

GENERAL TERMS AND CONDITIONS

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

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

I. DEFENSE OBLIGATIONS

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

II. GENERAL DEFINITIONS

(A) **"Application"** means:

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

(B) **"Change in Control"** means:

- (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets by another entity such that the **Parent Company** is not the surviving entity;
- (2) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **Parent Company**; or
- (3) the appointment of a Receiver, Conservator, Liquidator, Trustee, Rehabilitator, or any comparable authority, with respect to the **Parent Company**.

(C) **"Claim"** means:

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

(D) **"Company"** means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the **Policy Period**, subject to GENERAL CONDITIONS (F).

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

- (F) “**Insured**” shall have the meaning given to that term in each Coverage Part attached hereto.
- (G) “**Insured Person**” shall have the meaning given to that term in each Coverage Part attached hereto.
- (H) “**Interrelated Wrongful Acts**” means **Wrongful Acts** which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related or series of related facts, circumstances, situations, transactions or events.
- (I) “**Loss**” means damages, judgments, settlements or other amounts (including punitive or exemplary damages where insurable by law) in excess of the Retention that the **Insured** is obligated to pay, including **Defense Expenses**, whether incurred by the Insurer or the **Insured**. **Loss** will not include:
- (1) the multiplied portion of any damage award;
 - (2) matters which are uninsurable under the law pursuant to which this Policy is construed; and
 - (3) fines, penalties or taxes imposed by law.
- NOTE:** With respect to judgments in which punitive damages are awarded, the coverage provided by this Policy shall apply to the broadest extent permitted by law. If, based on the written opinion of counsel for the **Insured**, punitive damages are insurable under applicable law the Insurer will not dispute the written opinion of counsel for the **Insured**.
- (J) “**Parent Company**” means the entity named in ITEM 1 of the Declarations.
- (K) “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date.
- (L) “**Subsidiary**” means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity’s directors.
- (M) “**Wrongful Act**” shall have the meaning given to that term in each Coverage Part attached hereto.

III. GENERAL CONDITIONS

(A) LIMITS OF LIABILITY AND RETENTIONS

- (1) The amounts set forth in ITEM 3 (a) – (c) of the Declarations as the Maximum Aggregate Limit of Liability for each Coverage Part shall be the Maximum Aggregate Limit of Liability of the Insurer under such Coverage Part for all **Loss**, including **Defense Expenses**, from all **Claims** made or deemed made under such Coverage Part during the **Policy Period**. Each such amount shall be part of, and not in addition to, the amount set forth in ITEM 3 (d) of the Declarations, which amount is the Maximum Aggregate Limit of Liability of the Insurer under all Coverage Parts for all **Loss**, including **Defense Expenses**, from all **Claims** for which this Policy provides coverage.
- (2) **Defense Expenses** incurred by the Insurer or by the **Insured** in defense of a **Claim** will be part of and not in addition to the Limits of Liability, and payment of **Defense Expenses** by the Insurer will reduce and may exhaust all applicable Limits of Liability.
- (3) If coverage is available for a **Claim** under more than one Coverage Part, the maximum applicable Limit of Liability for such **Claim** shall be the largest applicable remaining Limit of Liability under only one of the applicable Coverage Parts.

- (4) With respect to a **Claim** under any applicable Coverage Part, the Insurer shall only pay **Loss** which is in excess of the amount set forth in ITEM 4 of the Declarations as the Retention applicable to each **Claim** under the applicable Coverage Part. If different Retentions are applicable to different parts of any **Loss** under this Policy, the applicable Retention will be applied separately to each part of such **Loss**, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.

(B) **DEFENSE, ALLOCATION OF LOSS AND SETTLEMENT**

- (1) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against the **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of **Loss** between that portion of **Loss** that is covered under this Policy and that portion of **Loss** that is not covered under this Policy.
- (2) No **Insured** may incur any **Defense Expenses** or admit any liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld. The Insurer will have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the Insurer deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendation, then, subject to the Limit of Liability for any applicable Coverage Part and the Maximum Aggregate Limit of Liability for the Policy as set forth in ITEM 3 of the Declarations, the Insurer's liability for such **Claim** will not exceed:
- (a) the amount for which such **Claim** could have been settled by the Insurer plus **Defense Expenses** up to the date the **Insureds** refused to settle such **Claim**; plus
 - (b) seventy percent (70%) of any **Loss**, including **Defense Expenses**, in excess of the amount in clause (a) above, incurred in connection with such **Claim**. The remaining thirty percent (30%) of **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above will be carried by the **Insured** at its own risk and will be uninsured.
- (3) The Insurer will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** after the Maximum Aggregate Limit of Liability for any applicable Coverage Part and/or the Maximum Aggregate Limit of Liability for the Policy as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, including **Defense Expenses**. In the event the Maximum Aggregate Limit of Liability for the Policy is exhausted, the premium will be fully earned.

(C) **NOTICE**

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

- (b) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then any **Claim** subsequently made arising out of such **Wrongful Act** will be treated as if it had been first made during the **Policy Period**.

- (3) All notices under GENERAL CONDITIONS (C)(1) and (2) must be sent by certified mail or the equivalent to the address set forth in ITEM 7 of the Declarations, Attention: Claim Department.

(D) **INTERRELATED CLAIMS**

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest **Claim** is made or deemed to have been made pursuant to GENERAL CONDITIONS (C)(1) or, if applicable, GENERAL CONDITIONS (C)(2).

(E) **OTHER INSURANCE**

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

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

- (1) If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity (an "Acquired Entity"), coverage shall be provided for any **Loss** resulting from **Claims** first made against the Acquired Entity, including its **Insureds** (other than any **Pension Benefit Plan** of such **Acquired Entity**) after the acquisition and during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts** committed or allegedly committed at any time. There is no coverage for any **Pension Benefit Plan** of the Acquired Entity under this GENERAL CONDITIONS (F)(1) unless the Insurer specifically agrees to provide such coverage pursuant to SECTION II DEFINITIONS (H)(4) of the Pension and Welfare Benefit Plan Fiduciary Liability Coverage Part.

- (2) If, however, by reason of the transaction (or series of transactions) described in (F)(1) above, the Acquired Entity exceeds thirty five percent (35%) of the total assets or liabilities of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements, coverage, as set forth in (F)(1) above, shall be provided only for a period of ninety (90) days after such transaction (or series of transactions); provided in all events coverage will not be available beyond the Policy Expiration Date. Coverage beyond the ninety (90) day period will be provided only if:

- (a) the Insurer receives written notice containing full details of the transaction(s); and
- (b) the Insurer specifically agrees by written endorsement to provide coverage with respect to such Acquired Entity, and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.

- (3) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.

- (4) If, during the **Policy Period**, there is a **Change in Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed prior to the time of the **Change in Control**; and
- (a) no coverage will be available under this Policy for any **Claim** for a **Wrongful Act** committed subsequent to the **Change in Control**; and
 - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change in Control**.

(G) **CANCELLATION AND RENEWAL OF COVERAGE**

- (1) Except for the nonpayment of premium, as set forth in (G)(2) below, the **Parent Company** has the exclusive right to cancel this Policy prior to the Policy Expiration Date set forth in Item 2 of the Declarations. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the date such notice is received by the Insurer. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than ten (10) days written notice stating when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Policy Expiration Date set forth in ITEM 2 of the Declarations.

(H) **OPTIONAL EXTENSION PERIOD**

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of the applicable additional premium set forth in ITEM 5 of the Declarations, to a one or two year extension of the coverage provided by this Policy with respect only to any **Claim** first made during the one or two year period of time after the Policy Expiration Date, but only with respect to **Wrongful Acts** occurring prior to the Policy Expiration Date.
- (2) As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Parent Company** elects to purchase the Optional Extension Period as set forth in (H)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date of the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limits of Liability set forth in ITEM 3 of the Declarations, and the Limits of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the applicable Limits of Liability for **Claims** made during the **Policy Period**.

(I) **SPOUSES, ESTATES AND LEGAL REPRESENTATIVES OF INSURED PERSONS**

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

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

(J) **ASSISTANCE, COOPERATION AND SUBROGATION**

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

(K) **EXHAUSTION**

If the Maximum Aggregate Limit of Liability for the Policy as set forth in ITEM 3(d) of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 8 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(L) **REPRESENTATION CLAUSE**

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

(M) **ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY**

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto:
 - (a) there has been full compliance with all of the terms and conditions of this Policy; and
 - (b) the amount of the obligation of the **Insured** has been finally determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and the Insurer.

- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured** to determine their liability, nor may the **Insured** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the Insurer.

(N) **AUTHORIZATION AND NOTICES**

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

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

(O) **APPLICATION OF COVERAGE PARTS**

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

(P) **ENTIRE AGREEMENT**

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

MANAGEMENT LIABILITY AND COMPANY REIMBURSEMENT COVERAGE PART

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

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

I. INSURING AGREEMENTS

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

II. DEFINITIONS

- (A) "**Claim**," as defined in GENERAL DEFINITIONS (C), shall include, for purposes of this Coverage Part, a formal civil, criminal, administrative, or regulatory investigation of an **Insured Person** which is commenced by the filing or issuance of notice of charges, formal investigative order or similar document specifically identifying in writing such **Insured Person** as a person against whom a proceeding as described in GENERAL DEFINITIONS (C)(2) or (3) may be commenced.
- (B) "**Insured**" means the **Insured Persons** and the **Company**.
- (C) "**Insured Person**" means:
- (1) any past, present or future director or officer, or member of the Board of Managers, of the **Company**;
 - (2) those persons serving in a functionally equivalent role as (C)(1) above for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States; and
 - (3) an individual identified in (C)(1) or (2) above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor of a **Non-Profit Entity**.

- (D) **“Non-Profit Entity”** means a corporation or organization, other than the **Company**, which is exempt from taxation under Section 501(c)(3), (4) or (10) of the Internal Revenue Code as amended or any rule or regulation promulgated thereunder.
- (E) **“Wrongful Act”** means:
- (1) with respect to any **Insured Person** of the **Company**, any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty but solely by reason of his or her status as such; and
 - (2) with respect to the **Company**, any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Company**.

III. EXCLUSIONS

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

- (A) brought about or contributed to in fact by any:
- (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - (2) profit or remuneration gained by any **Insured** to which such **Insured** is not legally entitled;
- as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A), such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance policy, directors and officers liability insurance policy or any similar insurance policy;
- (C) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;
- (E) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the applicable Pending And Prior Proceeding Date set forth in ITEM 6(a) of the Declarations;

- (F) brought by, or on behalf of, or at the direction of any **Insured**, except and to the extent such **Claim** is brought:
- (1) derivatively by a security holder of the **Company** who, when such **Claim** is made and maintained, is acting independently of, and without the solicitation, assistance, participation or intervention of any **Insured**;
 - (2) by the Bankruptcy Trustee or Examiner of the Company or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company**;
 - (3) in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
 - (4) for the actual or alleged wrongful termination of an **Insured Person**;
- (G) for any actual or alleged liability of the **Company** under any express contract or agreement. With respect to this EXCLUSION (G), an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION (G) will apply only to the coverage available to the **Company** under INSURING AGREEMENT (B)(2);
- (H) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an **Insured Person** acting in his or her capacity as an **Insured Person** of any entity other than the **Company** or a **Non-Profit Entity**;
- (I) for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" securities law, or any other federal, state or local securities law, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar common law imposing liability in connection with the offering, sale or purchase of securities of the **Company**. This EXCLUSION (I) shall not apply to any **Claim** arising out of the offering, sale or purchase of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933;
- (J) based upon, arising out of, 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 (ERISA), including any amendments thereto, or any rule or regulation promulgated thereunder or any similar federal, state, local or common law or regulation;
- (K) by, on behalf of, at the direction of or in the name or right of any **Non-Profit Entity** or its directors or officers in connection with an **Insured Person's** capacity as a director, officer, trustee, regent or governor of such **Non-Profit Entity**; or
- (L) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- (1) infringement of any patent, copyright or trademark; or
 - (2) unauthorized taking or use of any trade name, trade dress, trade secret, service mark, service name, title, slogan, proprietary process, material or information, other material or information in violation of any right under any patent, copyright or trademark registration or license, or any other intellectual property.

This EXCLUSION (L) will apply only to the coverage available to the **Company** under INSURING AGREEMENT (B)(2).

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

IV. INDEMNIFICATION AND RETENTIONS

- (A) With respect to the **Company's** indemnification of its **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of the **Parent Company** and each **Subsidiary** will be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (B) With respect to any **Non-Profit Entity's** indemnification of any **Insured Person**, the certificate of incorporation, charter, by-laws, articles of association, or other organizational documents of such **Non-Profit Entity** will be deemed to provide indemnification to the **Insured Person** to the fullest extent permitted by law.
- (C) The Retention applicable to INSURING AGREEMENT (B)(1) shall apply to any **Loss** as to which indemnification by the **Company** is legally permissible, whether or not actual indemnification is made unless such indemnification is not made by the **Company** solely by reason of its financial insolvency. In the event of financial insolvency, the Retention applicable to INSURING AGREEMENT (A) shall apply.
- (D) If different Retentions are applicable to different parts of any **Loss**, the applicable Retentions will be applied separately to each part of such **Loss**, and the sum of such Retentions will not exceed the largest applicable Retention set forth in ITEM 4 of the Declarations.

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

All coverage under this Policy for **Loss** from **Claims** made against the **Insured Persons** while acting in their capacity as a director, officer, trustee, regent or governor of a **Non-Profit Entity** will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from such **Non-Profit Entity** by reason of their service as such.

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

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

I. INSURING AGREEMENT

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

II. DEFINITIONS

- (A) “**Claim**,” as defined in GENERAL DEFINITIONS (C), shall include, for purposes of this Coverage Part, an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (“EEOC”) or similar, state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**. A **Claim** will not include any labor or grievance arbitration or other proceeding which is subject to a collective bargaining agreement.
- (B) “**Insured**” means the **Insured Persons** and the **Company**.
- (C) “**Insured Person**” means:
- (1) any past, present or future director, officer or employee of the **Company** including any part-time, seasonal, or temporary employee; and
 - (2) any leased employee or natural person independent contractor so long as he or she is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** provides indemnification to such individual in the same manner as is provided to the **Company’s** employees.
- (D) “**Loss**,” as defined in GENERAL DEFINITIONS (I), shall include, for purposes of this Coverage Part, damages (including back pay and front pay) and judgments (including pre-judgment and post judgment interest). **Loss** will not include any costs associated with the modification of any building or property in order to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans With Disabilities Act or the Civil Rights Act of 1964 and any amendments thereto or any similar federal, state or local statute, regulation, or common law.
- (E) “**Third Party**” means any person(s), other than an **Insured Person**, with whom an **Insured** interacts within the scope of the **Company’s** business.

- (F) “**Third Party Wrongful Act**” means any actual or alleged:
- (1) discrimination (including unfair or disparate treatment) based upon such **Third Party’s**, race, color, religion, age, gender, national origin, disability, sexual preference, pregnancy or other status that is protected pursuant to any applicable federal state or local statute or ordinance; or
 - (2) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature,

by an **Insured** against a **Third Party**.

- (G) “**Wrongful Act**” means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;
 - (2) employment discrimination of any kind including violation of any federal, state or local law involving employment or discrimination in employment which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee, because of such person’s race, color, religion, age, gender, national origin, disability, sexual preference, pregnancy, or other protected status;
 - (3) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature or other harassment in the workplace;
 - (4) wrongful deprivation of career opportunity, negligent supervision, failure to grant tenure, employment related misrepresentations, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, or negligent or refusal to hire;
 - (5) employment related libel, slander, humiliation, defamation, or invasion of privacy;
 - (6) failure to provide or enforce adequate or consistent policies and procedures relating to any **Wrongful Act**; and
 - (7) **Third Party Wrongful Act**;

by the **Company** or by any **Insured Person** in his or her capacity as such.

III. EXCLUSIONS

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

- (A) for any actual or alleged bodily injury, sickness, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof; provided that however, this EXCLUSION (A) will not apply to any allegations of emotional distress, loss of reputation, mental anguish, or humiliation;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the Pending And Prior Proceeding Date set forth in ITEM 6(b) of the Declarations;
- (C) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance policy, directors and officers liability insurance policy, employment practices liability or similar insurance policy;

(D) brought about or contributed to in fact by:

- (1) any intentionally dishonest, fraudulent or criminal act or omission; or
- (2) any profit or remuneration gained by any Insured to which such is not legally entitled;

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

- (E) based upon, arising out of, 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 (ERISA), including any amendments thereto, or any regulation promulgated thereunder or any similar federal, state, local or common law or regulation;
- (F) for any actual or alleged violation of the Occupational Safety and Health Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the National Labor Relations Act, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar federal, state, local or common law or regulation;

provided that EXCLUSIONS (E) and (F) above will not apply to actual or alleged retaliation against an **Insured Person** for exercising his or her rights under any such law(s);

- (G) seeking only injunctive or non-monetary relief, regardless of whether a prevailing claimant may be entitled to recover attorney's fees and costs; provided that this EXCLUSION (G) shall not apply to the Insurer's obligation to defend such **Claim** and to pay **Defense Expenses** resulting therefrom;
- (H) arising out of any actual or alleged liability of the **Company** under any express contract or agreement. With respect to this EXCLUSION (H), an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION (H) will not apply to the extent that an **Insured** would have been liable in the absence of such express contract or agreement; or
- (I) for any liability arising out of a lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations.

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

PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY COVERAGE PART

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

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

I. INSURING AGREEMENT

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

II. DEFINITIONS

(A) “**Administration**” means:

- (1) handling records in connection with **Employee Benefits**;
- (2) effecting enrollment, termination or cancellation of employees under an **Employee Benefits** program;
- (3) giving counsel to employees with respect to **Employee Benefits**; or
- (4) interpreting **Employee Benefits**.

(B) “**Claim**,” as defined in GENERAL DEFINITIONS (C), shall include, for purposes of this Coverage Part:

- (1) a written notice of the commencement of an investigation by the Department of Labor or the Pension Benefit Guaranty Corporation; or
- (2) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against an **Insured** for a **Wrongful Act**.

(C) “**Employee Benefits**” means any **Plan**, and any workers’ compensation insurance, unemployment insurance, Social Security or disability benefits for employees of the **Company**.

(D) “**Insured**” means the **Insured Persons**, the **Plan** and the **Sponsor Organization**.

(E) “**Insured Person**” means any director, officer, trustee, partner or employee of the **Plan** or of the **Sponsor Organization** while acting in his or her capacity as a fiduciary of the **Plan**.

- (F) “**Loss**,” as defined in GENERAL DEFINITIONS (I), will not include:
- (1) fines, penalties or taxes imposed by law, except that **Loss** may include civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) for inadvertent violation of Section 406 of ERISA, and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty; or
 - (2) benefits due or to become due under the terms of any **Plan**, unless and then only to the extent that recovery for such benefits is based on a **Wrongful Act** and is payable as the personal obligation of an **Insured** who is a natural person; provided that **Loss** shall include **Defense Expenses** with respect to any **Claim** seeking benefits due or to become due under the terms of any **Plan**.
- (G) “**Pension Benefit Plan**” means any employee pension benefit plan, as such term is defined in ERISA.
- (H) “**Plan**” means:
- (1) any **Pension Benefit Plan** identified in the Designated Plan Endorsement attached to this Policy, and any trust established to hold the assets of any such **Pension Benefit Plan**;
 - (2) any **Welfare Benefit Plan** which was, is now, or becomes sponsored by any **Sponsor Organization**;
 - (3) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, created during the **Policy Period** by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization** for the employees thereof, but only if the **Insured** provides the Insurer with written notice of the creation of such **Pension Benefit Plan** within ninety (90) days of the effective date of such **Pension Benefit Plan**; and
 - (4) any **Pension Benefit Plan**, or any trust established to hold the assets of any such **Pension Benefit Plan**, of any entity acquired during the **Policy Period** through the merger, consolidation or otherwise by any **Sponsor Organization** or by any interest owned or controlled by such **Sponsor Organization**, but only if:
 - (a) the **Insured** provides the Insurer such additional information with respect thereto as the Insurer may reasonably require;
 - (b) the **Insured** provides the Insurer written notice of such acquisition as soon as practicable after the effective date thereof; and
 - (c) the Insurer specifically agrees by written endorsement to provide coverage with respect to such **Plan** and the **Insured** has accepted any additional terms, conditions and limitations of coverage, and agrees to pay any additional premium that the Insurer in its sole discretion, shall deem appropriate.

Plan shall not include any multi-employer plan.

- (I) “**Sponsor Organization**” means the **Company** while acting in its capacity as a sponsor of a **Plan** for the benefit of its employees.
- (J) “**Welfare Benefit Plan**” means any employee welfare benefit plan, as such term is defined in ERISA.

- (K) **“Wrongful Act”** means any actual or alleged:
- (1) breach of the duties, responsibilities or obligations imposed upon fiduciaries of any **Plan** by ERISA or the common law or statutory law of any jurisdiction governing such **Plan**;
 - (2) negligent act, error or omission by an **Insured** in the **Administration of Employee Benefits**; or
 - (3) any other matter claimed against an **Insured** solely by reason of their service as a fiduciary of any **Plan**.

III. EXCLUSIONS

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

- (A) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;
- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain, treat, detoxify or neutralize pollutants contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;
- (C) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which was brought prior to the Pending And Prior Proceeding Date set forth in ITEM 6(c) of the Declarations;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any pension and welfare benefit plan fiduciary liability insurance policy or similar insurance policy;
- (E) brought about or contributed to in fact by any:
 - (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or
 - (2) profit or remuneration gained by any **Insured** to which such is not legally entitled;

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

- (F) arising out of any actual or alleged liability of the **Company** under any express contract or agreement, other than an Agreement and Declaration of Trust or similar agreement creating or establishing a **Plan**. With respect to this EXCLUSION (F), an “express contract or agreement” is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language. This EXCLUSION (F) will not apply to the extent that an **Insured** would have been liable in the absence of the express contract or agreement;

- (G) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged failure by any **Insured** to comply with any law, rule or regulation concerning workers' compensation insurance, unemployment insurance, Social Security or disability benefits, whether or not such failure to comply is willful;
- (H) for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of an **Insured**, or for the return to any employer of any contributions if such amounts are or could be chargeable to a **Plan**; provided this EXCLUSION (H) shall not apply to the Insurer's obligations, subject to the applicable Limit of Liability, to defend such **Claim** and to pay **Defense Expenses** resulting therefrom;
- (I) made by or on behalf of a fidelity insurer against a natural person whose conduct has resulted in a **Loss** which has been paid under a fidelity bond; or
- (J) based upon, arising out of, directly or indirectly resulting from any discrimination, retaliation or wrongful termination of employment; provided that this EXCLUSION (J) with not apply to **Claims** asserted under Section 510 of ERISA.

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

IV. RECOURSE

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