarations through the ownership of more than fifty percent (50%) of the voting stock of the **Company**, or the **Company** merges into another entity or consolidates with another entity such that the **Company** 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.

F. **Outside Entity and Joint Venture 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** or **Joint Venture**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** or **Joint Venture** and any insurance provided to the **Outside Entity** or **Joint Venture** which covers its directors, officers, trustees or governors.

G. **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.

H. **Coverage Extensions**

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.

I. **Priority of Payments**

1) In the event of **Financial Insolvency**, or the refusal of the **Company** or any **Subsidiary** 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 I(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 request of the **Company**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.(A) until such time as the **Company** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Company** 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.

J. 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**.

K. Dispute Resolution

In the event any dispute arises in connection with this Policy that cannot be resolved by agreement, the **Insurer** and the **Insured** shall first participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference, either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration under the then-prevailing AAA Commercial Arbitration Rules, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until at least 60 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of mediation, or arbitration, shall be split equally by the parties.

L. Choice of Law

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York notwithstanding New York's conflicts of law rules.

M. Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

N. Company Represents Insureds

By acceptance of this Policy, the **Company** identified in Item 1. of the Declarations 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.

O. Representative of the Insurer

Rockhill Underwriting Managers, 700 W 47th Street, Suite 350, Kansas City, MO 64112 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.

P. 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 Rockhill Insurance Company, 700 W 47th Street, Suite 350, Kansas City, MO 64112. 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 Rockhill Insurance Company, 700 W 47th Street, Suite 350, Kansas City, MO 64112, as the entity to whom said officer is authorized to mail such process or a true copy thereof.

Q. Bankruptcy

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

R. Headings

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

S. 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.

T. Premiums

The **Company** shown in the Declarations:

- 1) Is responsible for the payment of all premiums; and
- 2) Will be the payee for any return premiums we pay.