



Illinois Union Insurance Company

Business and Management Indemnity Policy

Declarations

This Policy is issued by the stock insurance company listed above (“Insurer”).

THE EMPLOYMENT PRACTICES, DIRECTORS & OFFICERS AND COMPANY, AND FIDUCIARY COVERAGE SECTIONS OF THIS POLICY, WHICHEVER ARE APPLICABLE, COVER ONLY CLAIMS FIRST MADE AGAINST, AND REPORTED BY, THE INSURED DURING THE POLICY PERIOD. THE CRIME COVERAGE SECTION, IF APPLICABLE, APPLIES ONLY TO LOSS DISCOVERED DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR COSTS, CHARGES AND EXPENSES. AMOUNTS INCURRED FOR COSTS, CHARGES AND EXPENSES AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AND DEDUCTIBLE AMOUNTS.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO THE APPROPRIATE DEFINITIONS SECTIONS OF THIS POLICY.

Policy Number:

Item A. **Parent Company:**

Principal Address:

Item B. **Policy Period:** From _____ to _____
12:01 a.m. local time at the Principal Address shown in Item A.

Item C. Coverage Section(s):

Employment Practices

1. Limit of Liability
 - a. \$ _____ aggregate for all **Loss**, subject to 1b and 1c immediately below,
 - b. \$ _____ additional aggregate for all **Costs, Charges and Expenses**, subject to 1c immediately below,
 - c. \$ _____ maximum aggregate for this Coverage Section
2. Retention: \$ _____ each **Employment Practices Claim**
 \$ _____ each **Third Party Claim**
3. **Continuity Date:** _____
4. **Third Party** Coverage: ____ Yes ____ No

Directors & Officers and Company

1. Limit of Liability \$ _____ maximum aggregate for this Coverage Section
2. Retentions:
 - \$ _____ each **Claim** under Insuring Clause 1
 - \$ _____ each **Claim** under Insuring Clause 2
 - \$ _____ each **Claim** under Insuring Clause 3
3. **Continuity Date:** _____

Fiduciary

1. Limit of Liability \$ _____ maximum aggregate for this Coverage Section
2. Retention: \$ _____ each **Claim**
3. **Continuity Date:** _____

Crime

1. Limit of Liability \$ _____ maximum aggregate for this Coverage Section
2. Deductibles:
 \$ _____ each **Single Loss**
 \$ _____ each **Single Loss** for **Employees Benefit Plan** Coverage
3. **Employee Benefit Plan** Coverage Yes____ No____

Item D. Premium: \$ _____

Item E. **Discovery Period**

- | | |
|--------------------|----------------------|
| 1. One (1) year | 100% of the premium |
| 2. Two (2) years | ____% of the premium |
| 3. Three (3) years | ____% of the premium |

As provided in subsection H of the General Terms and Conditions, **Discovery Period** options 2 and 3 above may be elected and purchased only with the written consent of the **Insurer**.

Item F. **Run-Off Period**

- | | |
|--------------------|----------------------|
| 1. One (1) year | ____% of the premium |
| 2. Two (2) years | ____% of the premium |
| 3. Three (3) years | ____% of the premium |
| 4. Four (4) years | ____% of the premium |
| 5. Five (5) years | ____% of the premium |
| 6. Six (6) years | ____% of the premium |

As provided in subsection I of the General Terms and Conditions, only one of the above **Run-Off Period** options may be elected and purchased.

Item G. Notice under this **Policy** shall be given to:

ACE Westchester Specialty Claims
 1133 Avenue of the Americas
 38th Floor
 New York, NY 10036

Item H. Form numbers of endorsements attached at **Policy** issuance:

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be signed by its President and Secretary, and countersigned by a duly authorized representative of the **Insurer**.

DATE: _____

 Authorized Representative



Business and Management Indemnity Policy

General Terms and Conditions

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows

A. SEVERABILITY OF GENERAL TERMS AND CONDITIONS

These General Terms and Conditions apply to each and every Coverage Section of this **Policy**. The terms and conditions of each Coverage Section apply only to that Coverage Section and shall not be construed to apply to any other Coverage Section.

B. DEFINITIONS

Whenever used in this **Policy**, the terms that appear below in **boldface** type shall have the meanings set forth in this Definitions subsection of the General Terms and Conditions. However, if a term also appears in **boldface** type in a particular Coverage Section and is defined in that Coverage Section, that definition shall apply for purposes of that particular Coverage Section. Terms that appear in **boldface** in the General Terms and Conditions but are not defined in this Definitions subsection and are defined in other Coverage Sections of the **Policy** shall have the meanings ascribed to them in those Coverage Sections.

1. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a direct or indirect renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
2. **Company** means:
 - a) the **Parent Company**; and
 - b) any **Subsidiary**,

and includes any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
3. **Discovery Period** means one of the periods described in Item E of the Declarations which is elected and purchased pursuant to subsection H below.
4. **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**.
5. **Extended Period** means the **Discovery Period** or the **Run-Off Period**, if such provision is elected and purchased pursuant to subsections H or I, respectively, below.
6. **Insurer** means the insurance company providing this insurance.
7. **Parent Company** means the entity first named in Item A of the Declarations.

8. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.
9. **Policy Period** means the period from the effective date and hour of the inception of this **Policy** to the **Policy** expiration date and hour as set forth in Item B of the Declarations, or its earlier cancellation date and hour, if any.
10. **Takeover** means:
 - a) the acquisition by any person or entity of more than 50% of the outstanding securities of the **Parent Company** representing the present right to vote for the election of directors;
 - b) the merger or consolidation of the **Parent Company** into another entity such that the **Parent Company** is not the surviving entity;
 - c) the acquisition by the **Company** or merger or consolidation with the **Company** of any publicly held company; or
 - d) the sale or transfer of more than 75% of the value of the assets of the **Company**, with the value of the assets of the **Company** determined as of the inception date of this **Policy**.
11. **Run-Off Period** means one of the periods described in Item F of the Declarations, which is elected and purchased pursuant to subsection I below.
12. **Subsidiary** means:
 - a) any entity of which more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors or managers are owned by the **Parent Company**, directly or indirectly, if such entity:
 - (i) was so owned on or prior to the inception date of this **Policy** ; or
 - (ii) becomes so owned after the inception date of this **Policy**; and
 - b) any joint venture entity in which the **Parent Company**, or an entity described in a) above, has an exact fifty percent (50%) ownership of the interests of such joint venture entity and where, pursuant to a written joint venture agreement, the **Parent Company** or entity described in a) above solely controls the management and operations of such joint venture entity.

All definitions shall apply equally to the singular and plural forms of the respective words.

C. LIMITS OF LIABILITY, RETENTIONS AND DEDUCTIBLES

1. The Limits of Liability, Retentions and Deductibles for each Coverage Section are separate Limits of Liability, Retentions and Deductibles pertaining only to the Coverage Section for which they are shown. The application of a Retention or Deductible to **Loss** under one Coverage Section shall not reduce the Retention or Deductible under any other Coverage Section, and no reduction in the Limit of Liability applicable to one Coverage Section shall reduce the Limit of Liability under any other Coverage Section.
2. In the event that any **Claim** is covered, in whole or in part, under two or more Insuring Clauses or more than one Coverage Section, the total applicable Retention or Deductible shall not exceed the single largest applicable Retention or Deductible. The largest applicable Retention or Deductible shall apply only once to such **Claim**.

D. WARRANTY

It is warranted that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy** and each Coverage Section.

By acceptance of this **Policy**, the **Insureds** agree that:

1. the statements in the **Application** are their representations, that such representations shall be deemed material to the acceptance of the risk or the hazard assumed by **Insurer** under this **Policy**, and that this **Policy** and each Coverage Section are issued in reliance upon the truth of such representations;
2. in the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive, or contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by **Insurer** under this **Policy**, this **Policy**, including each and all Coverage Sections, shall be void ab initio with respect to any **Insureds** who had knowledge of such misrepresentation or omission; and
3. the knowledge of the **Company's** Chief Executive Officer, Chief Financial Officer, general or managing partner, managing member, or any natural person in any similar position, shall be deemed to be the knowledge of the **Company** for purposes of this Section.

E. CANCELLATION

1. By acceptance of this **Policy**, the **Insureds** hereby confer to the **Parent Company** the exclusive power and authority to cancel this **Policy** on their behalf. The **Parent Company** may cancel this **Policy** in its entirety any of the applicable Coverage Sections individually by surrender thereof to the **Insurer**, or by mailing written notice to the **Insurer** stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the **Policy** or applicable Coverage Section. Delivery of such written notice shall be equivalent to mailing.
2. This **Policy** may be cancelled by the **Insurer** only for nonpayment of premium, by mailing written notice to the **Parent Company** stating when such cancellation shall be effective, such date to be not less than ten (10) days from the date of the written notice. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Insurer** shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then the notice period shall be deemed to be the minimum notice period permitted under the governing law or regulation.
3. If this **Policy** or any Coverage Section is cancelled, the **Insurer** shall retain the pro rata proportion of the premium therefore. Payment or tender of any unearned premium by **Insurer** shall not be a condition precedent to the effectiveness of cancellation.

F. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of natural persons who are **Insureds** shall be considered **Insureds** under this **Policy**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the natural person who is an **Insured**

to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All of the terms and conditions of this **Policy** including, without limitation, the Retentions and Deductibles applicable to **Loss** incurred by natural persons who are **Insureds** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

G. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of all **Insureds**, and the **Insureds** agree that the **Parent Company** will act on their behalf, with respect to the giving of all notices to **Insurer**, the receiving of notices from **Insurer**, the agreement to and acceptance of endorsements, the payment of the premium and the receipt of any return premium.

H. DISCOVERY PERIOD

1. If this **Policy** or any Coverage Section is cancelled or is not renewed by the **Insurer**, for reasons other than non-payment of premium or noncompliance with the terms and conditions of this **Policy** or if the **Parent Company** elects not to renew this **Policy** or a Coverage Section, then the **Parent Company** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item E1 of the Declarations of the total premium for this **Policy**, or the total premium for the cancelled or not renewed Coverage Section, whichever is applicable, to purchase an extension of the coverage granted by this **Policy** or the applicable cancelled or not renewed Coverage Section with respect to any **Claim** first made during the period of time set forth in Item E1 of the Declarations after the effective date of such cancellation or, in the event of a refusal to renew, after the Policy expiration date, but only with respect to any **Wrongful Act** committed before such date. The **Parent Company** shall not have the right to elect a **Discovery Period** set forth in Item E2 or E3 of the Declarations, and the **Insurer** shall have the sole discretion whether to offer such a **Discovery Period** to the **Insureds**.
2. As a condition precedent to the right to purchase the **Discovery Period** set forth in subsection H1 above, the total premium for the **Policy** must have been paid. Such right to purchase the **Discovery Period** shall terminate unless written notice, together with full payment of the premium for the **Discovery Period**, is received by **Insurer** within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the **Policy** expiration date. If such notice and premium payment is not so given to **Insurer**, there shall be no right to purchase the **Discovery Period**.
3. In the event of the purchase of the **Discovery Period**, the entire premium therefore shall be deemed earned at the commencement of the **Discovery Period**.
4. The exercise of the **Discovery Period** shall not in any way increase or reinstate the limit of **Insurer's** liability under any Coverage Section.

I. RUN-OFF COVERAGE

In the event of a **Takeover**:

1. The **Parent Company** shall have the right, upon payment of an additional premium calculated at the percentage of the total premium for this **Policy** set forth in Item F of the Declarations, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made during the **Run-Off Period**, as set forth in Item F of the Declarations, but only with respect to any **Wrongful Act** committed before the effective date of the **Takeover**. However, the additional premium shall be reduced by the amount of the unearned premium from the date of the **Takeover** through the expiration date set forth in Item B of the Declarations.

2. The **Parent Company** shall have the right to elect only one of the periods designated in Item F of the Declarations. The election must be made within 45 days of the **Takeover**, but in no event later than the expiration of the **Policy Period**. The right to purchase a **Run-Off Period** shall terminate at the earlier date of 45 days after the effective date of the **Takeover** or the expiration of the **Policy Period**.
3. If a **Run-off Period** is elected and purchased:
 - a) Subsection E, above, is deleted in its entirety and neither the **Insureds** nor the **Insurer** may cancel this **Policy** or any Coverage Section thereof;
 - b) Subsection H, above, is deleted in its entirety; and
 - c) the maximum aggregate Limit of Liability of the **Insurer** for each Coverage Section purchased and set forth on the Declarations shall be twice the otherwise applicable maximum aggregate Limit of Liability set forth in Item C of the Declarations for such Coverage Section; provided, however, the maximum aggregate Limit of Liability of the **Insurer** in connection with any one **Claim** shall be amount originally shown as the maximum aggregate Limit of Liability for each Coverage Section purchased and set forth on the Declaration.

J. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process described in this subsection.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence arbitration in accordance with this section; provided, however, that no such arbitration shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item A of the Declarations as the principal address of the **Parent Company**. The **Parent Company** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.

K. TERRITORY

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

L. ASSISTANCE, COOPERATION AND SUBROGATION

The **Insureds** agree to provide **Insurer** with such information, assistance and cooperation as **Insurer** reasonably may request, and they further agree that they shall not take any action which in any way increases **Insurer's** exposure under this Policy. In the event of any payments under this Policy, **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable **Insurer** effectively to bring suit or otherwise pursue subrogation in the name of the **Insureds**, and shall provide all other assistance and cooperation which **Insurer** may reasonably require.

M. ACTION AGAINST INSURER, ALTERATION AND ASSIGNMENT

Except as provided in subsection J above, Alternative Dispute Resolution, no action shall lie against **Insurer** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join **Insurer** as a party to any action against the **Insureds** to determine their liability, nor shall **Insurer** be impleaded by the **Insureds** or their legal representative. 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**.

N. ENTIRE AGREEMENT

By acceptance of this **Policy**, the **Insureds** agree that this **Policy** embodies all agreements existing between them and **Insurer** or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop **Insurer** from asserting any right under the terms of this **Policy** or otherwise, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by **Insurer** to form part of this **Policy**.



**Business and
Management Indemnity
Policy**
**Employment Practices
Coverage Section**

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSES

1. **Employee** Insuring Clause

Insurer shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of an **Employment Practices Claim** first made against the **Insureds** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Extended Period**, for an **Employment Practices Wrongful Act** taking place prior to the end of the **Policy Period**.

2. **Third Party** Insuring Clause

In the event **Third Party** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, the **Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Third Party Claim** first made against the **Insureds** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Extended Period**, for a **Third Party Wrongful Act** taking place prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Claim** means any:

- a) **Employment Practices Claim**; or
- b) **Third Party Claim**.

2. **Continuity Date** means the Continuity Date set forth in Item C of the Declarations relating to this Coverage Section.

3. **Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Company**.

4. **Employee** means any person who was, now is or shall become:

- a) a full-time or part-time employee of the **Company**, including voluntary, seasonal and temporary employees;
- b) any individual who applies for employment with the **Company**; and

- c) any individual who is leased or contracted to perform work for the **Company**, or is an independent contractor for the **Company**, but only if such individual performs work or services solely for or on behalf of the **Company**.
5. **Employment Practices Claim** means:
- a) a written demand against an **Insured** for monetary damages;
 - b) a civil judicial, administrative, regulatory or arbitration proceeding against an **Insured** seeking monetary damages, commenced by the service of a complaint or similar pleading, including any appeal therefrom; or
 - c) a civil proceeding against an **Insured** before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by the filing of a notice of charges, investigative order or similar document brought by or on behalf of an **Employee** in their capacity as such. **Employment Practices Claim** does not include a labor or grievance proceeding, which is pursuant to a collective bargaining agreement.
6. **Employment Practices Wrongful Act** means any actual or alleged:
- a) violation of any common or statutory federal, state, or local law prohibiting any kind of employment -related discrimination;
 - b) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including workplace harassment by any non-employee;
 - c) abusive or hostile work environment;
 - d) wrongful discharge or termination of employment, whether actual or constructive;
 - e) breach of an actual or implied employment contract;
 - f) wrongful deprivation of a career opportunity, wrongful failure or refusal to employ or promote, or wrongful demotion;
 - g) employment-related defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy;
 - h) wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures, solely as respects employment-related discrimination or harassment;
 - i) wrongful discipline;
 - j) employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;
 - k) **Retaliation**;
 - l) negligent evaluation; or
 - m) negligent hiring or negligent supervision of others in connection with a) through l) above, but only if employment-related and claimed by or on behalf of any **Employee** and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.

7. **Insured Persons** means all persons who were, now are or shall become:
- a) a director or officer of the **Company**;
 - b) any **Employee**; and
 - c) the functional equivalent of a director, officer or **Employee** in the event the **Company** is incorporated or domiciled outside the United States.
8. **Insureds** means the **Company** and any **Insured Persons**.
9. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.
10. **Loss** means the monetary damages, judgments, settlements, including front pay and back pay, and **Costs, Charges and Expenses** incurred by any of the **Insureds**. **Loss** does not include:
- a) taxes, fines or penalties;
 - b) matters uninsurable under the laws pursuant to which this Policy is construed;
 - c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages are insurable under the law pursuant to which this **Policy** shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Insureds** in deciding the insurability of such damages;
 - d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
 - e) amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
 - f) disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing benefit payments;
 - g) the costs to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any disabled person;
 - h) the cost of instituting or conducting any program, procedure, or training;
 - i) the cost of creating or reinstating employment;
 - j) any amount owed as wages to any **Employee**;
 - k) any amount that represents or is substantially equivalent to disgorgement, restitution or rescission damages, or forfeiture of any profits or remuneration;
 - l) dividends or other distributions of **Company** profits; or
 - m) any amount for which the **Insured** is not financially liable or legally obligated to pay.

11. **Retaliation** means any actual or alleged response of any of the **Insureds** to:
- a) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Insureds** where such act is alleged to be a violation of any federal, state local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder;
 - b) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
 - c) the filing of any claim under the Federal False Claims Act or any similar federal, state, local or foreign "whistleblower" law or "whistleblower" provision of any law; or
 - d) any legally-protected **Employee** work stoppage or slowdown.
12. **Third Party** means any natural person who is a customer, vendor, service provider or client of the **Company**; provided, however, **Third Party** shall not include any **Employee**.
13. **Third Party Claim** means:
- a) any written demand for monetary damages against an **Insured**; or
 - b) a civil judicial, administrative or arbitration proceeding against an **Insured** seeking monetary damages, including any appeal therefrom;
- brought by or on behalf of a **Third Party** in their capacity as such.
14. **Third Party Wrongful Act** means any actual or alleged:
- a) harassment of a **Third Party**, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; or
 - b) discrimination against a **Third Party**, including any such discrimination on account of race, color, religion, age, disability or national origin.
15. **Wrongful Act** means:
- a) **Employment Practices Wrongful Act**; or
 - b) **Third Party Wrongful Act**.

C. EXCLUSIONS

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- 1. for actual or alleged bodily injury, other than mental anguish or emotional distress in any **Employment Practices Claim**, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;
- 2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

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- a) any **Wrongful Act**, fact circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - b) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - b) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

including without limitation any such **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. Provided, however, this exclusion shall not apply to that part of any **Claim** under this Coverage Section where such **Claim** is for Retaliation.

For purposes of this exclusion, **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

4. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law; provided, however, this exclusion does not apply to any such **Claim** alleging violations of the Equal Pay Act or **Retaliation**;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any dishonest, fraudulent or criminal act, error or omission; provided, however this exclusion shall not apply unless and until there is a final judgment against any **Insured** as to such conduct. If such excluded conduct is established through a final judgment, the **Insured** shall reimburse the **Insurer** for any **Costs, Charges and Expenses** advanced;
6. against any **Subsidiary** or any of the **Insured Persons** of a **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof:
- a) before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**; or

- b) occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring before the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
8. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including without limitation any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission, filed or pending on or before the **Continuity Date**;
- b) the same or substantially the same **Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the U.S. Department of Labor or the U.S. Equal Employment Opportunity Commission; or
- c) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**;
9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act**, fact, circumstance, or situation which any of the **Insured Persons** who were, now are, or shall be directors, officers, managers or supervisory employees, had knowledge of prior to the **Continuity Date** where such **Insured Persons** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
10. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged responsibility, obligation or duty of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or pension benefits or similar law; provided, however, this exclusion shall not apply to any such **Claim** alleging **Retaliation**;
11. for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

The **Wrongful Act** of one **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of any of the above exclusions. The **Wrongful Act** of the directors and officers of a **Company** shall be imputed to the **Company** for purposes of determining the applicability to the **Company** of any of the above exclusions.

D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss**, which is excess of the Retention amount applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. As shown in Item C1 of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:

- a) The amount set forth in Item C1a relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss**, subject to additional payments for **Costs, Charges and Expenses** as further described in subsection b) immediately below.
 - b) The amount set forth in Item C1b relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Costs, Charges and Expenses** in addition to the limit described in subsection a) immediately above, provided, all payments for **Costs, Charges and Expenses** shall be first applied against the limit described in a) immediately above, and any remaining payments for **Costs, Charges and Expenses** shall be applied thereafter against the additional limit described in this subsection b).
 - c) The amount set forth in Item C1c of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability under this Coverage Section and the limit of liability set forth in C1a and C1b relating to this Coverage Section shall be a part of and not in addition to the maximum aggregate limit of liability set forth in Item C1c for this Coverage Section.
 - d) If the **Run-off Period** is elected and purchased pursuant to subsection I of the General Terms and Conditions, then the Limit of Liability for this Coverage Section set forth in Item C1b is deleted in its entirety and shall not apply with respect to any **Claim** first made during such **Run-off Period**.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be a single **Claim**, and such **Claim** shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
- a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2 below.
4. In the event a **Claim** is covered in part under more than one Coverage Section of this **Policy**, the Retentions and Deductibles set forth in Item C of the Declarations relating to this Coverage Section shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions and Deductibles so applied shall constitute the Retention and Deductibles applicable to such **Claim**.
5. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit(s) of Liability, and payment of **Costs, Charges and Expenses** reduce the Limit(s) of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made against the **Insureds**, or the expiration of the **Policy Period**, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, given written notice to **Insurer** as soon as practicable of:

- a) a description of the **Wrongful Act** allegations anticipated;
- b) the identity of the potential claimants;
- c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
- d) the identity of the **Insureds** allegedly involved;
- e) the consequences which have resulted or may result; and
- f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address specified in Item G of the Declarations for this **Policy**.

F. SETTLEMENT AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Parent Company** shall have the right to assume the duty to defend any covered **Claim** provided that the **Insurer** consents in writing to such assumption.
2. Notwithstanding subsection 1 above, in the event that any **Claim** is brought by or behalf of more than one claimant, whether as a class action or otherwise, and all or any part of such **Claim** involves any actual or alleged violation of the Fair Labor Standards Act of 1938, as amended, or any similar state law, regulation or code, then it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any such **Claim**.
3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insurer** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
4. If the **Insurer** does not have the duty to defend a **Claim**, then the **Insurer** shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by, the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
5. 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 position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
6. The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Costs, Charges and Expenses**, which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Costs, Charges and Expenses** shall be subject to the condition that such advanced amounts 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 to coverage for such **Costs, Charges and Expenses** under the terms and conditions of this **Policy**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **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, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. ALLOCATION

If the **Insurer** does not have the duty to defend a **Claim**, then the following subsections shall apply to such **Claim**.

1. If, in any **Claim** covered in whole or in part under this Coverage Section, the **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and financial exposures and the relative benefits obtained by the parties to covered and uncovered matters.
2. If there can be an agreement between **Insureds** and the **Insurer** on an allocation of **Costs, Charges and Expenses**, the **Insurer** shall advance on a current basis covered **Costs, Charges and Expenses**. If there can be no agreement on allocation of **Costs, Charges and Expenses**, the **Insurer** shall advance on a current basis **Costs, Charges and Expenses** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated or arbitrated. Any advancement of **Costs, Charges and Expenses** shall be subject to, and conditioned upon receipt by the **Insurer** of, a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent that **Insureds** shall not be entitled under the terms and conditions of the **Policy** to coverage for such **Costs, Charges and Expenses**.
3. Any negotiated or arbitrated allocation of **Costs, Charges and Expenses** on account of a **Claim** shall be applied retroactively to all **Costs, Charges and Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Costs, Charges and Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim** or any other **Claim**.



Business and Management Indemnity Policy

Directors & Officers and Company Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSES

1. The **Insurer** shall pay the **Loss** of the **Directors and Officers** for which the **Directors and Officers** are not indemnified by the **Company** and which the **Directors and Officers** have become legally obligated to pay by reason of a **Claim** first made against the **Directors and Officers** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Extended Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
2. The **Insurer** shall pay the **Loss** of the **Company** for which the **Company** has indemnified the **Directors and Officers** and which the **Directors and Officers** have become legally obligated to pay by reason of a **Claim** first made against the **Directors and Officers** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Extended Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
3. The **Insurer** shall pay the **Loss** of the **Company** which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** and reported to the **Insurer** during the **Policy Period**, or, if applicable, the **Extended Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Claim** means:
 - a) a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief;
 - b) a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
 - c) a criminal proceeding against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;
 - d) an arbitration proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief; or
 - e) a civil, administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges, investigative order or similar document.
2. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.
3. **Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable

Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Company**.

4. **Directors and Officers** means any person who was, now is, or shall become:
 - a) a duly elected or appointed director, officer, trustee other than a bankruptcy trustee, or similar executive of the **Company**, or any member of the management board of the **Company**;
 - b) a person who was, is or shall become a full-time or part-time employee of the **Company**; and
 - c) the functional equivalent of directors or officers of a **Company** incorporated or domiciled outside the United States of America.
5. **Insureds** mean the **Company** and the **Directors and Officers**.
6. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.
7. **Loss** means damages, judgments, settlements and **Costs, Charges and Expenses** incurred by **Directors and Officers** under Insuring Clauses 1 or 2, or the **Company** under Insuring Clause 3. **Loss** does not include:
 - a) taxes, fines or penalties;
 - b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
 - c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages are insurable under the law pursuant to which this **Policy** shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Insureds** in deciding the insurability of such damages;
 - d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
 - e) any amount that represents or is substantially equivalent to disgorgement, restitution or rescission damages, or forfeiture of any profits or remuneration;
 - f) any amount for which the **Insured** is not financially liable or legally obligated to pay;
 - g) the costs to modify or adapt any building or property to be accessible or accommodating, or more accessible or accommodating, to any disabled person; or
 - h) any amounts owed or paid to one or more securities holders of the **Company** under any written or express contract or agreement.
8. **Outside Entity** means:
 - a) any non-profit company which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as amended, in which any of the **Directors and Officers** is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and

- b) any other company specifically identified by endorsement to this **Policy**.
9. **Wrongful Act** means any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty or act allegedly committed or attempted by:
- a) any of the **Directors and Officers**, while acting in their capacity as such, or any matter claimed against any **Director and Officer** solely by reason of his or her serving in such capacity;
 - b) any of the **Directors and Officers**, while acting in their capacity as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Company**; and
 - c) the **Company**, but only with respect to Insuring Clause 3 of this Coverage Section.

C. EXCLUSIONS

1. Exclusions Applicable to All Insuring Clauses

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - (ii) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; provided, however, this exclusion shall not apply to any **Claim** brought directly, derivatively or otherwise by one or more securities holders of the **Company** in their capacity as such.

For purposes of this exclusion, **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or

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- oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;
- d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law;
 - e) brought or maintained by, on behalf of, in the right of, or at the direction of any **Insured** in any capacity, any **Outside Entity** or any person or entity that is an owner of or joint venture participant in any **Subsidiary** in any respect and whether or not collusive, unless such **Claim**:
 - (i) is brought derivatively by a securities holder of the **Parent Company** and is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation of, or intervention of, any **Insured**;
 - (ii) is brought or maintained by any **Insured** in the form of a cross claim, third party claim or other proceeding for contribution or indemnity which is part of, and directly results from a **Claim** that is covered by this Coverage Section;
 - (iii) is brought or maintained by an employee of the **Company** who is not or was not a director or officer of the **Company** and where such **Claim** is brought by such employee solely in their capacity as a securities holder of the **Company**; or
 - (iv) is brought or maintained by any former director or officer of the **Company** solely in their capacity as a securities holder of the **Company** and where such **Claim** is solely based upon and arising out of **Wrongful Acts** committed subsequent to the date such director or officer ceased to be a director or officer of the **Company** and where such **Claim** is first made two (2) years subsequent to the date such director or officer ceased to be a director or officer of the **Company**;
 - f) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any dishonest, fraudulent or criminal act, error or omission; provided, however this exclusion f)(i) shall not apply unless and until there is a final judgment against any **Insured** as to such conduct; or
 - (ii) the gaining in fact of any profit, remuneration or financial advantage to which any **Directors and Officers** were not legally entitled; provided, however, that this exclusion f)(ii) shall not apply unless and until such conduct is factually established.

When f) (i) or (ii) apply, the **Insured** shall reimburse the **Insurer** for any **Costs, Charges or Expenses** advanced;

- g) for the return by any of the **Directors and Officers** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Company** or **Outside Entity**, which payment without such previous approval shall be held to be in violation of law;
- h) against any of the **Directors and Officers** of any **Subsidiary** or against any **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Directors and Officers** thereof:

- (i) before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**; or
 - (ii) occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring before the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- j) for a **Wrongful Act** actually or allegedly committed or attempted by any of the **Directors and Officers** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Company**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
 - (i) such **Claim** is based on the service of any of the **Directors and Officers** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Company**; and
 - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Directors and Officers**; and
 - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
- k) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**;
 - (ii) the same or substantially the same **Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry; or
 - (iii) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- l) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act**, fact, circumstance or situation **which** any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
- m) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters brought by or on behalf of or on the right of an applicant for employment with the **Company** or any of the **Directors and Officers**, including any voluntary, seasonal, temporary, leased or independently-contracted employee of the **Company**;

- n) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any initial public offering of securities undertaken and consummated by the **Company**, including all activities in connection therewith;
 - (ii) the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any rules or regulations of the Securities Exchange Commission adopted thereunder, any federal, state or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto in connection with any **Wrongful Act** actually or allegedly committed subsequent to the consummation of an initial public offering of securities of the **Company**;
 - (iii) any equity or debt offering, solicitation, sale, distribution or issuance of securities of the **Company** in excess of \$50 million where such issuance takes place during the **Policy Period** and is exempt from the registration requirements of the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933 and rules and regulations promulgated thereunder, or any activities or transactions dealing in any way with such issuance of securities of the **Company**; provided, however, this exclusion shall not apply if the **Insurer** agrees in writing to extend coverage for **Wrongful Acts** in connection with such issuance of securities and the **Insureds** have paid the premium required by the **Insurer** for such coverage extension; or
- o) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

2. Exclusions Applicable Only to Insuring Clause A3

Insurer shall not be liable for **Loss** on account of any **Claim**:

- a) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any oral, written, express or implied contract or agreement;
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services; or
 - (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

Provided, however, the exclusions in 2a) and 2b) above shall not apply to any such **Claim** brought or maintained, directly or indirectly, by one or more securities holders of the **Company** in their capacity as such.

The **Wrongful Act** of one **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of any of the above exclusions. The **Wrongful Act** of the directors and officers of a **Company** shall be imputed to the **Company** for purposes of determining the applicability to the **Company** of any of the above exclusions.

D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2, below.
4. In the event a **Claim** is covered in part under more than one Coverage Section of this **Policy**, the Retentions and Deductibles set forth in Item C of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions and Deductibles so applied shall constitute the Retention and Deductibles applicable to such **Claim**.
5. The Retention applicable to Insuring Clause 2 shall apply to **Loss** resulting from any **Claim** if indemnification for the **Claim** by the **Company** is required or permitted by applicable law, to the fullest extent so required or permitted, regardless of whether or not such actual indemnification by the **Company** is made, except and to the extent such indemnification is not made by the **Company** solely by reason of the **Company's** financial insolvency.
6. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limits of Liability and payment of **Costs, Charges and Expenses** reduce the Limits of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made against the **Insureds** or the expiration of the **Policy Period**, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
 - a) a description of the **Wrongful Act** allegations anticipated;
 - b) the identity of the potential claimants;

- c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
- d) the identity of the **Insureds** allegedly involved;
- e) the consequences which have resulted or may result; and
- f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- 3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

F. SETTLEMENT AND DEFENSE

- 1. It shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim**.
- 2. Notwithstanding subsection 1 above, the **Insureds** shall have the right to tender the defense of a covered **Claim** to the **Insurer**. The **Insureds**, as a condition precedent to their right to tender the defense of a covered **Claim**, must provide written notice of the exercise of this right to the **Insurer** within thirty (30) days of the date such **Claim** is first made against any of the **Insureds**. The right to exercise this tender of defense shall terminate if written notice to the **Insurer** is not given within such thirty (30) day period. Provided that the foregoing notice provision has been satisfied, the **Insurer** shall assume the defense of such **Claim** even if the any of the allegations are groundless, false or fraudulent.
- 3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insurer** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
- 4. If the **Insurer** does not have the duty to defend a **Claim**, then the **Insurer** shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by, the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
- 5. 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 position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
- 6. The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Costs, Charges and Expenses**, which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Costs, Charges and Expenses** shall be subject to the condition that such advanced amounts 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 to coverage for such **Costs, Charges and Expenses** under the terms and conditions of this **Policy**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **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, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. PAYMENT PRIORITY

1. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss**, subject to such Limit of Liability, in the following priority:
 - a) first, the **Insurer** shall pay any **Loss** covered under Insuring Clause A1, in excess of any applicable Retention shown in Item C of the Declarations; and
 - b) second, only if and to the extent the payment under subsection 1 above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item C of the Declarations covered under any other applicable Insuring Clause.
 - c) Subject to the foregoing subsection, the **Insurer** shall, upon receipt of a written request from the Chief Executive Officer of the **Parent Company**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the Chief Executive Officer of the **Parent Company** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

I. ALLOCATION

1. If, in any **Claim** covered in whole or in part under this Coverage Section, the **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and financial exposures and the relative benefits obtained by the parties to covered and uncovered matters.
2. If there can be an agreement between **Insureds** and the **Insurer** on an allocation of **Costs, Charges and Expenses**, the **Insurer** shall advance on a current basis covered **Costs, Charges and Expenses**. If there can be no agreement on allocation of **Costs, Charges and Expenses**, the **Insurer** shall advance on a current basis **Costs, Charges and Expenses** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated or arbitrated. Any advancement of **Costs, Charges and Expenses** shall be subject to, and conditioned upon receipt by the **Insurer** of, a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent that **Insureds** shall not be entitled under the terms and conditions of the **Policy** to coverage for such **Costs, Charges and Expenses**.
3. Any negotiated or arbitrated allocation of **Costs, Charges and Expenses** on account of a **Claim** shall be applied retroactively to all **Costs, Charges and Expenses** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Costs, Charges and Expenses** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim** or any other **Claim**.



**Business and
Management Indemnity
Policy**

Fiduciary Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSE

Insurer shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against the **Insureds** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Extended Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Administration** means:

- a) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**;
- b) providing interpretations with respect to any **Plan**;
- c) handling records in connection with any **Plan**; or
- d) enrolling, terminating, or canceling employees under any **Plan**.

2. **Claim** means:

- a) a written demand for monetary damages against an **Insured**;
- b) a civil, administrative, regulatory or arbitration proceeding against any **Insured** seeking monetary damages, commenced by the service of a complaint or similar pleading, including any appeal therefrom; or
- c) a civil proceeding or investigation brought by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar federal, state or local governmental body, including any appeal therefrom.

3. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.

4. **Costs, Charges and Expenses** means reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, overhead or benefit expenses associated with officers or employees of any of the **Insureds**.

5. **Employee Benefit Plan** means any plan so defined by the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, or any rules and regulations promulgated thereunder.

6. **Insured Persons** means:
- a) any natural persons who were, now are, or shall become a trustee, director, officer or employee of the **Sponsor Company** or **Plan**,
 - b) any natural persons who were, now are, or shall become a fiduciary of any **Plan**; and
 - c) any natural persons for whose **Wrongful Acts** any of the **Insureds** are legally responsible.
7. **Insured Plan** means any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Sponsor Company**.
8. **Insureds** means:
- a) the **Sponsor Company**,
 - b) any **Plan**,
 - c) any **Insured Persons**; and
 - d) any other natural person or entity who was, now are, or shall be acting as a plan administrator of any of the **Plans** at the written request and consent of the **Sponsor Company**.
9. **Interrelated Wrongful Acts** means all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, cause, transaction or series of facts, circumstances, situations, causes, events or transactions.
10. **Loss** means monetary damages, judgments, settlements and **Costs, Charges and Expenses** incurred by any of the **Insureds**. **Loss** does not include:
- a) taxes, fines or penalties;
 - b) matters uninsurable under the laws pursuant to which this **Policy** is construed; or
 - c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages are insurable under the law pursuant to which this **Policy** shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Insureds** in deciding the insurability of such damages;
11. **Pension Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
12. **Plan** means:
- a) any **Sponsored Plan**, and
 - b) any **Insured Plan**,
established before or after the inception of this **Policy**.
13. **Plan Termination** means the termination, suspension, merger or dissolution of any **Plan**.
14. **Sponsor Company** means the **Company**.
15. **Sponsored Plan** means:

- a) any **Employee Benefit Plan, Pension Benefit Plan, or Welfare Benefit Plan** which is operated by the **Sponsor Company** for the benefit of the employees of the **Sponsor Company**;
- b) any other plan, fund or program specifically included as a **Sponsored Plan** by endorsement to this **Policy**; and
- c) any other employee benefit plan or program not subject to Title 1 of the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder, sponsored by the **Sponsor Company** for the benefit of the employees of the **Sponsor Company**, including any employee stock ownership plan;

provided, however, that the **Sponsored Plan** shall not include any multi-employer plan, as defined in the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder.

16. **Welfare Benefit Plan** means any employee welfare benefit plan so defined in the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder.

17. **Wrongful Act** means:

- a) with respect to a **Sponsored Plan**:
- b) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of the **Sponsored Plan** by the Employee Retirement Income Security Act of 1974, as amended, or by the Health Insurance Portability and Accountability Act of 1996, or any similar state or local common or statutory law, and any rules and regulations promulgated under either of these Acts;
- c) any other matter claimed against the **Sponsor Company** or any of the **Insured Persons** solely because of the service of the **Sponsor Company** or any of the **Insured Persons** as a fiduciary of any **Sponsored Plan**, including any actual or alleged violation of the Health Insurance Portability and Accountability Act of 1996 or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder; or
- d) any actual or alleged act, error or omission in the **Administration** of any **Sponsored Plan**, including any actual or alleged violation of the Health Insurance Portability and Accountability Act of 1996 or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder; and
- e) with respect to an **Insured Plan**, any actual or alleged act, error or omission in the **Administration** of such **Insured Plan**.

C. EXCLUSIONS

- 1. **Insurer** shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:
 - a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured.
 - b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

- (i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - (ii) any direction or request that any **Insured** 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.

For purposes of this exclusion, **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

- d) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to comply with any statutory or common law governing workers' compensation, unemployment, social security or disability benefits or any similar law; provided, however, this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the:
- (i) Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; or
 - (ii) Health Insurance Portability and Accountability Act of 1996, as amended;
- e) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) any dishonest, fraudulent or criminal act, error or omission; provided, however this exclusion e)(i) shall not apply unless and until there is a final judgment against any **Insured** as to such conduct; or
 - (ii) the gaining in fact of any profit, remuneration or financial advantage to which any **Insured** were not legally entitled; provided, however, that this exclusion e)(ii) shall not apply unless and until such conduct is factually established.

When e)(i) or (ii) apply, the **Insured** shall reimburse the **Insurer** for any **Costs, Charges or Expenses** advanced;

- f) against any **Subsidiary** or any of the **Insured Persons** of a **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or any of the **Insured Persons** of a **Subsidiary**:
 - (i) before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**; or
 - (ii) occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring before the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- g) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- h) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any prior or pending litigation, arbitration, or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before of the **Continuity Date**;
 - (ii) the same or substantially the same **Wrongful Act**, fact, circumstance, situation, transaction, cause or event underlying or alleged in such litigation, arbitration, administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry; or
 - (iii) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**;
- i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any oral, written, express or implied contract or agreement; provided, however, that this exclusion shall not apply to **Costs, Charges and Expenses**, and to the extent that liability would have attached to the **Sponsor Company** the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which any of the **Plans** was established;
- j) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Plan Termination**; provided, however, that this exclusion shall only apply to those **Plans** which were the subjects of the **Plan Termination**;
- k) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any employment or employment-related matters; provided, however, this exclusion shall not apply to any **Claim** where such employment or employment-related matters involve actual or alleged violations of the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder;
- l) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act**, fact, circumstance or

situation which any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**; or

- m) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.
2. **Insurer** shall not be liable to make any payment under this Coverage Section, other than **Costs, Charges and Expenses**, on account of any **Claim**:
- a) alleging, based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or attempted reversion or payment of assets of any of the **Plans** to the **Sponsor Company**, or to any successor or assign of the **Sponsor Company**;
 - b) for or which seeks or constitutes fines or penalties or the multiple portion of any multiplied damage award, other than the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon any of the **Insureds** as a fiduciary under Section 502(i) or (l), respectively, of the Employee Retirement Income Security Act of 1974, as amended;
 - c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, the failure to collect from the **Sponsor Company** contributions owed to any of the **Plans**, or the failure to fund a **Plan** in accordance with the Employee Retirement Income Security Act of 1974, as amended, or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder, unless the failure is solely due to the negligence of any of the **Insureds**; or
 - d) which constitutes benefits due to or to become due under the terms of any **Plan** if such **Plan** complied with all applicable law, unless and to the extent that:
 - (i) the **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation; and
 - (ii) recovery for the benefits is based upon a covered **Wrongful Act**.

The **Wrongful Act** of one **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of any of the above exclusions. The **Wrongful Act** of the directors and officers of a **Company** shall be imputed to the **Company** for purposes of determining the applicability to the **Company** of any of the above exclusions.

D. LIMIT OF LIABILITY AND RETENTION

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amount applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk.
2. The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:

- a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2, below.
4. In the event a **Claim** is covered in part under more than one Coverage Section of this **Policy**, the Retentions and Deductibles set forth in Item C of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions and Deductibles so applied shall constitute the Retention and Deductibles applicable to such **Claim**.
 5. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit(s) of Liability and payment of **Costs, Charges and Expenses** reduce the Limit(s) of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made against the **Insureds** or the expiration of the **Policy Period**, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
 - a) a description of the **Wrongful Act** allegations anticipated;
 - b) the identity of the potential claimants;
 - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
 - d) the identity of the **Insureds** allegedly involved;
 - e) the consequences which have resulted or may result; and
 - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

F. SETTLEMENT AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Parent Company** shall have the right to assume the duty to defend any covered **Claim** provided that the **Insurer** consents in writing to such assumption.

2. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insurer** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
3. If the **Insurer** does not have the duty to defend a **Claim**, then the **Insurer** shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by, the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
4. 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 position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
5. The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Costs, Charges and Expenses** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Costs, Charges and Expenses** shall be subject to the condition that such advanced amounts 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 to coverage for such **Costs, Charges and Expenses** under the terms and conditions of this **Policy**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **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, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. WAIVER OF RECOURSE

Insurer shall have no right of recourse, including but not limited to rights of contribution and subrogation, against any **Insureds** with respect to any **Claim** if this Coverage Section has been purchased by that **Insured**, with the exception of any of the **Plans**.



**Business and
Management Indemnity
Policy**

Crime Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSES

1. **Employee Theft** Coverage

a) **Employee Theft**

The **Insurer** will pay for loss of or damage to **Money**, **Securities** and **Other Property** resulting directly from **Theft** or **Forgery** by any identifiable **Employee** while acting alone or in collusion with others.

b) **Employee Benefit Plan**

In the event **Employee Benefit Plan** Coverage is affirmatively designated in Item C of the Declarations relating to this Coverage Section, then the **Insurer** will pay for loss to the **Employee Benefit Plan** of **Money**, **Securities** and **Other Property** resulting directly from **Theft** by an identifiable **Employee** while acting alone or in collusion with others.

2. **Premises** Coverage

a) Loss of **Money** and **Securities**

The **Insurer** will pay for loss of **Money** and **Securities** resulting directly from **Robbery**, **Safe Burglary**, disappearance or destruction thereto, or **Theft** while such **Money** or **Securities** is or are upon the **Premises** of the **Insured** or any **Banking Premises**.

b) Loss of or damage to **Other Property**

The **Insurer** will pay for loss of or damage to **Other Property** resulting directly from an actual or attempted **Robbery** or **Safe Burglary** within the **Insured's Premises**; provided, that the **Insured** is the owner of the **Premises** or is legally liable to the owner of the **Premises** for such loss or damage.

3. **Transit** Coverage

The **Insurer** will pay for loss of or damage to **Money**, **Securities** and **Other Property** outside the **Premises** in the care of a **Messenger** or armored motor vehicle company resulting directly from the actual destruction, disappearance, misappropriation, actual or attempted **Robbery** or **Theft**.

4. **Forgery, Alteration** and Counterfeit **Money**

The **Insurer** will pay for direct loss resulting from **Forgery**, **Alteration**, or counterfeiting of or in any **Financial Instrument** and from counterfeit **Money**.

For the purposes of this Insuring Clause 4, mechanically reproduced or facsimile signatures shall be treated the same as handwritten signatures.

5. **Computer Theft and Funds Transfer Fraud**

The **Insurer** will pay for loss of or damage to **Money** and **Securities** owned by the **Insured** resulting directly from **Computer Theft** or **Funds Transfer Fraud**.

B. DEFINITIONS

1. **Alteration** means the material modification of a **Financial Instrument** for a fraudulent purpose by a person other than the person who prepared the **Financial Instrument**.
2. **Banking Premises** means the interior of the portion of any building(s) occupied by any **Financial Institution**, or similarly recognized place of safe deposit, including any night depository chute or safe maintained by any **Financial Institution**.
3. **Computer Theft** means the unauthorized and fraudulent taking of **Money** and **Securities** directly through the use of a computer located anywhere.
4. **Employee** means:
 - a) any natural person while in the service of the **Insured**, including sixty (60) days after termination of service; provided the **Insured**:
 - (i) compensates such person directly by salary, wages or commissions; and
 - (ii) has the right to direct and control such person while performing services for the **Insured**;
 - b) any natural person furnished temporarily to or hired by the **Insured**:
 - (i) to substitute for a permanent **Employee** who is on leave or vacation;
 - (ii) as part-time help or to meet seasonal or short-term workload conditions;

provided that person is subject to the **Insured's** direction and control and performing services for the **Insured**;
 - c) any student or volunteer who performs services for the **Insured** without compensation; and
 - d) any director or trustee of the **Insured**, but only while performing acts within the scope of the usual duties of an **Employee**.

Employee does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character.

5. **Employee Benefit Plan** means a benefit plan subject to the requirements of the **Employee Retirement Income Act of 1974**, as amended, which is sponsored by the **Company** for its **Employees**.
6. **Financial Institution** means:
 - a) a banking, savings or thrift institution; or

- b) a stock broker, mutual fund, liquid assets fund or similar institution at which the **Insured** maintains a **Transfer Account**.
7. **Financial Instruments** means checks, drafts or promissory notes, or similar written promises, orders or directions to pay a sum certain in **Money**, that are:
- a) made or drawn upon by the **Insured**; or
 - b) made or drawn upon by one acting as the **Insured's** agent, or that are purported to have been so made or drawn upon.

Financial Instruments shall also mean written instruments required in conjunction with any credit, debit or charge card issued to the **Insured**, or any **Employee** on behalf of the **Insured**; provided, that the **Insurer** shall not pay for loss arising from any credit, debit or charge card if the **Insured** or the **Employee** has not fully complied with the provisions, conditions or other terms under which the card was issued.

8. **Forgery** means the signing of the name of another person or organization with intent to deceive. **Forgery** does not mean a signature which consists in whole or in part of one's own name signed, with or without authority, in any capacity, for any purpose.
9. **Funds Transfer Fraud** means:
- a) electronic, telegraphic, cable, telefacsimile, teletype or telephone instructions fraudulently transmitted to a **Financial Institution** directing such institution to debit a **Transfer Account** and to transfer, pay or deliver **Money** or **Securities** from such **Transfer Account** to any person, entity or account, which instructions purport to have been transmitted by an **Insured** but were in fact fraudulently transmitted by someone other than the **Insured** without the **Insured's** knowledge or consent; or
 - b) fraudulent written instructions, other than those covered under Insuring Clause 4, issued to a **Financial Institution** directing such institution to debit a **Transfer Account** by use of an electronic funds transfer system at specified intervals or under specified conditions, which instructions purport to have been issued by an **Insured** but were in fact fraudulently issued, forged or altered by someone other than the **Insured** without the **Insured's** knowledge or consent.
10. **Insured** means the **Company** and any **Employee Benefit Plan**.
11. **Messenger** means any partner or **Employee** of the **Insured** or other natural person duly authorized by the **Insured** to have custody for the purposes of conveying property, while said person has custody of the property outside the **Premises**.
12. **Money** means:
- a) currency, bullion, coins and bank notes; and
 - b) travelers checks, register checks and money orders held for sale to the public.
13. **Other Property** means any tangible property other than **Money** and **Securities** that has intrinsic value but does not include any property excluded under this Crime Coverage Section.
14. **Premises** means the interior of that portion of any building that is occupied by the **Insured** in conducting its business.

15. **Robbery** means the taking of property of the **Insured** from the care and custody of the **Insured**, an **Employee**, or any person who holds such property under authorization by the **Insured**, by one who has:
- a) caused or threatened to cause such person bodily harm; or
 - b) committed an unlawful act witnessed by such **Insured**, **Employee**, or person.
16. **Safe Burglary** means the taking of the **Insured's Money**, **Securities** or **Other Property** from within a vault or safe located within the **Premises** by a person making entry into such vault or safe, and any vault containing the safe, when all doors thereof are duly closed and locked by at least one combination or time lock, provided that such entry shall be made by actual force and violence upon the exterior of:
- a) a door or doors of such vault or safe, and any vault containing the safe, if entry is made through such doors; or
 - b) the top, bottom or walls of such vault or safe, and any vault containing the safe through which entry is made, if not made through such doors.
17. **Securities** means negotiable and non-negotiable instruments representing **Money** or **Other Property** and includes:
- a) stock certificates, tokens, tickets, revenue and other stamps, whether represented by actual stamps or unused value in a meter, in current use; and
 - b) evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Insured**.

Securities does not mean **Money**.

18. **Single Loss** means all loss caused by, resulting from or involving an act or event, or a series of related acts or events, whether or not involving one or more specific persons.
19. **Theft** means the unlawful taking of **Money**, **Securities**, or **Other Property** from the **Insured** to the deprivation of the **Insured**. For purposes of Insuring Clause 1b) only, **Theft** means the unlawful taking by any **Employee** of **Money**, **Securities** or **Other Property** that was intended to be paid as benefits by an **Employee Benefit Plan**.
20. **Transfer Account** means an account maintained by the **Insured** at a **Financial Institution** from which the **Insured** can initiate the transfer, payment or delivery of **Money** or **Securities**:
- a) by means of electronic, telegraphic, telefacsimile, cable or telephone instructions communicated directly or through an electronic funds transfer system; or
 - b) by means of written instructions, other than those covered under Insuring Clause 4, establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.

C. EXCLUSIONS

The **Insurer** will not pay for:

1. loss resulting from the acts, or based on the authority, of any government, or any agency, department or division thereof;

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2. loss that is an indirect or consequential result of any act or **Single Loss** covered by this Crime Coverage Section;
3. loss of potential income, including but not limited to, interest and dividends, not realized by the **Insured** because of a loss covered under this Crime Coverage Section;
4. loss of trade secrets, confidential processing methods, or other confidential or proprietary information of any kind;
5. loss resulting from pollution, nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident;
6. loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution or any related act or incident;
7. loss resulting from any dishonest or criminal act committed by any of the **Insured's Employees**, directors or trustees whether acting alone or in collusion with others and whether committed while performing services for the **Insured** or otherwise, except to the extent coverage is afforded under Insuring Clause 1;
8. loss resulting from any dishonest or fraudulent act committed by the **Insured** whether acting alone or in collusion with others;
9. loss, or that part of any loss, the proof of which involves in any manner a profit and loss computation or comparison, or a comparison of inventory records with an actual physical count; provided, however, that where the **Insured** establishes wholly apart from such comparison that it has sustained a loss covered under Insuring Clause 1 and it has identified the **Employee** involved, then it may offer its inventory records and actual physical count of inventory in support of the amount claimed;
10. loss resulting directly or indirectly from trading, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account, except to the extent coverage is afforded under Insuring Clause 1 as a consequence of **Employee Theft**;
11. loss of any intangible property;
12. expenses and costs incurred in the defense of any legal proceedings brought against the **Insured**, or to fees, costs or expenses incurred or paid by the **Insured** in prosecuting or defending any legal proceeding;
13. expenses and costs incurred by the **Insured** in investigating or establishing the existence of or the amount of any loss covered under this Crime Coverage Section;
14. damages of any type for which the **Insured** is legally liable, except direct compensatory damages arising from a loss covered under this Crime Coverage Section;
15. loss of **Money, Securities or Other Property** while in the custody or control of the United States Postal Service or other parcel delivery service;
16. loss for which the **Insured** could recover under a contract with an armored motor vehicle company or under any insurance or indemnity carried by or for the benefit of customers of an armored motor vehicle company;
17. loss due to fire however caused;
18. loss resulting directly or indirectly from **Computer Theft** or **Funds Transfer Fraud**, except and to the extent coverage is afforded under Insuring Clause 1 or 5;

19. loss resulting directly or indirectly from **Forgery, Alteration** or counterfeiting except and to the extent coverage is afforded under Insuring Clause 1 or 4;
20. loss of or damage to **Money, Securities** or **Other Property** as a result of kidnap, ransom or other extortion payments surrendered to any person because of a threat to do:
 - a) bodily harm; or
 - b) damage to the **Premises** or **Other Property** owned by the **Insured**;
 except and to the extent coverage is afforded under Insuring Clause 2;
21. loss resulting from any civil, criminal or other legal proceeding in which the **Insured** is adjudicated to have engaged in "racketeering activity" as that term is defined in 18 United States Code 1961, et seq., as amended; or
22. loss resulting from damage to any property, safe, vault, or to the **Premises** or its exterior, by vandalism or malicious mischief.

D. OTHER CONDITIONS

1. Joint **Insured**

- a) If there is more than one **Insured**, the **Parent Company** that is named first in the Declarations will act for itself and for every other **Insured** for all purposes of this Crime Coverage Section. If the first **Parent Company** ceases to be covered, then the next **Parent Company** will become the first **Parent Company** for the purposes of this subsection 1.
- b) If any **Insured**, or any partner, officer or director of that **Insured**, has knowledge of any information relevant to this Crime Coverage Section, that knowledge is considered knowledge of every **Insured**.
- c) An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.
- d) If a loss is sustained by more than one **Insured**, the **Insurer** will not pay more for loss sustained by more than one **Insured** than the amount the **Insurer** would have paid if all loss had been sustained by one **Insured**.

2. Discovery

The **Insurer** will pay for loss sustained by the **Insured** through acts committed or events occurring at any time and discovered by the **Insured** during the **Policy Period**. Discovery of loss occurs when an officer, director, Insurance Manager or Risk Manager first becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Crime Coverage Section has been or will be incurred, even though the exact amount or details of such loss may not then be known. Discovery also occurs when the **Insured** receives notice of an actual or a potential claim against it alleging facts that, if true, would constitute a covered loss under this Crime Coverage Section.

3. Other Insurance

This insurance does not apply to loss recoverable or recovered under any other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this Crime Coverage Section will apply to that part of the loss, other than that falling within any deductible amount, not recoverable or recovered under the other

insurance or indemnity. This Crime Coverage Section will not apply to the amount of loss that is more than the applicable Limit of Liability as stated in the Declarations.

4. Interests Covered; Ownership of Property

This Crime Coverage Section is for the exclusive benefit of the **Insured**. It provides no rights or benefits to any other person or organization. The property covered under this Crime Coverage Section is limited to **Money, Securities or Other Property** that the **Insured** owns.

5. Termination as to any **Employee**

This Crime Coverage Section shall terminate as to any **Employee** from and after the time that the **Insured** or any officer or director thereof not in collusion with such **Employee** shall have knowledge or information that such **Employee** has committed any fraudulent or dishonest act in the service of the **Insured** or otherwise, whether such act be committed before or after the date of employment by the **Insured**.

If, prior to the issuance of this Crime Coverage Section, any fidelity insurance in favor of the **Insured** or any predecessor in interest of the **Insured** and covering one or more of the **Insured's Employees** shall have been cancelled as to any of such **Employees** by reason of the giving of written notice of cancellation by the **Insurer** issuing such fidelity insurance, whether the **Insurer** or not, and if such **Employees** shall not have been reinstated under the coverage of such fidelity insurance or superseding fidelity insurance, **Insurer** shall not be liable on account of such **Employees** unless the **Insurer** shall agree in writing to include such **Employees** within the coverage of this Crime Coverage Section.

6. Termination of this Coverage Section

This Coverage Section shall terminate in its entirety:

- a) thirty days after the receipt by the **Parent Company** of a written notice of termination from the **Insurer**;
- b) upon receipt by the **Insurer** of a written notice of termination from the **Parent Company**;
- c) at such other time as may be agreed upon by the **Insurer** and the **Parent Company**;
- d) upon the voluntary liquidation or dissolution of the **Company**;
- e) upon the appointment of:
 - (i) a receiver, trustee, or other fiduciary of the property of the **Company**;
 - (ii) a committee for the dissolution thereof; or
- f) as to any of the **Insureds**, other than the **Company**, upon the appointment of:
 - (i) a receiver, trustee or other fiduciary of the property of any such **Insureds**, or
 - (ii) a committee for the dissolution thereof;

whichever occurs first.

E. PROVISIONS AFFECTING LOSS SETTLEMENT

1. Limit of Liability

The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of the **Insurer** under all Insuring Clauses for this Coverage Section.

2. Deductible

The **Insurer** will not pay for loss resulting from a **Single Loss** unless the amount of such loss exceeds the applicable **Single Loss** deductible shown in the Declarations. The **Insurer** will then pay the amount in excess of such deductible, subject to the applicable Limit of Liability of this Crime Coverage Section.

3. Duties in the Event of Loss

After the **Insured** discovers a loss or a situation that may result in a loss of **Money, Securities or Other Property** that may be covered under this Crime Coverage Section, the **Insured** must:

- a) provide to the **Insurer**, at the address set forth in Item G of the Declarations, written notice of such loss as soon as practicable, but in no event later than sixty (60) after such discovery;
- b) submit to an examination under oath at the **Insurer's** request and give the **Insurer** a sworn statement of the answers of the **Insured**;
- c) provide the **Insurer** with a sworn proof of loss within one hundred eighty (180) days after discovery which shall provide, at a minimum:
 - (i) the date and circumstances surrounding discovery, including the name(s) of the person(s) making the discovery;
 - (ii) details of how the subject loss occurred or will occur;
 - (iii) the amount of actual loss known and an estimate of the total loss expected to result; and
 - (iv) a description of all known sources of recovery to reduce the loss;
- d) provide the **Insurer** with all information, assistance and cooperation as the **Insurer** may reasonably request in the investigation and settlement of any claim;
- e) notify the police or other appropriate law enforcement authority(ies) if the **Insured** has reason to believe that loss covered by any Insuring Clause(s) involves a violation of law; and
- f) keep accurate records of all covered property so that the **Insurer** can verify the amount of any claimed loss.

4. Valuation

- a) Subject to the Limit of Liability, the **Insurer** will pay for:

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- (i) loss of **Money**, but only up to and including its face value. In the event of loss of **Money** in any currency other than United States dollars, the **Insurer** may, at its option, pay for loss of such **Money**:
 - (a) at face value in the **Money** issued by that country; or
 - (b) in the United States dollar equivalent of the currency in which the loss occurred determined by the rate of exchange as of 12:01 a.m. on the day the loss was discovered;
- (ii) loss of **Securities**, but only up to and including their value at the close of business on the day the loss was discovered. The **Insurer** may, at its option:
 - (a) pay the value of such **Securities** or replace them in kind, in which event the **Insured** must assign to the **Insurer** all its rights, title and interest in and to such **Securities**; or
 - (b) pay the cost of any Lost Instrument Bond, subject to the applicable deductible, required in connection with issuing duplicates of the **Securities**. However, the **Insurer** will be liable only for payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of:
 - i. the value of the **Securities** at the close of business on the day the loss was discovered; or
 - ii. the Limit of Liability of this Crime Coverage Section;
- (iii) loss of, or loss from damage to, **Other Property** including damage to the **Premises** for not more than:
 - (a) the actual cash value of the property on the day the loss was discovered;
 - (b) the cost of repairing the property or **Premises**; or
 - (c) the cost of replacing the property with property of like kind and quality.

The **Insurer** may, at its option, pay the actual cash value of the property or repair or replace it. If the **Insurer** cannot agree with the **Insured** upon the actual cash value or the cost of repair or replacement, the value or cost of repair or replacement will be determined by arbitration in accordance with the rules of the American Arbitration Association.

With respect to loss of or damage to electronic data, books of account or other records, tapes, disks or similar electronic media, the **Insurer** will only pay for the cost of blank books, blank pages, blank tapes, or blank disks, plus the cost of labor and computer time for the actual transcription or copying of data furnished by the **Insured** in order to reproduce such data, books, records, tapes, disks or similar electronic media.

- b) The **Insurer** may, at its option, pay for loss of, or loss from damage to, property other than **Money**:
 - (i) in the original currency in which the loss occurred; or
 - (ii) in the United States dollar equivalent of the currency in which the loss occurred determined by the rate of exchange as of 12:01 a.m. on the day the loss was discovered.

c) Any property that the **Insurer** pays for or replaces shall become the **Insurer's** property.

5. Recoveries

a) Any recoveries, less the reasonable cost of obtaining them, made after settlement of loss covered by this Crime Coverage Section will be distributed in the following order:

(i) to the **Insured**, until the **Insured** is reimbursed for any covered loss that it sustained in excess of the Limit of Liability and the deductible amount, if any;

(ii) to the **Insurer**, until it is reimbursed for all amounts paid under this Crime Coverage Section; and

(iii) to the **Insured**, until it is reimbursed for that part of the loss equal to the deductible amount, if any.

b) Recoveries do not include any recovery:

(i) from insurance, suretyship, reinsurance, security or indemnity taken for the **Insurer's** benefit; or

(ii) of original **Securities** after duplicates of them have been issued.

6. Legal Action against the **Insurer**

The **Insured** may not bring any legal action against the **Insurer** involving a claimed loss:

a) until ninety (90) days after the **Insured** has filed a sufficient proof of loss with the **Insurer**;

b) unless the **Insured** has complied with all of the terms of the **Policy**; and

c) unless brought within two (2) years from the date the **Insured** discovered the loss.

F. GENERAL TERMS AND CONDITIONS SECTION

Subsection H. and I. of the General Terms and Conditions section of the **Policy** shall not apply to this Crime Coverage Section.

G. EMPLOYEE BENEFIT PLAN

In compliance with certain provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA):

1. If the **Insured** first named in Item A. of the Declarations is an entity other than the **Employee Benefit Plan**, any payment the **Insurer** makes for loss sustained by any **Employee Benefit Plan** will be held by that **Insured** for the use and benefit of the **Employee Benefit Plan** sustaining the loss.

2. If two or more **Employee Benefit Plans** are **Insured** under this insurance, any payment the **Insurer** makes for loss:

a) sustained by two or more **Employee Benefit Plans**; or

b) of commingled funds or other property of two or more **Employee Benefit Plans**

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is to be shared by each **Employee Benefit Plan** sustaining loss in the proportion that the amount of insurance required for each such **Employee Benefit Plan** under ERISA bears to the total of those amounts.

3. The deductible applicable to any Insuring Clause does not apply to loss sustained by any **Employee Benefit Plan** covered under this Crime Coverage Section that is subject to ERISA.



Business and Management Indemnity Policy

Miscellaneous Professional Services Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSE

The **Insurer** shall pay the **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against any **Insureds** and reported to the **Insurer** during the **Policy Period**, or, if elected, the **Discovery Period**, by reason of a **Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Claim** means any written demand for monetary damages, civil, arbitration, judicial, administrative or regulatory proceeding commenced against any of the **Insureds** for a **Wrongful Act** in which any of the **Insureds** may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom. A **Claim** shall be deemed to have been made against any of the **Insureds** on the earlier of the dates that such demand, arbitration, judicial, administrative or regulatory proceeding is filed or is served on such **Insureds**.
2. **Continuity Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
3. **Costs, Charges and Expenses** mean reasonable and necessary legal fees and expenses incurred by any of the **Insureds** in defending **Claims** and the cost of appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, overhead or benefit expenses associated with partners, officers, directors, managers, member managers, or employees of the **Company**.
4. **Insureds** means:
 - a) the **Company**, and
 - b) all natural persons who were, now are, or shall become partners, officers, directors, managers, member managers, or employees of the **Company**, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy but only for **Professional Services** which were rendered, or which should have been rendered, by or for the **Company**, and which are otherwise covered by this Coverage Section, and
 - c) any independent contractor, but only for **Professional Services** which were rendered, or which should have been rendered, by or for the **Company**, and which are otherwise covered by this Coverage Section.

Insureds does not mean any joint venture entity in which the **Company** has any ownership interest.

5. **Interrelated Wrongful Acts** mean **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.
6. **Loss** means monetary damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Insureds**, but shall not include:
 - a) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages are insurable under the law pursuant to which this **Policy** shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Insureds** in deciding the insurability of such damages;
 - b) taxes, fines or penalties;
 - c) matters uninsurable under the laws pursuant to which this **Policy** is construed;
 - d) future royalties or future profits, restitution, or disgorgement of profits by **Insureds**, or the costs of complying with orders granting injunctive relief;
 - e) licensing fees or the return or offset of fees, charges, or commissions for the goods or services already provided; or
 - f) any amounts for which the **Insureds** are not liable, or for which there is no legal recourse against the **Insureds**.
7. **Professional Services** means only those services described by endorsement to this **Policy**.
8. **Retroactive Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section
9. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission or neglect or breach of duty by any **Insureds**, which occurs solely in connection with the **Insureds** rendering of, or actual or alleged failure to render **Professional Services**.

C. EXCLUSIONS

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

1. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any dishonest, fraudulent or criminal act, error or omission; provided, however this exclusion shall not apply unless and until there is a final judgment as to such conduct.

When this exclusion applies the **Insureds** shall reimburse the **Insurer** for any **Costs, Charges and Expenses** advanced;
2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) bodily injury, sickness, mental anguish, emotional distress, mental injury, mental tension, pain or suffering or shock, disease or death of any person, or loss of consortium;
 - b) loss of, damage to, or destruction of any tangible property or securities, including loss of use thereof;

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- c) invasion of privacy, wrongful entry, eviction, false arrest or imprisonment, malicious prosecution, malicious use or abuse of process, libel, slander or other defamatory or disparaging material or assault or battery; or
 - d) discrimination, humiliation, harassment, or misconduct arising out of or related to any such discrimination;
3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - b) any direction or request that any **Insured** 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.
- For purposes of this exclusion, **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;
4. brought by or on behalf of any of the **Insureds** or any of the **Insureds** successors or assigns, or by any natural person or entity:
- a) which is owned, operated or controlled by any of the **Insureds**;
 - b) which owns, operates or controls any of the **Insureds**;
 - c) which is affiliated with any of the **Insureds** through common ownership of greater than 15%, common operation or common control; or
 - d) in which any of the **Insureds** is a director, officer, partner or principal stockholder;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - b) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
6. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations

- promulgated thereunder, or similar federal, state or local statutory law, rules, regulations or common law;
7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any liability assumed by the **Insureds** under any contract or agreement, whether written or oral, express or implied, including but not limited to any express warranties or guarantees, or estimates of cost, unless such liability would have attached to the **Insureds** in the absence of such contract or agreement;
 8. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving plagiarism, infringement of any copyright, trademark, service mark, trade secret, or patent;
 9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**;
 - b) the same or substantially the same **Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry; or
 - c) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such prior or pending proceedings, would constitute **Interrelated Wrongful Acts**;
 10. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the gaining in fact of any profit or advantage to which the **Insureds** is not legally entitled or any dispute involving fees, expenses or costs paid to or charged by the **Insureds**;
 11. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the violation of any antitrust, anticompetitive, or restraint of trade law, rule or regulation, or any similar law, rule or regulation which protects competition;
 12. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the insolvency or bankruptcy of any of the **Insureds** or of any other individual or entity including but not limited to the failure, inability, or unwillingness to pay claims, losses, or benefits due to such insolvency or bankruptcy;
 13. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any way involving the Securities Act of 1933, the Securities Exchange Act of 1934, any state securities law, any other similar federal, state, local or common law, any rules or regulations promulgated thereunder, or any amendments thereto;
 14. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act**, fact, circumstance or situation which any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**; or
 15. for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2, below.
4. In the event a **Claim** is covered in part under more than one Coverage Section of this **Policy**, the Retentions and Deductibles set forth in Item C of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions and Deductibles so applied shall constitute the Retention and Deductibles applicable to such **Claim**.
5. Payments of **Loss** by **Insurer** shall reduce the Limit of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit of Liability and payment of **Costs, Charges and Expenses** reduce the Limit of Liability. If such Limit of Liability is exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made against the **Insureds** or the expiration of the **Policy Period**, whichever is later.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
 - a) a description of the **Wrongful Act** allegations anticipated;
 - b) the identity of the potential claimants;
 - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
 - d) the identity of the **Insureds** allegedly involved;
 - e) the consequences which have resulted or may result; and

- f) the nature of the potential monetary damages and non-monetary relief; then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.
3. Notice to **Insurer** shall be given to the address specified in Item G of the Declarations for this **Policy**.

F. SETTLEMENTS AND DEFENSE

7. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Parent Company** shall have the right to assume the duty to defend any covered **Claim** provided that the Insurer consents in writing to such assumption.
8. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insurer** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
9. If the **Insurer** does not have the duty to defend a **Claim**, then the **Insurer** shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
10. 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 position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
11. The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Costs, Charges and Expenses** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Costs, Charges and Expenses** shall be subject to the condition that such advanced amounts 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 to coverage for such **Costs, Charges and Expenses** under the terms and conditions of this **Policy**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **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, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. MERGERS AND ACQUISITIONS

The **Parent Company** shall give written notice to the **Insurer** prior to the completion of a merger or acquisition by or of the **Parent Company**, and **Insurer** expressly reserves the right to demand a premium adjustment if this **Policy** is to remain in force subsequent to any such merger or acquisition. However, the **Insured** is not required to notify **Insurer** until renewal of this **Policy** if the merger or acquisition will represent an increase of less than 25% of the **Parent Company's** annual revenues as set forth in its most recent application to **Insurer** for insurance.

I. INNOCENT INSUREDS

1. Any exclusion relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any of the **Insureds** shall not be applied to any other **Insureds** who did not personally participate or personally acquiesce or remain passive after having personal knowledge of such acts, errors or omissions. However, the knowledge the Chief Executive Officer and Chief Financial Officer of a **Company** shall be imputed to the **Company**, for purposes of determining the applicability of such exclusions;
2. Any condition relating to the giving of notice to the **Insurer** shall not be applied to any other **Insured** who would otherwise be deprived of coverage solely because of the failure to give such notice by one or more of the **Insureds** responsible for giving such notice under the **Policy**; provided that the condition regarding giving notice is one with which **Insureds** who are not responsible for giving notice under the **Policy** can comply and that such **Insureds** comply with such condition promptly after obtaining knowledge of the failure of any other **Insureds** to comply therewith.

This provision shall not apply to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Parent Company** arising from any criminal, dishonest, fraudulent or malicious act, error or omission either participated in by any present or former principal, partner, director or officer of the **Parent Company**, or in which such person acquiesced or remained passive after having knowledge thereof.

J. GENERAL PROVISIONS

Section I., Run-Off Coverage, and section B.12. b) of the General Terms and Conditions do not apply to this Coverage Section.



Business and Management Indemnity Policy

Technology, Media and Professional Services Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSES

1. The **Insurer** shall pay the **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against any **Insureds** and reported to the **Insurer** during the **Policy Period** or if elected, the **Discovery Period**, by reason of a **Professional Services Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.
2. The **Insurer** shall pay the **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against any **Insureds** and reported to the **Insurer** during the **Policy Period** or if elected, the **Discovery Period**, by reason of a **Media Services and Technology Based Services Wrongful Act** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Claim** means any written demand for monetary damages, civil, arbitration, judicial, administrative or regulatory proceeding commenced against any of the **Insureds** for a **Wrongful Act** in which any of the **Insureds** may be subjected to a binding adjudication of liability for damages or other relief, including any appeal therefrom. A **Claim** shall be deemed to have been made against any of the **Insureds** on the earlier of the dates that such demand, arbitration, judicial, administrative or regulatory proceeding is filed or is served on such **Insureds**.
2. **Continuity Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
3. **Costs, Charges and Expenses** mean reasonable and necessary legal fees and expenses incurred by any of the **Insureds** in defending **Claims** and the cost of appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability. **Costs, Charges and Expenses** do not include salaries, wages, overhead or benefit expenses associated with partners, officers, directors, managers, member managers, or employees of the **Company**.
4. **Insureds** means:
 - a) the **Company**, and
 - b) all natural persons who were, now are, or shall become partners, officers, directors, managers, member managers, or employees of the **Company**, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy but only for **Professional Services, Media Services** and/or **Technology Based Services** which were rendered, or which should have been rendered, by or for the **Company**, and which are otherwise covered by this Coverage Section, and

- c) any independent contractor, but only for **Professional Services, Media Services** and/or **Technology Based Services** which were rendered, or which should have been rendered, by or for the **Company**, and which are otherwise covered by this Coverage Section.

Insureds does not mean any joint venture entity in which the **Company** has any ownership interest.

5. **Interrelated Wrongful Acts** mean **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, cause, transaction or series of facts, circumstances, situations, events, transactions or causes.
6. **Loss** means monetary damages, settlements and **Costs, Charges and Expenses** incurred by any of the **Insureds**, but shall not include:
 - a) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages are insurable under the law pursuant to which this **Policy** shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Insureds** in deciding the insurability of such damages;
 - b) taxes, fines or penalties;
 - c) matters uninsurable under the laws pursuant to which this **Policy** is construed;
 - d) future royalties or future profits, restitution, or disgorgement of profits by **Insureds**, or the costs of complying with orders granting injunctive relief;
 - e) licensing fees or the return or offset of fees, charges, or commissions for the goods or services already provided;
 - f) the costs of recall, correction, reproduction, redistribution or reprinting of **Media Material**; or
 - g) any amounts for which the **Insureds** are not liable, or for which there is no legal recourse against the **Insureds**.
7. **Media Services** means:
 - a) the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication**; or
 - b) the publication, dissemination or release of **Media Material** in any **Media Communication**in the ordinary course of the **Insureds** business.
8. **Media Communication** means any communication of **Media Material** by any type of media, regardless of the nature or form of such communication.
9. **Media Material** means material of any form or nature whatsoever, including but not limited to advertising, art, words, data, entertainment, film, composition, news, photographs, pictures, recordings, video, computer coding, images, graphics and music.

10. **Media Services and Technology Based Services Wrongful Act** means one of the following acts committed in the course of the **Insureds** performance of **Media Services** or **Technology Based Services**:
- a) disparagement or harm to the reputation or character of any natural person or entity, defamation, libel, slander, product disparagement, trade libel, negligent infliction of emotional distress, outrage or outrageous conduct;
 - b) invasion of or interference with the right of privacy or publicity, including eavesdropping, intrusion upon seclusion, false light, invasion of privacy, public disclosure of private facts, and misappropriation of name or likeness;
 - c) false arrest, detention or imprisonment or malicious prosecution;
 - d) infringement of any right to private occupancy, including trespass, wrongful entry, or eviction;
 - e) plagiarism, piracy or misappropriation of ideas;
 - f) infringement of copyright, or the dilution or infringement of trademark, trade dress, service mark, service name, trade name, title or slogan;
 - g) failure to prevent a party other than any of the **Insureds** from unauthorized access to, use of, or tampering with computer or electronic data or systems;
 - h) negligence regarding the content of any **Media Communication**, including harm directly resulting from reliance or failure to rely upon such content;
 - i) failure to prevent a party other than any of the **Insureds** from introducing a virus into computer or electronic data or systems; or
 - j) inability of a third party, who is authorized to do so, to gain access to the **Insureds Media Services** or **Technology Based Services**, unless such inability is caused by a mechanical or electrical failure outside of the control of the **Insureds**.
11. **Professional Services** means professional services or professional activities performed by the **Insureds** for others.
12. **Professional Services Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission or neglect or breach of duty by any **Insureds** which occurs solely in connection with the **Insureds** rendering of, or alleged failure to render **Professional Services**.
13. **Retroactive Date** means the date set forth in Item C. of the Declarations relating to this Coverage Section.
14. **Technology Based Services** means electronic media operations, digital services, data processing, internet services, e-commerce services, web-based services, information services and other electronic activities performed for others in the ordinary course of the **Insureds** business.
15. **Wrongful Act** means any **Professional Services Wrongful Act** and **Media Services and Technology Based Services Wrongful Act**.

C. EXCLUSIONS

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

1. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any dishonest, fraudulent or criminal act, error or omission; provided, however this exclusion shall not apply unless and until there is a final judgment as to such conduct.

When this exclusion applies the **Insureds** shall reimburse the **Insurer** for any **Costs, Charges and Expenses** advanced;

2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) bodily injury, sickness, mental anguish, emotional distress, mental injury, mental tension, pain or suffering or shock, disease or death of any person, or loss of consortium;
 - b) loss of, damage to, or destruction of any tangible property or securities, including loss of use thereof;
 - c) assault or battery; or
 - d) discrimination, humiliation, harassment, or misconduct arising out of or related to any such discrimination;
3. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - b) any direction or request that any **Insured** 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.

For purposes of this exclusion, **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

4. brought by or on behalf of any of the **Insureds** or any of the **Insureds** successors or assigns, or by any natural person or entity:
 - a) which is owned, operated or controlled by any of the **Insureds**;
 - b) which owns, operates or controls any of the **Insureds**;

- c) which is affiliated with any of the **Insureds** through common ownership of greater than 15%, common operation or common control; or
 - d) in which any of the **Insureds** is a director, officer, partner or principal stockholder;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - b) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
6. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar federal, state or local statutory law, rules, regulations or common law;
7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any liability assumed by the **Insureds** under any contract or agreement, whether written or oral, express or implied, including but not limited to any express warranties or guarantees, or estimates of cost, unless such liability would have attached to the **Insureds** in the absence of such contract or agreement;
8. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving infringement of any patent, inducement to infringe a patent, or misappropriation of any trade secret;
9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- a) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**;
 - b) the same or substantially the same **Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry; or
 - c) any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**;
10. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the gaining in fact of any profit or advantage to which the **Insureds** is not legally entitled or any dispute involving fees, expenses or costs paid to or charged by the **Insureds**;
11. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the violation of any antitrust, anticompetitive, or restraint of trade law, rule or regulation, or any similar law, rule or regulation which protects competition;

12. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the insolvency or bankruptcy of any of the **Insureds** or of any other individual or entity including but not limited to the failure, inability, or unwillingness to pay claims, losses, or benefits due to such insolvency or bankruptcy;
13. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the Securities Act of 1933, the Securities Exchange Act of 1934, any state securities law, any other similar federal, state, local or common law, including any rules or regulations promulgated thereunder, or any amendments thereto;
14. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act**, fact, circumstance or situation which any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**; or
15. for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.

D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss**, which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. The amount shown in Item C of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of **Insurer** under this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2, below.
4. In the event a **Claim** is covered in part under more than one Coverage Section of this **Policy**, the Retentions and Deductibles set forth in Item C of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions and Deductibles so applied shall constitute the Retention and Deductibles applicable to such **Claim**.
5. Payments of **Loss** by **Insurer** shall reduce the Limit of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limit of Liability and payment of **Costs, Charges and Expenses** reduce the Limit of Liability. If such Limit of Liability is exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable, but in no event

later than sixty (60) days after such **Claim** is first made against the **Insureds** or the expiration of the **Policy Period**, whichever is later.

2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of a specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
 - a) a description of the **Wrongful Act** allegations anticipated;
 - b) the identity of the potential claimants;
 - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
 - d) the identity of the **Insureds** allegedly involved;
 - e) the consequences which have resulted or may result; and
 - f) the nature of the potential monetary damages and non-monetary relief; then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.
3. Notice to **Insurer** shall be given to the address specified in Item G of the Declarations for this **Policy**.

F. SETTLEMENTS AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Parent Company** shall have the right to assume the duty to defend any covered **Claim** provided that the **Insurer** consents in writing to such assumption.
2. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insurer** shall have the right to investigate and settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
3. If the **Insurer** does not have the duty to defend a **Claim**, then the **Insurer** shall have the right and shall be given the opportunity to effectively associate with, and shall be consulted in advance by the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
4. 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 position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
5. The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Costs, Charges and Expenses** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Costs, Charges and Expenses**

Expenses shall be subject to the condition that such advanced amounts 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 to coverage for such **Costs, Charges and Expenses** under the terms and conditions of this **Policy**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **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, and regardless of whether or not any **Loss** in connection with such **Claim** is collectible or recoverable under such other policy, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. MERGERS AND ACQUISITIONS

The **Parent Company** shall give written notice to the **Insurer** prior to the completion of a merger or acquisition by or of the **Parent Company**, and **Insurer** expressly reserves the right to demand a premium adjustment if this **Policy** is to remain in force subsequent to any such merger or acquisition. However, the **Insured** is not required to notify **Insurer** until renewal of this **Policy** if the merger or acquisition will represent an increase of less than 25% of the **Parent Company's** annual revenues as set forth in its most recent application to **Insurer** for insurance.

I. INNOCENT INSUREDS

1. Any exclusion relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any of the **Insureds** shall not be applied to any other **Insureds** who did not personally participate or personally acquiesce or remain passive after having personal knowledge of such acts, errors or omissions. However, the knowledge the Chief Executive Officer and Chief Financial Officer of a Company shall be imputed to the Company, for purposes of determining the applicability of such exclusions;
2. Any condition relating to the giving of notice to the **Insurer** shall not be applied to any other **Insured** who would otherwise be deprived of coverage solely because of the failure to give such notice by one or more of the **Insureds** responsible for giving such notice under the **Policy**; provided that the condition regarding giving notice is one with which **Insureds** who are not responsible for giving notice under the **Policy** can comply and that such **Insureds** comply with such condition promptly after obtaining knowledge of the failure of any other **Insureds** to comply therewith.

This provision shall not apply to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Parent Company** arising from any criminal, dishonest, fraudulent or malicious act, error or omission either participated in by any present or former principal, partner, director or officer of the **Parent Company**, or in which such person acquiesced or remained passive after having knowledge thereof.

J. GENERAL PROVISIONS

Section I., Run-Off Coverage, and section B.12. b) of the General Terms and Conditions do not apply to this Coverage Section.