



Endurance American Insurance Company

(Hereinafter referred to as the "Insurer")
Wilmington, Delaware

PRIMARY MANAGEMENT LIABILITY INSURANCE FOR PRIVATE COMPANIES

NOTICE: PLEASE READ CAREFULLY

This **Policy** is a claims-made policy. Except as otherwise provided herein, this **Policy** covers only claims first made against the **Insureds** during the **Policy Period**. The limit of liability available to pay judgments or settlements shall be reduced by **Defense Costs**. Please read this **Policy** carefully.

DECLARATIONS

POLICY NO:

Item 1. **Named Insured:**
Address:

Item 2. **Policy Period:** From: To:
(12:01 A.M. local time at the address stated in Item 1.)

Item 3. Premium:

Item 4. Producer's Name and
Address:

Item 5. **Discovery Period:**
A. Additional Period: Days
B. Additional Premium: % of annual premium

Item 6. **Run-Off Coverage Period:**
A. Additional Period: Years
B. Additional Premium: % of annual premium

Item 7. Notice: Mail E-Mail
A. Claims or Vice President and Manager – Claims
Potential Endurance American Insurance Company
Claims: <INSERT ADDRESS> <INSERT E-MAIL CLAIM ADDRESS>
B. All Other: Endurance Risk Solutions Management Liability
Underwriting Department
Endurance American Insurance Company <INSERT E-MAIL ADDRESS>
<INSERT ADDRESS>

Item 8. Forms and Endorsements Effective at Inception:

Title Form No.

Item 9. Coverage Schedule

Directors & Officers Liability Coverage Section	Pur- chased	Limit of Liability	Retention	Prior Litigation Date
Insuring Agreements				
A. Insured Person Liability:				
B. Company Indemnification:				
C. Company Liability:				
D. Outside Position Liability:				
E. Retired Independent Directors Liability:				
Coverage Section Aggregate Limit of Liability:				

Fiduciary Liability Coverage Section

Insuring Agreements				
A. Fiduciary Liability:				
B. Voluntary Compliance Coverage:				
Retention for Sponsor Securities Claims :				
Coverage Section Aggregate Limit of Liability:				

Employment Practices Liability Coverage Section

Insuring Agreements				
A. Employment Practices Liability				
B. Third Party Discrimination Coverage				
Retention for Mass or Class Actions :				
Coverage Section Aggregate Limit of Liability:				

Item 10. Combined Aggregate Limit of Liability:
All **Loss** under all Insuring Agreements in all Coverage Sections combined:

Item 11. Single Claim Covered by Multiple Insuring Agreements:

- A. Integrated Retentions:
- B. Integrated Limit of Liability:

Item 12. Acquisition Threshold Amount:

- A. Directors & Officers Liability Coverage Section: The total assets of the acquired organization exceed XX% of the total assets of the **Named Insured** as reflected in their respective then most recent audited consolidated financial statements.
- B. Fiduciary Liability Coverage Section: The total assets of the acquired **Plans** exceed XX% of the total assets of all other **Plans** of all **Companies** as reflected in their respective then most recent financial statements
- C. Employment Practices Liability Coverage Section: The total number of **Employees** of all **Companies** increases by more than XX% as an immediate result of the acquisition, merger or consolidation

Policy Issuance Date:
Policy Issuance Office: <INSERT ADDRESS>

Endurance American Insurance Company
PML 0001 0411

This **Policy** shall constitute the contract between the **Insureds** and the Insurer.

The Insurer hereby causes this **Policy** to be signed on the Declarations page by a duly authorized representative of the Insurer.

Authorized Representative

Date

Policy Issuance Date:
Policy Issuance Office: <INSERT ADDRESS>

Endurance American Insurance Company
PML 0001 0411

**PRIMARY MANAGEMENT LIABILITY INSURANCE POLICY
General Terms and Conditions**

Table of Contents

<u>Clause</u>	<u>Page</u>
I. Terms and Conditions	1
II. General Definitions	1
III. Limits of Liability, Retention and Single Claims	4
IV. Extensions	6
V. Allocation	6
VI. Changes in Exposure	7
VII. Defense and Settlement	8
VIII. Reporting and Notice.....	8
IX. Representations and Severability and Non-Rescindable Coverages	9
X. Territory and Valuation	9
XI. Other Insurance	9
XII. Subrogation	10
XIII. Alteration, Assignment and Headings	10
XIV. Payment Priority.....	10
XV. Policy Termination and Nonrenewal	10
XVI. Authorization Clause	11
XVII. Bankruptcy.....	11

PRIMARY MANAGEMENT LIABILITY INSURANCE POLICY
General Terms and Conditions

All words and phrases that appear in bold type (except headings) have special meaning and are defined under GENERAL DEFINITIONS (Section II) of these 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 in the **Application**, which is hereby made a part hereof, and subject to the foregoing Declarations and to all other terms of this **Policy**, the **Insureds** and the Insurer agree as follows:

I. TERMS AND CONDITIONS

An Insuring Agreement(s) in a Coverage Section is included within this **Policy** and affords coverage only if the Insuring Agreement is designated as purchased in the Coverage Schedule in Item 9 of the Declarations. If no Insuring Agreement within a Coverage Section is purchased, such Coverage Section is not included within this **Policy**.

The terms and conditions of each of the Coverage Sections apply only to the Insuring Agreements contained in such Coverage Section and shall not apply to any other Coverage Sections or Insuring Agreements.

Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under the Insuring Agreement(s) in that Coverage Section, have the meaning set forth in that Coverage Section. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any applicable Coverage Section, the terms and conditions of such Coverage Section shall control for purposes of that Coverage Section.

II. GENERAL DEFINITIONS

When used in this **Policy**, the following terms, whether in the singular or plural, are defined as follows:

A. **Application** means:

1. all materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insureds** to the Insurer in connection with the underwriting of this **Policy** or any policy issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement; and
2. all publicly available documents filed by the **Company** with the Securities and Exchange Commission during the one (1) year prior to inception of this **Policy** which are reviewed by the Insurer in connection with the underwriting of this **Policy**.

The **Application** is deemed attached to and incorporated into this **Policy**.

- B. **Claim** means those demands, proceedings, investigations and other matters defined as a **Claim** in each Coverage Section.
- C. **Company** means, collectively, the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- D. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorney's fees and expert's fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or **Employees** of the **Company**) incurred by the **Insureds** (i) in defending or investigating **Claims**, including costs assessed against the **Insureds** in a **Claim** or the premium for appeal, attachment or similar bonds, provided the Insurer shall have no obligation to apply for or furnish such bonds, or (ii) at the Insurer's request to assist the Insurer in investigating a **Claim**.
- E. **Domestic Partner** means 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. **Discovery Period** means the period of the extended coverage as set forth in Item 5.A of the Declarations.
- G. **Employee** means the following:
1. any natural persons in the regular service of the **Company** in the ordinary course of the **Company's** business and whom the **Company** compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including any such natural persons who are leased, temporary, part-time or seasonal employees of the **Company**;
 2. any natural person independent contractors who are treated under applicable law as an employee of the **Company**; and
 3. any volunteers of the **Company**;
- provided any coverage for any such leased employees or independent contractors shall be specifically excess of any indemnification or insurance otherwise available to such leased employees or independent contractors from the applicable leasing company or any other source.
- H. **Employment Practices Claim** means a **Claim** which is brought and maintained by or on behalf of any past, present, future or prospective **Employee(s)** of the **Company** against any **Insured** for any **Wrongful Act** in connection with any actual or alleged:
1. breach of any express or implied employment contract;
 2. violation of any law or public policy concerning discrimination in employment whether based upon race, national origin, religion, sex, sexual preference, pregnancy, marital status, disability, medical leave, genetic predisposition or any other protected class;
 3. employment-related torts including without limitation wrongful termination, failure or refusal to hire or promote; wrongful discipline; wrongful reference, deprivation of a career opportunity, demotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; humiliation; retaliation for asserting a legal right; workplace harassment including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications; negligent hiring, retention, supervision, training or performance evaluation; and employment-related misrepresentation, defamation, invasion of privacy, false imprisonment, malicious prosecution or infliction of emotional distress.
- I. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended.
- J. **Executive Officers**, either in the singular or plural, means with respect to any **Company**, any natural persons who were, now are, or shall become its chairperson, president, chief executive officer, chief financial officer and in-house general counsel.
- K. **Extradition** means any formal process by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- L. **Financial Impairment** means the status of the **Company** resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession.
- M. **Independent Contractor** means any natural person who is not an **Employee** and who is working for a **Company** in the capacity of an independent contractor pursuant to an express contract or agreement with the **Company** which governs the nature of such person's engagement.
- N. **Insureds**, either in the singular or plural, means with respect to each Insuring Agreement in a Coverage Section the entities, plans and natural persons defined in such Coverage Section as **Insureds** for purposes of such Insuring Agreement.
- O. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- P. **Managers** means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company.

- Q. **Named Insured** means the organization designated in Item 1 of the Declarations.
- R. **Plans** either in the singular or plural, means the plans and programs defined as **Plans** in the Fiduciary Liability Coverage Section, if purchased.
- S. **Policy** means, collectively, the Declarations, the General Terms and Conditions, the **Application**, the purchased Coverage Sections and any endorsements hereto.
- T. **Policy Period** means the period set forth in Item 2 of the Declarations, subject to prior termination in accordance with Section XV of these General Terms and Conditions.
- U. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.
- V. **Run-off Coverage Period** means the period of the extended coverage, as described in Subsection VI.B of these General Terms and Conditions.
- W. **Subsidiary**, either in the singular or plural, means:
 1. any organization, other than a joint venture or partnership, in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors, trustees, **Managers** or equivalent executives is owned or controlled, directly or indirectly, in any combination, by one or more **Companies**;
 2. any organization, other than a joint venture or partnership, in which one or more **Companies**, in any combination, directly or indirectly have the right, pursuant to a written contract with or the bylaws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, **Managers** or equivalent executives of such organization; and
 3. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**.
- X. **Third Party Discrimination Claim** means a **Claim**, other than an **Employment Practices Claim**, which is brought and maintained by or on behalf of any natural person (including customers, vendors, service providers and other business invitees) other than an **Insured Person** for an actual or alleged violation of any law or public policy concerning discrimination or harassment.

III. LIMITS OF LIABILITY, RETENTION AND SINGLE CLAIMS

A. Limits of Liability

1. Combined Aggregate Limit of Liability

The amount set forth in Item 10 of the Declarations shall be the Insurer's maximum aggregate liability for all **Loss** covered under all Insuring Agreements in all Coverage Sections, combined.

2. Coverage Section Aggregate Limit of Liability

The respective Aggregate Limit of Liability for each Coverage Section, as set forth in the Coverage Schedule in Item 9 of the Declarations, shall be the Insurer's maximum aggregate liability for all **Loss** covered under all Insuring Agreements included in such Coverage Section. Each Coverage Section Aggregate Limit of Liability shall be part of and not in addition to the Combined Aggregate Limit of Liability set forth in Item 10 of the Declarations.

3. Insuring Agreement Limit of Liability

The respective Limit of Liability for each Insuring Agreement, as set forth in the Coverage Schedule in Item 9 of the Declarations, shall be the Insurer's maximum aggregate liability for all **Loss** covered under such Insuring Agreement. The Limit of Liability for each Insuring Agreement shall be part of

and not in addition to the Coverage Section Aggregate Limit of Liability applicable to such Insuring Agreement or to the Combined Aggregate Limit of Liability set forth in Item 10 of the Declarations.

4. Retired Independent Director Limit of Liability

Notwithstanding anything to the contrary in this Section III.A, the Insurer's maximum aggregate additional liability for all **Loss** covered under the Retired Independent Directors Liability Insuring Agreement in the Directors & Officers Liability Coverage Section (if purchased) shall be the Limit of Liability for such coverage as set forth in Item 9 of the Declarations. Such Retired Independent Directors Limit of Liability shall be in addition to the Coverage Section Aggregate Limit of Liability set forth in Item 9 of the Declarations and the Combined Aggregate Limit of Liability set forth in Item 10 of the Declarations.

5. Defense Costs Within Limit of Liability

Defense Costs and **Investigative Costs** are part of and not in addition to the applicable Limits of Liability and the payment by the Insurer of **Defense Costs** and **Investigative Costs** reduces such applicable Limits of Liability.

6. **Discovery Period** or **Run-Off Coverage Period** Limit of Liability

The Limit of Liability for any **Discovery Period** or **Run-Off Coverage Period** shall be part of and not in addition to the applicable Limits of Liability for the **Policy Period**. The purchase of the **Discovery Period** or **Run-Off Coverage Period** shall not increase or reinstate the applicable Limit of Liability. If more than one individual **Discovery Period** or **Run-Off Coverage Period** is elected pursuant to Subsection IV.C of these General Terms and Conditions, the Insurer's maximum aggregate liability under all such individual **Discovery Periods** or **Run-Off Coverage Periods**, combined, shall not exceed the Insurer's maximum aggregate liability for any one individual **Discovery Period** or **Run-Off Coverage Period**.

B. Retention

The Insurer's liability with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in the Coverage Schedule in Item 9 of the Declarations. No Retention shall apply to **Loss** incurred by an **Insured Person** for which the **Company** is not permitted by common or statutory law to indemnify, or is not financially able to indemnify by reason of **Financial Impairment**.

If with respect to any **Claim** under the Insured Person Liability Insuring Agreement of the Directors & Officers Liability Coverage Section, the **Company** is permitted or required by common or statutory law to indemnify the **Insured Persons** for any **Loss**, or to advance **Defense Costs** on their behalf, and does not in fact do so other than for reasons of **Financial Impairment**, then the Retention applicable to the Company Indemnification Insuring Agreement for such Coverage Section shall apply to such **Loss** under such Insured Person Liability Insuring Agreement.

C. Single Claims

All **Claims** which arise out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**.

D. Single Claim Covered by Multiple Insuring Agreements

If a single **Claim** (as described in Subsection III.C above) is covered in whole or in part under more than one Insuring Agreement:

1. the applicable Retention for each such Insuring Agreement shall apply to the portion of such **Claim** covered under such Insuring Agreement, provided if Item 11.A of the Declarations is designated as Yes, then the sum of all Retentions applicable to such **Claim** under all such Insuring Agreements shall not exceed the largest of such applicable Retentions; and
2. the remaining applicable Limits of Liability under each such Insuring Agreement shall apply to the portion of such **Claim** covered under such Insuring Agreement, provided if Item 11.B. of the Declarations is designated as Yes, then the Insurer's maximum aggregate liability for all **Loss** covered under all such Insuring Agreements, combined, on account of such **Claim** shall not exceed the largest

of such remaining applicable Limits of Liability. This paragraph 2 further limits and does not increase the Insurer's maximum liability with respect to such **Claim**.

IV. EXTENSIONS

A. Estates, Legal Representatives, Spouses and Domestic Partners

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All provisions in these General Terms and Conditions and the respective Insuring Agreement applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

B. Discovery Period

If the **Named Insured** terminates this **Policy** or the **Named Insured** or Insurer refuses to renew this **Policy**, the **Insureds** shall have the right, upon payment of the additional premium set forth in Item 5.B. of the Declarations, to an extension of coverage for the **Discovery Period** set forth in Item 5.A. of the Declarations following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within thirty (30) days following the effective date of termination or nonrenewal.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

The entire additional premium for the **Discovery Period** shall be deemed fully earned at the inception of the **Discovery Period**.

The **Insureds** shall not be entitled to elect the **Discovery Period** if a **Run-Off Coverage Period** is purchased.

C. Individual Insured Person Extended Coverage

If the **Insureds** are entitled to but do not exercise the **Discovery Period** or the **Run-Off Coverage Period**, any **Insured Person** shall have the right to elect a **Discovery Period** or **Run-Off Coverage Period** under any Coverage Section for only such **Insured Person**, subject to the provisions of this **Policy**. The extension of coverage pursuant to any such individual **Discovery Period** or **Run-Off Coverage Period** shall apply only with respect to coverage under such Coverage Section for **Loss** which is incurred by the **Insured Person** who elected such extension of coverage and which is not indemnified by the **Company**, and shall not apply to any other coverage afforded under this **Policy**.

This right of extension shall lapse unless written notice of such election is given by the **Insured Person** to the Insurer within thirty (30) days after the **Named Insured's** right to exercise the **Discovery Period** has expired, or with respect to the **Run-Off Coverage Period**, within thirty (30) days after the end of the **Policy Period**. If one or more **Insured Persons** give such written notice within such thirty (30) day period, then promptly after expiration of such thirty (30) day period the Insurer shall notify all the **Insured Persons** who elected such individual **Discovery Period** or **Run-Off Coverage Period** of the additional premium payable by each such **Insured Person** for such extension. This extension of coverage for any such **Insured Person** is conditioned upon such **Insured Person** paying such additional premium within fifteen (15) days after being notified of the amount of the additional premium.

V. ALLOCATION

If in any **Claim** the **Insureds** incur both **Loss** covered by this **Policy** and loss not covered by this **Policy** either because the **Claim** against the **Insureds** includes both covered and uncovered matters or because the **Claim** is made against both **Insureds** who are afforded coverage for such **Claim** and others, including **Insureds**, who are not afforded coverage for such **Claim**, the **Insureds** and the Insurer shall use their best efforts to allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and

financial exposures of the parties to covered and uncovered matters; provided however that one hundred percent (100%) of any such **Defense Costs** shall be allocated to covered **Loss** if and to the extent such **Defense Costs** are incurred by covered **Insureds** and are in part covered and in part not covered by this **Policy** solely because the **Claim** against the **Insureds** includes both covered and uncovered matters.

Nothing in this Section V. shall limit, waive or remove the rights of any **Insured** or the Insurer to assert claims for indemnity or contribution against third parties pursuant to any statutory or common law or any provision of this **Policy**.

In any arbitration, suit or other proceeding among the Insurer and the **Insureds** or the **Company**, no presumption shall exist concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.

VI. CHANGES IN EXPOSURE

A. New Organizations or **Plans**

1. If before or during the **Policy Period** the **Company** acquires or creates a new **Subsidiary** or **Plan** or acquires an entity by merger or consolidation, coverage shall automatically apply to the new organization or **Plan** and its **Insureds**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation.
2. However, if the size of an acquired organization or **Plan** exceeds the acquisition threshold(s) for the respective Coverage Sections as shown in Item 12 of the Declarations Page, then coverage under this **Policy** or such Coverage Section as provided in subsection 1 above shall apply only if the Insurer agrees to afford such coverage pursuant to subsection 3 below.
3. The Insurer may agree to extend the coverage described in subsection 1 above to the new organization or **Plan** described in subsection 2 above and its **Insureds** if, within thirty (30) days after the acquisition, the **Named Insured** provides any additional information, pays any additional premium and agrees to any additional terms and conditions reasonably required by the Insurer for such extension of coverage. In such event, the Insurer shall issue an endorsement to this **Policy** confirming such coverage extension.

B. Acquisition of **Named Insured**

If during the **Policy Period** the **Named Insured** merges into or consolidates with another organization such that the **Named Insured** is not the surviving entity, or another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors, trustees or equivalent executives of the **Named Insured**, then coverage shall continue until the termination of this **Policy** or, if the **Run-Off Coverage Period** is purchased, the expiration of the **Run-Off Coverage Period**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition.

The right to exercise the **Run-Off Coverage Period** shall lapse unless the **Named Insured** gives written notice of such exercise to the Insurer prior to expiration of the **Policy Period**, including the requested length of the **Run-Off Coverage Period** which shall not exceed six (6) years after such merger, consolidation or acquisition. If the **Named Insured** requests a **Run-Off Coverage Period** as described in Item 6.A. of the Declarations, then the additional premium for such **Run-Off Coverage Period** shall be as described in Item 6.B. of the Declarations. If the **Named Insured** requests another **Run-Off Coverage Period**, the Insurer shall then notify the **Named Insured** of the additional premium for the requested **Run-Off Coverage Period**. The **Named Insured** shall promptly pay such additional premium as a condition precedent to commencement of the **Run-Off Coverage Period**.

The entire additional premium for the **Run-Off Coverage Period** shall be deemed fully earned at the inception of the **Run-Off Coverage Period**.

The **Named Insured** shall not be entitled to elect the **Run-Off Coverage Period** if the **Discovery Period** is elected pursuant to Subsection IV.B.

C. Cessation of Subsidiaries

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

D. Cessation of Plans

If before or during the **Policy Period** a **Plan** is terminated, coverage for such **Plan** and its **Insureds** under the Fiduciary Liability Coverage Section, if purchased, shall continue until termination of such Coverage Section with respect to **Wrongful Acts** taking place before or after such termination.

VII. DEFENSE AND SETTLEMENT

Subject to this Section VII, it shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claim**.

The Insurer shall have the right, but not the duty, and shall be given the opportunity to effectively associate with the **Insureds** regarding the investigation, defense, negotiation of settlement and settlement of any **Claim** that is or reasonably could be covered in whole or in part by this **Policy**.

The **Insureds** shall not offer to settle or settle, incur any **Defense Costs** or otherwise assume any obligation, admit any liability or stipulate to any judgment with respect to any **Claim** that is or reasonably could be covered in whole or in part by this **Policy** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for or as a result of any offer to settle, settlement, **Defense Costs**, assumed obligation, admission of liability or stipulated judgment to which it has not given its prior written consent. However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

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

The Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this **Policy**. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled under the terms and conditions of this **Policy** to coverage for such **Defense Costs**.

Subject to Section XIV of these General Terms and Conditions, the Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

The Insurer shall not unreasonably withhold any consent referenced in this Section VII.

VIII. REPORTING AND NOTICE

As a condition precedent to their rights under this **Policy**, the **Insureds** shall give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after an **Executive Officer** or an employee of the **Company's** office of general counsel, risk management or functionally equivalent departments, if any, first learns of such **Claim**, but in no event later than (i) sixty (60) days after expiration of the **Policy Period**, or (ii) the expiration of the **Discovery Period** or **Run-Off Coverage Period**, if exercised.

If during the **Policy Period** or the **Discovery Period** or **Run-Off Coverage Period**, if exercised, the **Insureds** become aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Insurer during the **Policy Period** or the **Discovery Period** or **Run-Off Coverage Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. No coverage is afforded for fees, expenses or other loss incurred in connection with such potential **Claim** prior to the time such notice results in a **Claim**.

As a condition precedent to exercising their rights under this **Policy**, the **Insureds** shall (i) include within any notice of **Claim** or circumstance a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Claim** or circumstances; and (ii) give to the Insurer such information and cooperation as it may reasonably require.

Except as otherwise provided in this **Policy**, all notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in Item 1 of the Declarations. Notice to the Insurer shall be given to the respective address shown in Item 7 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or in the case of courier, email or fax, one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

IX. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

A. Representations

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and complete, are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. This **Policy** is issued in reliance upon the truth and completeness of such representations.

B. Severability

The **Application** shall be construed as a separate application for coverage by each of the **Insured Persons**. In the event the **Application** contains any misrepresentation or omission (i) made with the intent to deceive, or (ii) which materially affects either the acceptance of the risk or the hazard assumed by the Insurer, then this **Policy** shall be void *ab initio* as to:

1. any **Company** to the extent such **Company** indemnifies an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; and
2. any **Company** and its **Subsidiaries** and **Plans** if an **Executive Officer** of such **Company** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons** for purposes of this Section IX.

C. Non-Rescindable Coverages

The Insurer shall not have the right to rescind or void, in whole or in part, the coverage provided under this **Policy** for any **Loss** incurred by the **Insured Persons** which is not indemnified by the **Company**.

X. TERRITORY AND VALUATION

All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world, to the extent legally permitted.

XI. OTHER INSURANCE

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

Liability provided in this **Policy**, or (ii) personal umbrella excess liability insurance purchased by an **Insured Person**.

XII. SUBROGATION

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, including without limitation any right of recovery from the **Company** for **Loss** incurred by **Insured Persons** which is indemnifiable by the **Company**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insureds**. In any subrogation claim against the **Company** to enforce the **Insured Persons'** right of indemnification, the shareholder and board of director resolutions of the **Company** shall be deemed to provide indemnification to the fullest extent permitted by law, and the Insurer's recovery from the **Company** for such **Loss** shall not exceed the Retention applicable to the **Company** for such **Loss**. The Insurer shall not exercise its right of subrogation against an **Insured Person** with respect to payments under any Insuring Agreement unless and to the extent one of the following respective exclusions in such Insuring Agreement applies to such **Insured Person**:

<u>Coverage Section</u>	<u>Exclusions</u>
Directors & Officers' Liability	A.6
Employment Practices Liability	A. 6 and A. 7
Fiduciary Liability	A.5

XIII. ALTERATION, ASSIGNMENT AND HEADINGS

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

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

XIV. PAYMENT PRIORITY

If the **Loss** due and owing by the Insurer under this **Policy** exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

- A. First, the Insurer shall pay such **Loss** which is incurred by **Insured Persons** and which is not indemnified by the **Company**;
- B. Second, the Insurer shall pay all other **Loss**.

Subject to the foregoing paragraph, the Insurer shall, upon receipt of a written request from an **Executive Officer** of the **Named Insured**, delay any payment of **Loss** due and owing to the **Company** until such time as the **Executive Officer** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. POLICY TERMINATION AND NONRENEWAL

This **Policy** and the **Policy Period** shall terminate at the earliest of the effective date of nonrenewal of the **Policy Period** shown in Item 2 of the Declarations or the effective date of cancellation, as described below.

- A. Cancellation
 1. The **Named Insured** may cancel this **Policy** by surrender of this **Policy** to the Insurer or by giving prior written notice to the Insurer stating when such cancellation shall take effect.
 2. The Insurer may cancel this **Policy** only for nonpayment of premium. In such event, the Insurer shall mail written notice of cancellation for nonpayment of premium to the **Named Insured**. Such notice shall state the effective date of cancellation, which shall not be less than fifteen (15) days after mailing such notice.

3. In the event of cancellation, the Insurer shall refund the unearned premium computed pro rata.

B. Nonrenewal

If the Insurer elects not to renew this **Policy**, the Insurer shall mail to the **Named Insured** written notice thereof at least sixty (60) days prior to the expiration of the **Policy Period**. The Insurer's offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute an election by the Insurer not to renew this **Policy**.

C. Notice

The Insurer shall send all notices required under this Section XV by certified mail to the **Named Insured** at the address in Item 1 of the Declarations, and by mail or electronic mail to the **Named Insured's** authorized agent, if any. Proof of mailing will be sufficient proof of notice.

XVI. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices of **Claim** or termination, paying premiums and receiving any return premiums that may become due under this **Policy**, agreeing to endorsements, and giving or receiving notices provided for in this **Policy** (except notices to apply for the **Discovery Period** or **Run-Off Coverage Period**), and the **Insureds** agree that the **Named Insured** shall act on their behalf.

XVII. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Company** and the **Insureds** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Insurer, the **Company** or any **Insured** to obtain relief from any such stay or injunction.

DIRECTORS' AND OFFICERS' LIABILITY COVERAGE SECTION
Private Company

I. INSURING AGREEMENTS

A. Insured Person Liability

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

B. Company Indemnification

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay on account of a **Claim** first made against the **Insured Persons** during the **Policy Period** or during the **Discovery Period** or **Run-Off Coverage Period**, if exercised, for any **Wrongful Acts** taking place prior to the earlier of the end of the **Policy Period** or commencement of the **Run-Off Coverage Period**.

C. Company Liability

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay on account of a **Claim** first made against the **Company** during the **Policy Period** or during the **Discovery Period** or **Run-Off Coverage Period**, if exercised, for any **Wrongful Acts** taking place prior to the earlier of the end of the **Policy Period** or commencement of the **Run-Off Coverage Period**.

D. Outside Position Liability

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

E. Retired Independent Directors Liability Coverage

The Insurer shall pay on behalf of the **Retired Independent Directors** all **Loss** for which the **Retired Independent Directors** are not indemnified by the **Company** and which the **Retired Independent Directors** become legally obligated to pay by reason of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or during the **Discovery Period** or **Run-Off Coverage Period**, if exercised, for any **Wrongful Acts** taking place prior to the earlier of the end of the **Policy Period** or commencement of the **Run-Off Coverage Period**. Coverage under this Insuring Agreement E shall apply only if (i) the **Retired Independent Director** is a **Retired Independent Director** when the **Claim** is first made, and (ii) the Limit of Liability otherwise applicable to this Coverage Section is exhausted by reason of payment by the Insurer of **Loss**. Such coverage shall then be excess of all other insurance specifically excess of this **Policy** as well as all other insurance described in Section XI of the General Terms and Conditions. If **Loss** is due and owing by the Insurer under both Insuring Agreement A and this Insuring Agreement E, then such **Loss** shall be allocated to and paid by the Insurer under the respective Limits of Liability in whatever portions will maximize the total amount of such **Loss** being paid under this Coverage Section.

II. PUBLIC COMPANY COVERAGE QUOTE

If during the **Policy Period** the **Named Insured**:

1. gives prior written notice to the Insurer that a **Company** intends to publicly offer or sell any debt or equity securities or to otherwise become a publicly-held organization described in Section 12(g) of the Securities and Exchange Act of 1934, as amended ("Public Transaction"), and
2. provides to the Insurer all information requested by the Insurer with respect to the Public Transaction,

the Insurer shall provide to the **Company** during the **Policy Period** a quotation for coverage under the Insurer's then-standard Directors and Officers Liability Insurance Policy for Public Companies, provided such coverage shall be subject to such terms, conditions, limits, retentions and premium as the Insurer may require in its sole discretion. No coverage is afforded pursuant to this Subsection II. unless and until the **Named Insured** agrees in writing to such terms, conditions, limits, retentions and premium, and the Insurer agrees in writing to bind such coverage. This Subsection II. shall not impact the Insurer's ability to cancel or non-renew this **Policy** as provided in Section XV of the General Terms and Conditions.

III. DEFINITIONS

When used with respect to this Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

A. **Claim** means:

1. a written demand for monetary damages or other relief against any **Insured** for a **Wrongful Act**, commenced by the **Insured's** receipt of such demand,
2. a civil proceeding against any **Insured** for a **Wrongful Act**, commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding against any **Insured** for a **Wrongful Act**, commenced by the **Insured's** receipt of an arbitration demand,
4. a criminal proceeding against any **Insured** for a **Wrongful Act**, commenced by a return of an indictment, information or similar document,
5. any official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**,
6. a formal administrative or regulatory adjudicatory or investigative proceeding against any **Insured** for a **Wrongful Act**, commenced by the filing of a notice of charge, formal investigative order or similar document,
7. a civil, criminal, administrative or regulatory investigation against an **Insured Person** for a **Wrongful Act**, commenced by the service upon or other receipt by the **Insured Person** of a written notice, including a Wells Notice, or subpoena from the investigating authority identifying the **Insured Person** as an individual against whom a formal proceeding may be commenced,
8. any request or demand by a regulatory, administrative, governmental or similar authority to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such; provided such request or demand (i) is not part of a routine or regularly scheduled audit, inspection or general oversight or compliance activity, and (ii) shall constitute a **Claim** under this Coverage Section only if and when the **Insureds** give to the Insurer written notice thereof pursuant to Section VIII of the General Terms and Conditions, or
9. a written request that the **Insured** toll or waive a statute of limitations with respect to a potential or threatened claim against any **Insured** for a **Wrongful Act**,

including any appeal therefrom.

B. **Insured Persons**, either in the singular or plural, means:

1. any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, governors, **Managers**, officers, in-house general counsel, controller, risk manager, advisory director or member of a duly constituted committee or board of the **Company** or their functional equivalent;
2. any one or more other natural persons not described in subparagraph 1 above who were, now are or shall become full or part-time **Employees** of the **Company** (including employed lawyers solely in their capacity as an **Employee** of the **Company**); and

3. any one or more natural persons described in subparagraph 1 above while serving in an **Outside Position**;

provided that **Employees** described in subparagraph 2 above shall not be considered **Insured Persons** for purposes of Insuring Agreement D and Exclusion A.7 or A.8 in Section IV of this Coverage Part.

C. **Insureds**, either in the singular or plural, means:

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

D. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages (including punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Costs** and civil money penalties assessed against an **Insured** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B) or for a violation of any other federal, state, local or foreign law if such law violation is not knowing or willful.

The insurability of such punitive, exemplary or multiple damages and civil money penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Insurer, or such **Claim** is located.

E. **Outside Entity** means:

1. any organization chartered and operated as a not-for-profit organization, or
2. any other entity specifically included as an **Outside Entity** by endorsement to this **Policy**,

provided such entity is not included in the definition of **Company**.

F. **Outside Position** means the position of director, officer, manager, trustee or other equivalent executive position held by an **Insured Person** in an **Outside Entity** if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**.

G. **Personal Injury** means false arrest, wrongful detention or imprisonment, malicious prosecution, defamation including libel and slander, invasion of privacy or wrongful entry or eviction.

H. **Retired Independent Director** means any **Insured Person** who (i) formerly served but no longer serves as a duly elected or appointed director, trustee, governor or functional equivalent executive of the **Named Insured**, (ii) never has been an officer of any **Company**, and (iii) no longer serves any **Company** or **Plan** in any insured capacity under this **Policy**.

I. **Wrongful Act** means:

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

IV. EXCLUSIONS

A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of that portion of any **Claim** made against any **Insured**:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Coverage Section is a direct or indirect renewal or replacement, but this exclusion shall not apply if the insurer of such other policy rejects such notice as invalid;
2. for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, but this exclusion shall not apply to any **Claim** for emotional distress or mental anguish in a **Claim** against **Insured Persons** for **Personal Injury**;

3. based upon, arising out of, or attributable to any litigation or administrative or regulatory proceeding or investigation against any **Insured** pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item 9 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
4. for an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA**, or any similar foreign, state or local common or statutory law or any rules and regulations promulgated thereunder, upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to **Employees** of the **Company**;
5. for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary** or its **Insured Persons** before the date such organization became a **Subsidiary**;
6. based upon, arising out of, or attributable to such **Insured** having gained any personal profit or remuneration to which such **Insured** was not legally entitled or having committed any deliberate fraud or willful violation of law, if a final and non-appealable judgment or adjudication adverse to such **Insured** in any proceeding not brought by the Insurer, or if a written admission under oath by such **Insured**, establishes that such **Insured** in fact gained any such personal profit or remuneration or committed such deliberate fraud or willful violation of law; provided this exclusion shall not apply (i) by reason of a written admission under oath by an **Insured Person** if a majority of disinterested directors of the **Named Insured** elects to waive the applicability of this exclusion with respect to such **Insured Person** by reason of such written admission, or (ii) to **Defense Costs**;
7. brought or maintained by or on behalf of a **Company** or any **Insured Person** in any capacity, except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the active assistance or participation of, or solicitation by, the **Company** or any **Insured Person**; provided that this Exclusion 7 shall not apply to such a derivative action if the only such assistance, participation or solicitation is (i) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (ii) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute or regulation;
 - b. a **Claim** for an employment-related **Wrongful Act** brought or maintained by any **Insured Person**;
 - c. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this **Policy**;
 - d. a **Claim** brought by an **Insured Person** who has not served as an **Insured Person** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the active assistance or participation of, or solicitation by, the **Company** or any other **Insured Person** who is serving or has served as an **Insured Person** within such three (3) year period;
 - e. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such **Company**, or any assignee of such trustee, examiner, receiver, or similar official or creditors committee; or
 - f. a **Claim** brought and maintained outside of the United States, Canada, the United Kingdom, Australia or any other common law jurisdiction, including any territory or possession thereof;
8. for a **Wrongful Act** by an **Insured Person** in an **Outside Position** if such **Claim** is brought or maintained by or on behalf of the **Outside Entity** in which the **Insured Person** serves or by or on behalf of any past, present or future director, officer, manager or trustee of such entity in any capacity, except:
 - a. a **Claim** that is a derivative action brought or maintained on behalf of such **Outside Entity** by one or more persons who are not directors, officers, managers or trustees of the **Outside Entity** and who bring and maintain the **Claim** without the active assistance or participation of, or solicitation by, the **Company**, any **Insured Person**, the **Outside Entity** or any director, officer, manager or trustee of the **Outside Entity**; provided that this Exclusion 8 shall not apply to such a derivative action if the only such assistance, participation or solicitation is (i) solely pursuant to or in

- compliance with a subpoena or similar legal process, or (ii) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute;
- b. a **Claim** for an employment-related **Wrongful Act** brought or maintained by a director, officer, manager or trustee of such **Outside Entity**;
 - c. a **Claim** brought by a director, officer, manager or trustee of such **Outside Entity** who has not served as such for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the active participation of, or solicitation by, such **Outside Entity** or any other director, officer, manager or trustee of such **Outside Entity** who is serving or has served as such within such three (3) year period;
 - d. a **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such **Outside Entity**, or any assignee of such trustee, examiner, receiver, similar official or creditors committee; or
 - e. a **Claim** brought and maintained outside of the United States, Canada, the United Kingdom, Australia or any other common law jurisdiction, including any territory or possession thereof;
9. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so, including without limitation any **Claim** by or on behalf of the **Company**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion; but this exclusion shall not apply to any **Loss** incurred by **Insured Persons** for which the **Company** does not indemnify the **Insured Persons** either because the **Company** is neither permitted nor required to grant such indemnification or because of the **Financial Impairment** of the **Company**;
10. for a **Wrongful Act** actually or allegedly committed or attempted by the **Company** as a general partner, or by **Insured Persons** in their capacity as a director, officer, trustee, manager or employee, of any organization other than an **Outside Entity** or the **Company**, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**;
11. based upon, arising out of or attributable to (i) the actual, alleged or attempted purchase or sale, or offer or solicitation of an offer to purchase or sell, any equity or debt securities, or (ii) the actual or alleged violation of any federal, state, local or common or foreign law relating to equity or debt securities; provided this exclusion shall not apply to any **Claim**:
- a. based upon, arising out of or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any equity or debt securities in a private-placement transaction exempt from registration under the Securities Act of 1933, as amended;
 - b. based upon, arising out of or attributable to the failure of the **Company** to undertake or successfully complete a public offering of securities, including any "roadshow" disclosures or other activities in connection with such an unsuccessful public offering; or
 - c. if prior to such purchase or sale, or offer or solicitation of an offer to purchase or sell, securities (i) the Insurer agrees in writing to delete this exclusion with respect to such purchase, sale, offer or solicitation, and (ii) the **Company** pays any additional premium and agrees to any additional terms and conditions reasonably required by the Insurer for such deletion;
12. solely with respect to Insuring Clause C:
- a. for any actual or alleged liability of the **Company** under any written or express contract or agreement, except to the extent that the **Company** would have been liable in the absence of such contract or agreement;
 - b. for **Personal Injury**;
 - c. for taxes;
 - d. for the rendering of or failure to render professional services;

- e. based upon, arising out of or attributable to an actual or alleged violation of the Sherman Anti-Trust Act, the Clayton Act or the Federal Trade Commission Act, as amended, or any other federal, state, local, common or foreign laws involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing, restraint of trade, unfair trade practices or tortious interference with another's actual or prospective business or contractual relationships or opportunities;
 - f. based upon, arising out of or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress or service mark, or the actual or alleged misappropriation of ideas or trade secrets or the unauthorized disclosure of or access to confidential information; or
 - g. based upon, arising out of or attributable to the actual or alleged malfunction, defect or failure of any goods or products manufactured, distributed, sold, installed, marketed, developed or processed by the **Company**; or
13. which constitutes an **Employment Practices Claim** or **Third Party Discrimination Claim**; provided this exclusion shall apply to **Insured Persons** only if one or more of the Insuring Agreements in the Employment Practices Liability Coverage Section are designated as purchased in the Coverage Schedule in Item 9 of the Declarations.

B. **Loss** does not include:

- 1. any amount for which the **Insureds** are absolved from payment,
 - 2. fines or penalties imposed by law, other than civil money penalties expressly referenced in the definition of **Loss** above,
 - 3. taxes, other than taxes (a) imposed upon a **Company** for which the **Insured Persons** are legally liable solely by reason of the **Company's** insolvency, or (ii) imposed upon an **Insured Person** solely by reason of the Insurer's payment of **Loss** incurred by such **Insured Person**,
 - 4. any amount incurred by the **Insured** in a proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**,
 - 5. any amount incurred by the **Company** that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a **Company** in connection with its purchase of any securities or assets, or
 - 6. matters uninsurable under the law pursuant to which this **Policy** is construed,
- provided this subsection IV.B does not apply to **Defense Costs**.

For the purpose of determining the applicability of any Exclusion set forth in this Section IV: the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Persons**; and only the **Wrongful Act** or knowledge of an **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries**.

FIDUCIARY LIABILITY COVERAGE SECTION

I. INSURING AGREEMENTS

A. FIDUCIARY LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of a **Claim** first made against the **Insureds** during the **Policy Period** or during the **Discovery Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place prior to the earlier of the end of the **Policy Period** or commencement of the **Run-Off Coverage Period**.

B. VOLUNTARY COMPLIANCE COVERAGE

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

II. DEFINITIONS

When used with respect to this Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

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

B. **Claim** means:

1. a written demand against any **Insured** for monetary damages or other relief commenced by the **Insured's** receipt of such demand;
2. a civil proceeding against any **Insured**, commenced by the service of a complaint or similar pleading;
3. a criminal proceeding against any **Insured**, commenced by a return of an indictment, information or similar document;
4. an administrative or regulatory proceeding against any **Insured**, commenced by the filing of a notice of charges or similar document;
5. a civil, criminal, administrative or regulatory investigation (including a fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) of any **Insured**, commenced by the service upon or other receipt by the **Insured** of a target letter or other written notice from the investigating authority identifying by name the **Insured** as a person against whom a proceeding may be commenced;
6. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**;
7. an arbitration proceeding against any **Insured**, commenced by receipt of an arbitration demand; or
8. a written request that the **Insured** toll or waive a statute of limitations with respect to a potential or threatened claim against any **Insured**;

for a **Wrongful Act**, including any appeal therefrom.

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

C. **Insured Persons** means any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, governors, **Managers**, officers, **Employees** (including employed lawyers solely in their capacity as an **Employee**), advisory directors or members of a duly constituted committee or board of any **Company** or **Plan** or their functional equivalent.

D. **Insureds** means:

1. the **Insured Persons**;

2. the **Company**; and
 3. the **Plans**.
- E. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages (including punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Costs**, and:
- (a) the five percent (5%) or less or the twenty percent (20%) or less civil penalties imposed under §502(i) or (l) of **ERISA**;
 - (b) civil money penalties imposed upon an **Insured** for violation of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, or Section 507 of the Pension Protection Act of 2006, as amended, provided that (i) no Retention shall apply to coverage under this Coverage Section for such civil money penalties, and (ii) the Insurer's maximum aggregate liability for all such civil money penalties under this Coverage Section shall be subject to a sublimit of twenty-five thousand dollars (\$25,000) which shall be the maximum aggregate amount that the Insurer shall pay for all such penalties and shall be part of, and not in addition to, the applicable Limits of Liability set forth in Items 9 and 10 of the Declarations; or
 - (c) civil penalties imposed upon an **Insured** by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder, provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Section.

Solely with respect to Insuring Clause B, **Loss** means **Voluntary Compliance** and **Defense Costs**.

The insurability of such punitive, exemplary or multiple damages, civil penalties or **Voluntary Compliances** shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Insurer, or such **Claim** is located.

F. **Plan** means:

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

Plan shall not include any "employee stock ownership plan" as defined by **ERISA** or, for purposes of any coverage not described in paragraph 5 above, any multiemployer plan as defined by **ERISA**, unless such plan or coverage is specifically included by endorsement to this **Policy**.

- G. **Settlement Program** means any voluntary compliance resolution program or similar **Voluntary Compliance** program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include,

without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

- H. **Settlement Program Notice** means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter into a **Settlement Program**.
- I. **Sponsor Securities Claim** means any **Claim** for any **Wrongful Act** based on, arising out of, or attributable to any **Plan's** purchase, sale, ownership or retention of, or investment or concentration in securities issued by the **Company**, including but not limited to any disclosures made, or which allegedly should have been made, in connection therewith.
- J. **Voluntary Compliance** means any fees, fines or penalties paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Voluntary Compliance** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines or penalties relating to a **Plan** which, as of the earlier of the inception date of this **Policy** or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.
- K. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by the **Insureds** in the discharge of their duties as, or solely by reason of their status as, fiduciaries of any **Plan**, or
 2. any negligent act, error or omission actually or allegedly committed or attempted by the **Insureds** in the **Administration** of a **Plan**; provided that with respect to the **Administration** of a **Plan** that is a multiemployer plan as defined by **ERISA**, such act, error or omission shall be by the **Insureds** in a capacity other than as a fiduciary of such **Plan** and shall not be by such **Plan**.

III. EXCLUSIONS

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of that portion of any **Claim** made against any **Insured**:
1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice accepted under any policy of which this Coverage Section is a direct or indirect renewal or replacement;
 2. based upon, arising out of, or attributable to any litigation or administrative or regulatory proceeding or investigation against any **Insured** pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item 9 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 3. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof; provided this exclusion shall not apply to any **Defense Costs** on account of a **Claim** for emotional distress or mental anguish;
 4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; provided this exclusion shall not apply to any **Loss** incurred by **Insured Persons** for which the **Company** does not indemnify the **Insured Persons** either because the **Company** is neither permitted nor required to grant such indemnification or because of the **Financial Impairment** of the **Company**;
 5. based upon, arising out of or attributable to any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Insurer establishes such a deliberately fraudulent act or omission or willful violation; provided this exclusion shall not apply to **Defense Costs**;

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

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

B. Loss does not include:

1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
2. taxes, fines or penalties imposed by law, other than civil penalties expressly referenced in II.E. (a), (b) or (c) above;
3. any costs incurred by the **Company** or **Plan** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief; or
4. matters uninsurable under the law pursuant to which this policy is construed;

provided this subsection III.B does not apply to **Defense Costs**.

For the purpose of determining the applicability of any Exclusion set forth in this Section III, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of an **Executive Officer** (i) of a **Company** shall be imputed to such **Company** and its **Subsidiaries**, and (ii) of a **Plan** shall be imputed to such **Plan**.

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

I. INSURING AGREEMENTS

A. EMPLOYMENT PRACTICES LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or during the **Discovery Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place prior to the earlier of the end of the **Policy Period** or commencement of the **Run-Off Coverage Period**.

B. THIRD PARTY DISCRIMINATION LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Third Party Discrimination Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period** or **Run-Off Coverage Period**, if exercised, for a **Wrongful Act** taking place prior to the earlier of the **Policy Period** or commencement of the **Run-Off Coverage Period**.

II. DEFINITIONS

When used with respect to this Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

A. **Claim** means:

1. a written demand against any **Insured** for monetary damages or other relief, commenced by the **Insured's** receipt of such demand,
2. a civil proceeding against any **Insured**, commenced by the service of a complaint or similar pleading;
3. an administrative or regulatory proceeding against any **Insured**, including a proceeding before the Equal Employment Opportunity Commission or a similar state or local governmental body, commenced by the filing of a notice of charges or similar document;
4. a civil, administrative or regulatory investigation of any **Insured**, commenced by the service upon or other receipt by the **Insured** of a target letter or other written notice from the investigating authority identifying by name the **Insured** as an individual or entity against whom a proceeding may be commenced;
5. an arbitration proceeding against any **Insured**, commenced by the **Insured's** receipt of an arbitration demand; or
6. a written request that the **Insured** toll or waive a statute of limitations with respect to a potential or threatened claim against any **Insured**;

for a **Wrongful Act**, including any appeal therefrom; provided **Claim** does not include a labor or grievance proceeding pursuant to a collective bargaining agreement.

B. **Insured Persons** means:

1. any one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, governor, **Manager**, officer, **Employee** (including employed lawyers solely in their capacity as an **Employee**), advisory director, or member of a duly constituted committee or board of the **Company**, or their functional equivalent;
2. any **Independent Contractor**, but only if the **Company** agrees in writing within thirty (30) days after the **Claim** is made to provide indemnification to such **Independent Contractor** for any **Loss** on account of such **Claim**; provided any coverage under this Coverage Section for any

such **Independent Contractor** shall be specifically excess of any indemnification or insurance otherwise available to such **Independent Contractor** from any other source.

- C. **Insureds** means the **Insured Persons** and the **Company**.
- D. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages (including back pay, front pay and punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Defense Costs**, prevailing plaintiff attorney's fees awarded pursuant to Section 1988 of the Civil Rights Act, and liquidated damages awarded under the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act.

The insurability of such punitive, exemplary, liquidated and multiple damages or attorneys' fees shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Insurer or such **Claim** is located.

- E. **Mass or Class Action** means any **Employment Practices Claim** or **Third Party Discrimination Claim** brought or maintained:
1. By or behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
 2. By or on behalf of one to four natural persons if any such natural persons are making a pattern and practice of systemic discrimination allegations and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Employment Practices Claim** or **Third Party Discrimination Claim**, whether or not such natural persons are represented by one or more legal counsel;
 3. By a governmental entity, department or agency making a pattern and practice of systemic discrimination allegations or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Employment Practices Claim** or **Third Party Discrimination Claim**.
- F. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons**, individually or otherwise, in their capacity as such, or by the **Company**; or
 2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity.

III. EXCLUSIONS

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of that portion of any **Claim** made against any **Insured**:
1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice accepted under any policy of which this Coverage Section is a direct or indirect renewal or replacement;
 2. based upon, arising out of, or attributable to any litigation or administrative or regulatory proceeding or investigation against any **Insured** pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item 9 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 3. for an actual or alleged violation of the responsibilities, obligations or duties imposed by:
 - a. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law,

- b. **ERISA** (except Section 510 thereof),
- c. the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning wage and hour practices, including but not limited to any **Claim** for off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to timely pay wages, conversions, unjust enrichment, or unfair business practices,
- 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. the Racketeer Influenced and Corrupt Organizations Act,
- i. the Federal False Claims Act, or
- j. rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state, local or foreign statutory law or common law;

provided this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation or for any other actual or alleged violation of any whistleblower statute or law;

- 4. for bodily injury, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof; provided this exclusion shall not apply to any **Claim** for emotional distress, mental anguish or humiliation;
- 5. based upon, arising out of, or attributable to any actual or alleged breach of any contract or agreement which specifies the terms of the **Company's** engagement of an **Independent Contractor**;
- 6. based upon, arising out of, or attributable to any deliberately fraudulent or deliberately criminal act or omission committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought by the Insurer establishes such a deliberately fraudulent act or omission; provided this exclusion shall not apply to **Defense Costs**;
- 7. based upon, arising out of, or attributable to such **Insured** gaining any profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable adjudication adverse to such **Insured** in any proceeding not brought or maintained by or against the Insurer establishes such **Insured** in fact gained any such profit, remuneration or advantage; provided this exclusion shall not apply to **Defense Costs**;
- 8. based upon, arising out of, or attributable to the employment reinstatement or continued employment of the claimant by the **Company**; or
- 9. if such **Loss** constitutes:
 - a. the cost of any non-monetary relief, including without limitation (i) any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws;
 - b. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days, sick days, prerequisites, stock options or similar rights; provided this exclusion shall not apply to any back pay or front pay or any additional

compensation allegedly due as a result of alleged discrimination or wrongful dismissal, discharge or termination of employment;

- c. amounts owing under or assumed by the **Insured** pursuant to a written contract with or written severance obligation of the **Company**; provided this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of the written contract with or obligation of the **Company**; or
- d. medical, insurance or other benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance;

provided this exclusion 9 shall not apply to **Defense Costs**.

B. **Loss** does not include any of the following:

- 1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- 2. taxes, fines or penalties imposed by law; or
- 3. matters uninsurable under the law pursuant to which this policy is construed;

provided this subsection III.B does not apply to **Defense Costs**.

For the purpose of determining the applicability of any Exclusion set forth in this Section III, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of an **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries**.