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## GENERAL TERMS AND CONDITIONS

THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY. ALL WORDS IN **BOLD** FACE TYPE SHALL HAVE THE MEANINGS SET FORTH IN SECTION II. **GENERAL DEFINITIONS** OF THESE GENERAL TERMS AND CONDITIONS, OR UNDER THE **DEFINITIONS** SECTION OF EACH **COVERAGE PART**.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the Retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insured** agree as follows:

### I. APPLICATION OF GENERAL TERMS AND CONDITIONS

This Policy is comprised of the **Application**, the Declarations, these GENERAL TERMS AND CONDITIONS, all **Coverage Parts** that have been purchased, and any endorsements. These GENERAL TERMS AND CONDITIONS apply to all **Coverage Parts** that have been purchased by the **Insured**, as indicated in Item 2. of the Declarations. A **Coverage Part** is included within this Policy and affords coverage only if the **Coverage Part** is designated in the Declarations as being purchased by the **Insured**. The respective terms and provisions of each **Coverage Part** shall apply only to that **Coverage Part** and shall in no way be construed as applying to any other **Coverage Part**. 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**.

### II. GENERAL DEFINITIONS

- A. **Advisory Board** means a board or committee of a **Company** formed pursuant to such **Company's** partnership agreement, resolutions, or equivalent organizational or governance documents.
- B. **Application** means the written application for this Policy along with any written attachments, warranties, and any other material submitted with or incorporated into such application, as well as any other documents submitted in connection with the underwriting of this Policy or any other policy issued by the **Insurer**, or any of its affiliates, of which this Policy is in whole or in part a renewal or replacement; and all publicly available documents prepared by the **Company** in the past 12 months and which are reviewed in connection with the underwriting of this Policy or any policy issued by the **Insurer** of which this Policy is in whole or in part a renewal or replacement.
- C. **Claim** shall have the meaning attributed to that term in each applicable **Coverage Part**; and solely with respect to the COMMERCIAL CRIME COVERAGE PART, if purchased, shall include any **Occurrence**.
- D. **Clean Up Costs** means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, remediating, containing, removing, treating, neutralizing, detoxifying, or assessing the effects of **Pollutants**.
- E. **Company** means: the (i) **Named Insured**; (ii) and any **Subsidiary** thereof; and (iii) in the event a bankruptcy proceeding is commenced by or against the foregoing entities, the resulting debtor-in-possession under United States bankruptcy law, or any equivalent status under foreign law.
- F. **Company Takeover** means:
  - 1. the **Named Insured** consolidating with or merging into, or selling all or substantially all of its assets to any other person or entity, or group of persons or entities acting in concert; or

2. any person or entity or group of persons or entities acting in concert acquiring more than fifty percent (50%) of the outstanding stock or other interest representing the right to vote, designate or select: (i) a majority of the Board of Directors if the **Named Insured** is a corporation; or (ii) a majority of the management board if the **Named Insured** is a limited liability company.
- G. **Coverage Part** means each coverage part that is listed as purchased in Item 2. of the Declarations.
- H. **Defense Expenses** means reasonable and necessary legal fees and expenses incurred in the defense of a **Claim**, including the premium for an appeal bond; provided, however, that the **Insurer** shall not be required to apply for or furnish such bonds. **Defense Expenses** shall not include: (i) any of the **Insured's** overhead expenses, or any wages, salaries, benefits, or costs of **Insured Persons** or any other representative, agent or servant of any **Insured**; (ii) **Dodd-Frank 954 Costs**; (iii) **Sox 304 Costs**; and (iv) **Derivative Investigation Costs**.
- I. **Derivative Investigation Costs** shall have the same meaning attributed to that term in each applicable **Coverage Part**.
- J. **Dodd-Frank 954 Costs** shall have the same meaning attributed to that term in the EXECUTIVE AND PRIVATE COMPANY LIABILITY COVERAGE PART.
- K. **Domestic Partner** means any individual person legally recognized as a domestic or civil union partner under:
1. the provisions of any applicable federal, state, or local law; or
  2. the provisions of any formal program established by the **Company**.
- L. **Employee** means any past or present employee whose labor or service is engaged by and directed by the **Company** while performing duties related to the conduct of the **Company's** business. **Employee** includes leased, part-time, seasonal and temporary workers, volunteers and interns; and independent contractors who are treated under applicable law as employees of the **Company**. **Employee** shall not include **Executives**.
- M. **Employment Claim** means any **Claim** alleging an **Employment Practices Wrongful Act** against an **Insured** brought by or on behalf of any past or present **Insured Person** or any applicant for employment with the **Company**.
- N. **Employment Practices Wrongful Act** means any actual or alleged:
1. wrongful termination, including but not limited to discharge, or dismissal of employment, whether actual or constructive;
  2. violation of any federal, state, local, foreign, or common law prohibiting employment discrimination, including but not limited to: the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990; the Civil Rights Act of 1866 and 1991; the Civil Rights Law of 1964; the Equal Pay Act of 1963; the Family and Medical Leave Act of 1993; the Genetic Information Nondiscrimination Act of 2008; the Older Workers Benefit Protection Act of 1990; or any rule or regulation promulgated under any of the foregoing provisions;
  3. discrimination based upon race, color, age, religion, gender, sexual orientation, disability, national origin, pregnancy, or any other basis prohibited by law;
  4. wrongful: deprivation of career opportunity; failure to employ or promote; discipline or evaluation; demotion; denial of tenure; or modification of any term or condition of employment;
  5. retaliation in response to an **Employee** exercising any lawful right;
  6. sexual or other harassment in the workplace;
  7. abusive or hostile work environment, including workplace bullying and cyber bullying;
  8. negligent retention, hiring or training, supervision, or failure to provide or enforce consistent employment-related corporate policies or procedures; or
  9. employment-related libel, slander, misrepresentation, defamation, or invasion of privacy.

- O. **Executive** means any natural person who was, now is, or shall be a duly elected or appointed director, manager or member of the management board (if the **Company** is a limited liability company), **Advisory Board**, trustee, governor, officer, risk manager, Board Observer, Shadow/De Facto Director, or in-house general counsel, or a holder of a title, position or capacity equivalent to any of these positions, of any **Company**.
- P. **Insured** shall have the same meaning attributed to that term in each applicable **Coverage Part**.
- Q. **Insured Person** shall have the same meaning attributed to that term in each applicable **Coverage Part**.
- R. **Insurer** means the insurance company issuing this Policy.
- S. **Interrelated Wrongful Acts** means any **Wrongful Acts** that are:
1. repeated or continuous;
  2. connected by reason of any common circumstance, situation, transaction, casualty, event, decision or policy; or
  3. part of the same series of facts, circumstances, situations, transactions, casualties, events, decisions, or policies.
- T. **Loss** shall have the same meaning attributed to that term in each applicable **Coverage Part**; and with respect to the COMMERCIAL CRIME COVERAGE PART, **Loss** means the amounts covered under such applicable **Coverage Part**.
- U. **Named Insured** means the entity identified as such in the Declarations.
- V. **Not-For-Profit Entity** means any corporation or organization other than the **Company** which is exempt from taxation under the Internal Revenue Code, as amended, or any rule or regulation promulgated thereunder.
- W. **Occurrence** shall have the same meaning attributed to that term in the COMMERCIAL CRIME COVERAGE PART.
- X. **Policy Period** means the time period beginning at the inception date and time specified in the Declarations as the Policy Period, and ending at the earlier of the expiration date and time stated in the Declarations as the Policy Period or the effective date and time of the cancellation of this Policy.
- Y. **Pollutants** means any substance that exhibits any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any state, county, local, or foreign equivalent thereof, including, but not limited to, solids, liquids, gaseous, or thermal irritants, contaminants or smoke, vapor, dust, soot, fumes, acids, alkalis, chemicals or waste materials (including, but not limited to, recycled, reconditioned, or reclaimed sewage or waste water, nuclear materials, or infectious or medical waste); or any air emission, magnetic or electric waves or emissions, odor, oil or oil products, asbestos or asbestos products, fibers, mold, spores, fungi, germs, bacteria, viruses or any noise.
- Z. **Securities Claim** means any **Claim** that:
1. a security holder of the **Company** brings in his or her capacity as such, whether individually or by class action, which alleges any **Wrongful Act** by the **Company** or an **Insured Person**; or brings derivatively on behalf of the **Company** alleging any **Wrongful Act** by any **Insured Person**; or
  2. in connection with the purchase or sale of, or offer or solicitation of an offer to purchase or sell, any securities of the **Company**, alleges the **Company** or an **Insured Person**: (i) committed a **Wrongful Act**; or (ii) violated any securities law, whether federal, state, local, or foreign, or any rule or regulation promulgated thereunder;

Provided, however, that **Securities Claim** shall not include any **Claim** by or on behalf of an **Insured Person** arising out of or in any way involving the loss of, or the failure to receive or obtain from the **Company**, any stock, stock warrants, or options or other securities of the **Company** or the benefit of stock, stock warrants, or options or other securities of the **Company**.

- AA. **Security Holder Derivative Demand** shall have the same meaning attributed to that term in each applicable **Coverage Part**.
- BB. **Sox 304 Costs** shall have the same meaning attributed to that term in the EXECUTIVE AND PRIVATE COMPANY LIABILITY COVERAGE PART.
- CC. **Subsidiary** means:
1. any corporation or limited liability company of which the **Named Insured** owns, directly or indirectly through one or more of its **Subsidiaries**, more than fifty percent (50%) of the outstanding stock or other interest representing the present right to vote, designate, or select a majority of the Board of Directors of a corporation or of the management board of a limited liability company; but only during such time as the **Named Insured** owns, directly or indirectly through one or more of its **Subsidiaries**, more than fifty percent (50%) of such outstanding stock or other interest representing the present right to vote, designate, or select a majority of the Board of Directors of a corporation or of the management board of a limited liability company; or
  2. any joint venture entity in which the **Named Insured**, or any entity described in paragraph 1., above, has exactly fifty percent (50%) ownership of the interests of such joint venture entity and where, pursuant to a written joint venture agreement, the **Named Insured** or any entity described in paragraph 1., above, controls the management and operations of such joint venture entity.

In the event a **Subsidiary** is acquired at any point during the **Policy Period**, then Section XIII. **General Conditions**, Subsection E. **Mergers and Acquisitions**, of these GENERAL TERMS AND CONDITIONS shall apply.

- DD. **Third-Party Discrimination** means any violation of any federal, state, local, foreign, or common law concerning discrimination against, or sexual harassment of, any natural person other than an **Insured Person**, including customers, clients, vendors, service providers, and business invitees.
- EE. **Third-Party Discrimination Claim** means any **Claim** against an **Insured**, other than an **Employment Claim**, alleging any **Insured** committed **Third-Party Discrimination**.
- FF. **Voluntary Settlement** shall have the same meaning attributed to that term in the FIDUCIARY LIABILITY COVERAGE PART.
- GG. **Wrongful Act** shall have the same meaning attributed to that term in each applicable **Coverage Part**.

### III. GENERAL POLICY EXCLUSIONS

The **Insurer** shall not be liable to pay any **Loss** in connection with any **Claim**:

- A. brought about or contributed to by: (i) the gaining of any personal profit or financial advantage to which an **Insured** was not legally entitled; or (ii) by the committing of any intentional criminal or deliberate fraudulent act, if such profit or advantage or intentional criminal or deliberate fraudulent act is established by a final, non-appealable adjudication in the underlying action. For the purpose of applying this exclusion, any **Wrongful Act** of the Chief Executive Officer or the Chief Financial Officer of the **Company** shall be imputed to such **Company**. With the exception of the possible imputation of **Wrongful Acts** described in the preceding sentence, no **Wrongful Act** of an **Insured** may be imputed to any other **Insured**. In addition, Section A. (i) of this exclusion shall not apply to any **Securities Claim** arising out of a public offering of securities of the **Company**;
- B. for any actual or alleged bodily injury, mental anguish or emotional distress, disease, sickness, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to:
  1. emotional distress and mental anguish damages asserted in any **Employment Claim**;
  2. **Defense Expenses** incurred in a criminal proceeding for manslaughter (or for any similar offense); or
  3. any **Securities Claim**;

- C. arising out of, based upon or in consequence of, resulting from or in any way involving any written demand, suit, proceeding or other claim, or any investigation of which any **Insured** had notice, pending on or prior to the respective **Coverage Part** Pending or Prior Litigation Date stated in Item 2. of the Declarations, or any fact, matter, circumstance, situation, transaction or event underlying or alleged in such written demand, suit, proceeding, claim or investigation; provided, however, that this exclusion shall apply solely to the **Coverage Part** for which the **Insured's** notice of the written demand, suit, proceeding or other claim, or any investigation preceded its respective Pending or Prior Litigation Date;
- D. arising out of, based upon or in consequence of, resulting from or in any way involving;
1. any **Wrongful Act** alleged in any demand, suit, proceeding or other claim which has been the subject of any notice given or reported prior to the inception of the **Policy Period**, or in any circumstance of which notice has been given under any policy of which this Policy or any **Coverage Part** is a renewal, replacement, or succeeds in time; or
  2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior claim or notice, would constitute **Interrelated Wrongful Acts**;
- E. arising out of, based upon or in consequence of, resulting from or in any way involving: (i) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic or personally identifiable nonpublic information; or (ii) any unauthorized access to, failure, malfunction or breakdown of any computer, electrical, electronic or mechanical systems, or machines; provided, however, that this exclusion shall not apply to any **Claim** otherwise covered under the CYBER LIABILITY COVERAGE PART, or any **Claim** brought by a shareholder of the **Company** otherwise covered under the EXECUTIVE AND PRIVATE COMPANY LIABILITY COVERAGE PART, if purchased;
- F. arising out of, based upon or in consequence of, resulting from or in any way involving any **Employment Claim, Third-Party Discrimination Claim, Employment Practices Wrongful Acts, or Third-Party Discrimination**; provided, however, this exclusion shall not apply to the EMPLOYMENT PRACTICES AND THIRD-PARTY DISCRIMINATION LIABILITY COVERAGE PART, if purchased; or
- G. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by:
1. the Employee Retirement Income Security Act of 1974 (ERISA), or amendments thereto or regulations thereunder or any similar foreign, state, local or common law; provided, however, that this exclusion shall not apply to any **Claim** otherwise covered by the FIDUCIARY LIABILITY COVERAGE PART, if purchased;
  2. the Occupational Safety and Health Act (OSHA), the Worker Adjustment and Retraining Notification Act (WARN), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the National Labor Relations Act (NLRA), or other similar provisions of any federal, state or local statutory or common law, or any rules or regulations promulgated under any of the foregoing;
  3. the Fair Labor Standards Act (FLSA), as amended, or any other foreign, federal, state, or local law, whether statutory or common law, governing the classification of employees to determine their eligibility for compensation or the payment of wages, overtime, on-call time, rest periods or minimum wages;
  4. any employment-related tort; provided, however, that this paragraph shall not apply to any **Employment Claim** otherwise covered under the EMPLOYMENT PRACTICES AND THIRD-PARTY DISCRIMINATION LIABILITY COVERAGE PART, if purchased; or
  5. any law governing workers' compensation, unemployment insurance, social security, disability benefits, or any similar foreign, state, local or common law;

Provided, however, that this exclusion shall not apply to **Employment Claims** for retaliation otherwise covered under the EMPLOYMENT PRACTICES AND THIRD-PARTY DISCRIMINATION LIABILITY COVERAGE PART, if purchased.

## IV. DEFENSE AND SETTLEMENT

### A. Defense

1. The **Insureds**, and not the **Insurer**, shall have the duty to defend all **Claims**. It shall not be the duty of the **Insurer** to defend any **Claim** under this Policy; but the **Insurer** shall have a right to associate in the defense of all **Claims**.
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** written consent, such consent not to be unreasonably delayed or withheld.

### B. Optional Tender of Defense

1. Notwithstanding Section IV.A., above, the **Named Insured** shall have the right to tender the defense of the **Claim** to the **Insurer** on behalf of all **Insureds** provided such right is exercised in writing at the time the **Claim** is first made and reported under **Section VIII. NOTICE OF CLAIM AND WRONGFUL ACT**, but in no event later than 30 days after the Insured first learns of the **Claim**.
2. From the date the **Claim** is first made against the **Insured** to the date when the **Insurer** accepts the optional tender of the defense of such **Claim**, no **Insured** may incur any **Defense Expenses** or admit any liability for, make any settlement offer with respect to, or settle such **Claim**, or take any action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**.
3. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent, provided, however, that the **Insurer** shall not be obligated to defend such **Claim** after the least of the following has been exhausted: (i) the Policy Maximum Aggregate Limit of Liability; (ii) the Aggregate Limit of Liability of the applicable **Coverage Part**; or (iii) or any applicable Sub-Limit of Liability.
4. The assumption of defense of the **Claim** shall be effective upon written confirmation sent by the **Insurer** to the **Policyholder**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and negotiation of any settlement of any **Claim**, subject to the provisions of this Subsection IV.B. The Option to Tender afforded pursuant to this Subsection IV.B shall not be afforded for any **Claim** alleging, in whole or in part, any violation of the Fair Labor Standards Act (FLSA), as amended, or any other foreign, federal, state, or local law, whether statutory or common law, governing the classification of employees to determine their eligibility for compensation or the payment of wages, overtime, on-call time, rest periods or minimum wages.

### C. Settlement

The **Insurer** has the right to investigate, conduct negotiations and with the **Insured's** written consent, settle any **Claim** that is covered by this Policy. The **Insurer** shall not settle or compromise any **Claim** without the written consent of the **Insured**, such consent to not be unreasonably delayed or withheld.

## V. LIMITS OF LIABILITY

- A. The amount stated in Item 1. of the Declarations as the Policy Maximum Aggregate Limit of Liability shall be the **Insurer's** maximum aggregate liability for all payment obligations under this Policy under all **Coverage Parts**, combined, including any matter noticed during the Discovery Period, if applicable. All obligations of the **Insurer** under this Policy shall cease after the Policy Maximum Aggregate Limit of Liability stated in Item 1. of the Declarations has been paid by the **Insurer**.

- B. The amounts stated in Item 2. of the Declarations as the Aggregate Limit of Liability for each purchased **Coverage Part** listed shall be the maximum aggregate limit of liability of the **Insurer** under such **Coverage Part** for all payment obligations under this Policy. The amount set forth in Item 2. of the Declarations as the Aggregate Limit of Liability for each respective **Coverage Part** purchased shall be part of, and not in addition to, the amount stated in Item 1. of the Declarations as the Policy Maximum Aggregate Limit of Liability under the Policy. The amounts stated in Item 2. of the Declarations as the Sub-Limit of Liability under such **Coverage Part**, or the amount(s) listed as Limits of Liability for covered loss under COMMERCIAL CRIME COVERAGE PART, shall be the maximum aggregate limit of liability for the **Insurer** under such sub-limited coverage, such amount being part of, and not in addition to, the Aggregate Limit of Liability for such **Coverage Part**. The **Insurer's** obligations under this Policy shall cease with respect to any respective **Coverage Parts** purchased after the Aggregate Limit of Liability under such **Coverage Part** has been paid by the **Insurer**.

If Shared Limits of Liability are indicated for any purchased **Coverage Part** under Item 2. of the Declarations, then each such Shared Limit of Liability shall be the maximum aggregate limit of the **Insurer's** liability for all amounts and all **Loss** of all **Insureds** during the **Policy Period** or the Discovery Period, if applicable, with respect to the applicable **Coverage Parts** subject to the shared limits, combined. The Limit of Liability respecting each **Coverage Part** which is indicated as Shared Limit of Liability in Item 2. of the Declarations shall be part of and not in addition to the Shared Limit of Liability of every other **Coverage Part** which is also indicated as Shared Limit of Liability in Item 2. of the Declarations. Furthermore, the Shared Limit of Liability for the Discovery Period shall be part of and not in addition to, this Shared Limit of Liability for the **Policy Period**. Each Shared Limit of Liability shall be part of and not in addition to the POLICY MAXIMUM AGGREGATE LIMIT OF LIABILITY in Item 1. of the Declarations. Any Sub-Limit of Liability provided in the Policy shall be part of and not in addition to Aggregate Limit of Liability as shown in the Declarations for the respective **Coverage Part** to which the Sub-Limit applies. Payment of **Loss** from such sublimit shall reduce the Aggregate Limit of Liability and any applicable Shared Limit of Liability.

- C. **Defense Expenses** are part of, and not in addition to, the applicable limit of liability, and payment of **Defense Expenses** by the **Insurer** shall reduce and may exhaust the applicable limits of liability; provided, however that:
1. Notwithstanding anything in this Subsection C. to the contrary and subject to paragraphs 2. 3., and 4., immediately below, if an Additional Dedicated Limit of Liability for **Defense Expenses** is purchased as indicated in Item 4. of the Declarations, then an additional Limit of Liability in the amount indicated in the Declarations as the Additional Dedicated Limit of Liability for **Defense Expenses** shall be available solely for **Defense Expenses** covered under this Policy ("**Additional Defense Expenses**");
  2. The amount indicated in the Declarations as the Additional Dedicated Limit of Liability for **Defense Expenses** shall be the limit for all such Additional **Defense Expenses** per **Claim** and in the aggregate, which amount is in addition to, and not part of, the Aggregate Limit of Liability for any **Coverage Part** exhausted by payments by the **Insurer** for **Defense Expenses** covered by this Policy;
  3. Such Additional Dedicated Limit of Liability for **Defense Expenses** shall not apply to any **Claim** arising out of, based upon or in consequence of, resulting from or in any way involving: the same, or any similar or related, **Wrongful Act** or **Interrelated Wrongful Act** for which there has been any payment of **Loss** under any Aggregate Limit of Liability for any **Coverage Part**; and
  4. The Additional Dedicated Limit of Liability for **Defense Expenses** is excess any insurance available that is specifically excess to this Policy, and such excess insurance must be completely exhausted by payment of loss, damages or defense costs thereunder before the **Insurer** shall have any obligation to make any payment on account of the Additional Dedicated Limit of Liability for Non-Indemnified **Loss**.
- D. If coverage is available for a **Claim** under more than one **Coverage Part**, then the maximum applicable limit of liability for such **Claim** shall be the largest applicable remaining Aggregate Limit of Liability under only one of the applicable **Coverage Parts**. The **Insurer's** obligations under this Policy shall cease with respect to such a **Claim** when the largest applicable remaining Aggregate Limit of Liability under only one of the applicable **Coverage Parts** is exhausted.

## VI. RETENTIONS

- A. With respect to each **Claim** covered under any **Coverage Part**, the **Insurer** shall only pay **Loss** which is in excess of the Retention that is applicable to such respective **Coverage Part** (or Insuring Agreement subject to a separate Retention under such **Coverage Part**, if indicated) as set forth in Item 2. of the Declarations, such Retention shall be borne by the **Insureds**.

With respect to covered loss under the COMMERCIAL CRIME COVERAGE PART, **Derivative Investigation Costs, Voluntary Settlements, and Supplemental Coverage**, the **Insurer** shall only pay such covered loss, **Derivative Investigation Costs, Voluntary Settlements**, and any amounts payable under **Supplemental Coverage**, which are in excess of the applicable Retention as set forth in Item 2. of the Declarations for such applicable **Coverage Part**, such Retention shall be borne by the **Insureds**.

Should the **Company** be unable or refuse to pay an applicable Retention due to bankruptcy or insolvency, the **Insurer** will then advance **Loss** within the Retention, subject to the other terms, conditions and exclusions of this Policy within sixty (60) days; provided, however, that the **Insurer** shall be entitled to recover such amounts advanced within the retention from the **Company**.

- B. If a **Claim** could be subject to multiple Retentions, the largest applicable Retention set forth in Item 2. of the Declarations shall apply.
- C. The applicable Retention shall not be reduced by any amounts that are determined to be non-covered loss pursuant to Section **XI. Allocation**, below.

## VII. ESTATES, LEGAL REPRESENTATIVES, SPOUSES, AND DOMESTIC PARTNER EXTENSION

- A. Coverage under this Policy, subject to its terms and the terms of each **Coverage Part**, shall be extended to apply to **Claims** for a **Wrongful Act** of an **Insured Person** made against:
1. a natural person who, at the time the **Claim** is made, is the lawful spouse or **Domestic Partner** of an **Insured Person**, provided that such **Claim**:
    - a) arises solely out of such spouse or **Domestic Partner's** status as the spouse or **Domestic Partner** of such **Insured Person**; or
    - b) seeks recovery from marital community property, other property jointly held by the spouse or **Domestic Partner** and such **Insured Person**, or property transferred from such **Insured Person** to the spouse or **Domestic Partner**; or
  2. the estate, heir, legal representative or assigns of an **Insured Person**, in the event of such **Insured Person's** death, incompetency, insolvency or bankruptcy.
- B. There shall be no coverage extended under this Section for **Loss** resulting from a **Claim** arising from any act, error, or omission of any spouse, **Domestic Partner**, estate, heir, legal representative or assigns of such **Insured Person**.

## VIII. NOTICE OF CLAIM AND WRONGFUL ACT

- A. As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insureds** shall give the **Insurer** written notice of any **Claim**, or **Security Holder Derivative Demand** made during the **Policy Period** or the Discovery Period (if applicable) against an **Insured** as soon as practicable, but in all events before the later of:
1. ninety (90) days after the Policy expires and is renewed with the **Insurer**, provided however, if the **Insured** can prove to the **Insurer's** satisfaction that it was not reasonably possible for the **Insured** to give such notice within the ninety (90) day time period and that subsequent notice was given as soon as reasonably possible thereafter, the **Insurer** shall waive the foregoing time period; or



2. sixty (60) days after:
  - a) this Policy expires or terminates and is not renewed with the **Insurer**; or
  - b) the expiration date of the Discovery Period, if applicable.
- B. Notwithstanding the conditions and obligations set forth in Subsection A., above, in the event the **Insured** fails to provide timely notice of a **Claim**, coverage may be denied by the **Insurer** solely on the basis of late notice only if the **Insurer** can show that such late notice materially prejudiced its interests.
- C. If during the **Policy Period** or the Discovery Period (if applicable), the **Insured** becomes aware of any circumstances which reasonably may be expected to give rise to a **Claim** being made against an **Insured**, and gives written notice to the **Insurer** of such circumstances, including the anticipated alleged **Wrongful Act(s)**, the reasons for anticipating such a **Claim**, and full particulars as to dates, persons and entities involved, then any **Claim** subsequently made against the **Insureds** arising out of the circumstances described in such notice shall be deemed to have been made at the time such notice was received by the **Insurer**.
- D. The **Insureds** shall give notice to the **Insurer** under this Section at the address set forth by Endorsement to this Policy.

#### IX. DISCOVERY PERIOD

- A. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this Policy, the **Named Insured** shall have up to thirty (30) days after the effective date of such cancellation or non-renewal, to pay the Additional Premium for the **Discovery Period** specified in Item 3. of the Declarations to extend the coverage granted by this Policy to any **Claim** first made during an additional period of time specified in Item 3. of the Declarations (the **Discovery Period**), which **Discovery Period** shall begin on the effective date of such cancellation or non-renewal; provided, however, that the **Named Insured** shall not be entitled to extend the coverage granted by this Policy by paying the Additional Premium for the **Discovery Period** if the Policy is rescinded, cancelled, or non-renewed as a result of a material misrepresentation on the **Application**.

Any coverage for **Claims** first made and first reported during the **Discovery Period** shall be limited only to **Wrongful Acts** that occurred prior to the inception of the **Discovery Period**.
- B. The Additional Premium for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**; and the **Discovery Period** is not cancelable, except that the **Insurer** may cancel the **Discovery Period** for non-payment of premium.
- C. The **Discovery Period** is not available and the provisions of this Section IX. **Discovery Period** shall not be applicable if the Policy is cancelled for non-payment of premium.

#### X. SINGLE CLAIM/INTERRELATED WRONGFUL ACTS

All **Claims** based upon or arising out of the same **Wrongful Act** or out of **Interrelated Wrongful Acts** shall be considered a single **Claim**, and each such **Claim** is deemed to have been first made on the earlier of the following:

- A. when the earliest **Claim** arising out of such **Wrongful Act** or **Interrelated Wrongful Acts** was first made; or
- B. when written notice of a fact, circumstance, or situation giving rise to such **Claim** pursuant to Section VIII. **Notice of Claim and Wrongful Act**, Subsection C., above, was received by the **Insurer**.

## XI. ALLOCATION

If both **Loss** covered by this Policy and loss not covered by this Policy are incurred as a result of a **Claim**, the **Insurer** shall not be liable for that portion of such amount allocated to non-covered loss; and:

- A. With respect to all loss incurred by the **Insureds** in connection with such a **Claim**, the **Insureds** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of covered **Loss** and non-covered loss, taking into account the relative legal and financial exposures of and the relative benefits obtained in the defense and/or settlement of the **Claim** by the **Insureds**.
- B. In the event that the **Insurer** and the **Insureds** cannot agree upon an allocation, the **Insurer** shall make an interim payment for the **Loss** that is not in dispute until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law. If the **Insured** and the **Insurer** agree on an allocation of **Defense Expenses**, then the **Insurer** shall pay, on behalf of such **Insured**, **Defense Expenses** allocated to covered **Loss**. If, however, the **Insured** and the **Insurer** cannot agree on an allocation of **Defense Expenses**, no presumption as to allocation of **Defense Expenses** shall exist in any suit or other proceeding; but the **Insurer** shall pay, on behalf of such **Insured**, **Defense Expenses** which the **Insurer** believes to be covered until a different allocation is negotiated or judicially determined.
- C. Notwithstanding any prior advancement to the contrary, any negotiated or judicially determined allocation of **Defense Expenses** on account of a **Claim** shall be applied retroactively to all **Defense Expenses** on account of such **Claim**. Any allocation of **Defense Expenses** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

## XII. COORDINATION OF COVERAGE PARTS

- A. The **Insured** has elected to purchase the **Coverage Parts** as indicated in Item 2. of the Declarations by the appearance of a dollar amount Aggregate Limit of Liability corresponding to such **Coverage Part**, and any other **Coverage Part** available from the **Insurer** but not purchased by the **Insured** shall not be included in the Policy.
- B. Subject to the applicable Aggregate Limit of Liability, in the event any coverage is available for a **Claim** under more than one **Coverage Part** purchased, the **Insurer** shall only be liable for the actual amount of **Loss** incurred by the **Insureds**.
- C. The **Insurer** shall be entitled to make its own determination as to which **Coverage Part**, if any, **Loss** is covered and should be paid, regardless of the **Coverage Part** under which the **Insureds** provide notice of **Claim** or notice of circumstances which reasonably may be expected to give rise to a **Claim**.

## XIII. GENERAL CONDITIONS

- A. Cancellation and Non-Renewal
  1. The **Insurer** may cancel this Policy for non-payment of any premium when due by providing written notice to the **Named Insured** stating when, not less than twenty (20) days thereafter, such cancellation shall be effective.
  2. The **Named Insured** may cancel this Policy by providing written notice to the **Insurer** at the address set forth by Endorsement to this Policy, stating when thereafter such cancellation shall be effective. The **Insurer** shall retain the *pro rata* proportion of the premium calculated from the effective date of cancellation; provided, however, that if at the time of cancellation any **Claims** or notices of circumstance have been reported during the **Policy Period** under Section VIII., above, then the entire premium shall be considered fully earned and non-refundable. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

3. In the event the **Insurer** decides not to renew this Policy, the **Insurer** shall provide written notice of such non-renewal to the **Named Insured** not less than thirty (30) days prior to the end of the **Policy Period**. The notice shall state the reason for such non-renewal. An offer to renew this Policy on terms that involve any change in Retention amount, premium, limit of liability or other terms or conditions shall not constitute a decision by the **Insurer** not to renew this Policy.
4. Any notices to be given to the **Named Insured** shall be provided to the **Named Insured** at its last known principal address with a copy to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

B. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy.

C. ADR Provision

The **Insurer** and the **Insured** agree that they will attempt in good faith to negotiate a resolution to any dispute arising out of this Policy. In the event any dispute cannot be resolved by negotiation, the **Insurer** and the **Insured** agree to submit the dispute to non-binding mediation, the terms of which shall be subject to negotiation. If the parties cannot agree to such terms within thirty (30) days of either party requesting the mediation, the matter will be submitted to JAMS for mediation, with each party bearing their own costs. Should the mediation fail to result in a settlement of the dispute, no party may commence an action against any other party until at least thirty (30) days after the conclusion of the final mediation session.

D. Company Takeover

If a **Company Takeover** occurs during the **Policy Period**, then this Policy shall continue in full force and effect only for **Wrongful Acts** occurring prior to the effective date of the **Company Takeover**, unless:

1. the **Named Insured** gives the **Insurer** written notice of the **Company Takeover** as soon as practicable but not later than thirty (30) days after the effective date of the **Company Takeover** and the **Insurer** agrees in writing to provide coverage for **Wrongful Acts** occurring after such effective date; and
2. the **Named Insured** accepts any special terms, conditions, amendments, exclusions or additional premium charge required by the **Insurer**.

This Policy may not be canceled after the effective time of the **Company Takeover** and the entire premium for this Policy shall be deemed fully earned as of the effective date of the **Company Takeover**.

E. Mergers and Acquisitions

1. If the **Company**, during the **Policy Period**:
  - a. acquires another entity by merger or by consolidation with a **Subsidiary**, acquires all or substantially all of the assets of another entity, or creates or acquires a **Subsidiary**; and
  - b. provided such **Subsidiary** or acquired entity is not a public company, a financial services organization or provider; or a healthcare services or care organization or provider;then, subject to all the other provisions of this Policy, coverage shall apply to any **Claim** involving the merged or consolidated entity or **Subsidiary**.
2. There shall be no coverage for any **Wrongful Act** or **Occurrence** involving the merged or consolidated entity or **Subsidiary** that occurred prior to the consummation of a transaction described in Paragraph 1., above, or for any other **Wrongful Act** whenever occurring which together with a **Wrongful Act** that occurred prior to the consummation of such transaction would constitute **Interrelated Wrongful Acts**.
3. There shall be no coverage for any **Wrongful Act** of any **Subsidiary** or any of its directors, officers or employees occurring on or after the date such entity ceases to be a **Subsidiary**.

4. If an entity ceases to be a **Subsidiary** during the **Policy Period**, coverage with respect to any **Coverage Part** for such **Subsidiary** and its **Insureds** shall continue until expiration of the **Policy Period** or termination of this Policy, whichever occurs first, but only for **Claims for Wrongful Acts** while such entity was a **Subsidiary**.

F. Bankruptcy

Bankruptcy or insolvency of the **Company** or of an **Insured Person** shall not relieve the **Insurer** of any of its obligations hereunder; and the **Insurer** agrees not to oppose or object to any efforts to obtain relief from any automatic stay or injunction which may apply to this Policy or its proceeds.

G. Representations

The **Insureds** agree that the **Application** is deemed attached to this Policy and incorporated herein, and that all warranties, statements and representations contained in or incorporated into the **Application** have been made to the **Insurer** and are material to the risk assumed by the **Insurer**. This Policy is issued in reliance upon the truth of such warranties, statements and representations. The **Insureds** further agree that in the event of any material misstatement, misrepresentation or omission in the **Application**, there shall be no coverage under this Policy for any **Insured** who had actual or imputed knowledge as of the inception date of the **Policy Period** of the facts that were misstated, misrepresented or omitted in the **Application** (whether or not such **Insured** was aware that such facts were misstated, misrepresented, or omitted in the **Application**). For purposes of determining the applicability of this Paragraph, any knowledge possessed by the Chief Executive Officer, the Chief Financial Officer, or the General Counsel of the **Named Insured** shall be imputed to the **Company**, but with the exception of the foregoing, any knowledge possessed by an **Insured** shall not be imputed to any other **Insured**.

H. Other Insurance

Such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written as specific excess insurance over this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

In the event a **Claim** against an **Insured** arising out of his or her service as an **Insured Person** who, with the knowledge and consent of the **Company**, is serving as a director, officer, trustee, regent or governor of any **Not-For-Profit Entity**, coverage as is afforded by this policy shall be specifically excess of any: (i) indemnification provided by such **Not-For Profit Entity**; and (ii) any other insurance provided to such **Not-For Profit Entity**.

I. Subrogation

1. The **Insurer** shall be subrogated to the extent of any payment made under this Policy to all of the rights of recovery of the **Insureds** against any person or organization. The **Insureds** shall do nothing to prejudice any of the **Insurer's** subrogation rights, and shall execute and deliver all papers and instruments required, and shall do whatever else is necessary, to enable the **Insurer** effectively to bring suit in their name and otherwise secure such rights. In no event, however, shall the **Insurer** exercise its subrogation rights against any **Insured Person** under this Policy, unless such **Insured Person** has been convicted of a criminal act, or been determined by a final adjudication to have committed a dishonest, fraudulent act or willful violation of any statute, rule or law, or determined by a final adjudication to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.
2. Any amount recovered after payment under this Policy shall be apportioned in the inverse order of any actual payment of the underlying **Claim** so the last dollar paid shall be the first dollar recovered. The expenses incurred in obtaining any such recoveries shall be apportioned in the ratio of the actual recoveries of the **Insurer** and the **Insureds**; and any amounts recovered, less the expenses incurred in obtaining any such recovery, shall be credited toward the applicable limit of liability.

J. Assignment

This Policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

K. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties.

L. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws.

M. Authorization

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to the giving of all notices to the **Insurer**, the receipt of notices from the **Insurer**, the payment of premiums, and the receipt of any return premiums that may become due under this Policy.

N. Worldwide Territory

The Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

O. Compliance with Laws Governing Trade and Economic Sanctions

Payment of **Loss** under this Policy shall be made only in full compliance with all economic or trade sanction laws and regulations, including but not limited to sanctions, laws, and regulations administered and enforced by the United States Treasury's Office of Foreign Asset Control (OFAC), and any other laws or regulations of the United States, European Union, or United Kingdom.

P. Headings

The descriptions in the headings and any subheading of this Policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF THE DECLARATIONS PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

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## EXECUTIVE AND PRIVATE COMPANY LIABILITY COVERAGE PART

THIS IS A "CLAIMS MADE AND REPORTED" COVERAGE PART. SUBJECT TO ITS TERMS AND PROVISIONS, THIS COVERAGE PART ONLY APPLIES TO CLAIMS FIRST MADE AGAINST THE INSURED, AND FIRST REPORTED TO THE INSURER IN THE TIME AND MANNER REQUIRED BY THIS POLICY. IN ADDITION, DEFENSE EXPENSES ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THIS ENTIRE COVERAGE PART CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS COVERAGE PART OR ANY OTHER PART OF THE POLICY.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insured** agree as follows:

### I. INSURING AGREEMENTS

#### A. Insured Person Coverage For Non-Indemnified Loss

##### 1. Insuring Agreement

The **Insurer** shall pay, on behalf of any **Insured Persons**, **Loss** to the extent the **Company** has not indemnified such **Insured Persons**, arising from any **Claim** for any **Wrongful Act** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

##### 2. Additional Dedicated Limit of Liability

- a. Notwithstanding anything in this Policy to the contrary, an Additional Dedicated Limit of Liability for Non-Indemnified **Loss**, if purchased as indicated in Item 2 of the Declarations, shall be an additional Limit of Liability available solely for **Loss** covered under Insuring Agreement A.1., and shall be in an amount not to exceed \$500,000 per **Claim** and in the aggregate, which amount is in addition to, and not part of, the Aggregate Limit of Liability for this **Coverage Part**, as set forth in Item 2. Of the Declarations.
- b. The Additional Dedicated Limit of Liability for Non-Indemnified **Loss** is excess of any insurance available that is specifically excess to this **Coverage Part**, and such excess insurance must be completely exhausted by payment of loss, damages or defense costs thereunder before the **Insurer** shall have any obligation to make any payment on account of the Additional Dedicated Limit of Liability for Non-Indemnified **Loss**.

#### B. Private Company Coverage For Indemnified Loss

The **Insurer** shall pay, on behalf of the **Company**, **Loss**, to the extent the **Company** has indemnified **Insured Persons**, arising from any **Claim** for any **Wrongful Act** taking place prior to the end of the **Policy Period**, and which is first made against such **Insured** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

#### C. Private Company Entity Coverage

The **Insurer** shall pay, on behalf of the **Company**, **Loss** arising from any **Claim** for any **Wrongful Act** of the **Company** taking place prior to the end of the **Policy Period**, and which is first made against the **Company** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

#### D. Derivative Investigation Costs Coverage for Security Holder Derivative Demands

Subject to the Sub-Limit of Liability set forth in Item 2. of the Declarations, the **Insurer** shall pay, on behalf of the **Company**, **Derivative Investigation Costs** arising from a **Security Holder Derivative Demand** which is first made against the **Company** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

## II. DEFINITIONS

For the purposes of this **Coverage Part**:

### A. **Claim** means:

1. under **INSURING AGREEMENTS A. and B.**:
  - a. a written demand for monetary, non-monetary, or injunctive relief made upon an **Insured Person** for a **Wrongful Act**;
  - b. a civil, proceeding for monetary or non-monetary relief against an **Insured Person** for a **Wrongful Act**, which is commenced by: service of a complaint or similar pleading; receipt of a notice of charges; or receipt of a Wells notice;
  - c. a criminal proceeding brought against an **Insured Person** for a **Wrongful Act**, which is commenced by an arrest or a return of an indictment or information;
  - d. a formal administrative or formal regulatory proceeding against an **Insured Person** for a **Wrongful Act**, which is commenced by the filing of a notice of charges, formal investigative order or similar document;
  - e. a mediation or arbitration proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document alleging a **Wrongful Act** against an **Insured Person**;
  - f. an official request for **Extradition**, or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**, against an **Insured Person** for a **Wrongful Act**;
  - g. a civil, criminal, administrative, or regulatory investigation of an **Insured Person** for a **Wrongful Act** once such **Insured Person** who is identified in writing by the investigating authority undertaking the investigation as someone against whom a formal proceeding may be commenced, including when such **Insured Person** is served with a target letter or similar document; or
  - h. any written request to toll or waive a statute of limitations received by an **Insured Person** relating to a potential **Claim** described in Paragraphs **II.A.1.a.** through **II.A.1.g.**, above.
2. solely under **INSURING AGREEMENT A.** service of a subpoena or other similar written request upon an **Insured Person** compelling document production or witness testimony in connection with:
  - a. any matters described in Paragraphs **II.A.1.a.** through **II.A.1.g.**, above; or
  - b. any equivalent action against the **Company**, provided, however, that the **Insurer** shall only pay **Defense Expenses** incurred solely by such **Insured Person** in responding to such subpoena or written request that is in connection with any such equivalent action against the **Company**.

3. under **INSURING AGREEMENT C.:**
- a. a written demand for monetary, non-monetary, or injunctive relief made upon the **Company** for a **Wrongful Act** of the **Company**;
  - b. a civil, proceeding for monetary or non-monetary relief against the **Company** for a **Wrongful Act**, which is commenced by: service of a complaint or similar pleading; receipt of a notice of charges; or receipt of a Wells notice;
  - c. a criminal proceeding brought against the **Company** for a **Wrongful Act**, which is commenced by a return of an indictment, information, or similar document;
  - d. a formal administrative or formal regulatory proceeding against the **Company** for a **Wrongful Act**, which is commenced by the filing of a notice of charges, formal investigative order or similar document, but only while such proceeding is also pending against an **Insured Person**;
  - e. a mediation or arbitration proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document alleging a **Wrongful Act** against the **Company**;  
or
  - f. any written request to toll or waive a statute of limitations received by an **Insured Person** relating to a potential **Claim** described in Paragraphs II.A.3.a. through II.A.3.e., above.
- B. **Insured** means the **Company** or any **Insured Person**.
- C. **Insured Person** means any **Executive** or any **Employee**.
- D. **Derivative Investigation Costs** means any reasonable and necessary fees (including but not limited to attorneys' fees and experts' fees), expenses, costs, or charges incurred by the **Company** (including its Board of Directors or any committee of its Board of Directors) with the **Insurer's** prior written consent while investigating or evaluating whether it is in the best interest of the **Company** to commence a civil proceeding as demanded by a **Security Holder Derivative Demand**; provided, however, **Derivative Investigation Costs** shall not include (i) any damages, judgments, or settlements; and (ii) salaries, wages (including overtime wages), or fees of any **Executive** or **Employee**.
- E. **Dodd-Frank 954 Costs** means the reasonable and necessary expenses, fees, and costs consented to by the **Insurer** and incurred by an **Executive** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; provided, however, that **Dodd-Frank 954 Costs** shall not include the reimbursement, payment, return, disgorgement, or restitution of any such amounts requested or required to be repaid by such **Executive**.
- F. **Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to otherwise answer any criminal allegations.
- G. **Loss** means **Defense Expenses, Dodd-Frank 954 Costs, Sox 304 Costs**, and the amounts an **Insured** is legally obligated to pay as a result of any **Claim**, including:
1. settlements;
  2. compensatory damages;
  3. judgments, including awarded costs, and pre-judgment and post-judgment interest;
  4. punitive, exemplary and multiplied damages;
  5. civil fines or penalties assessed against **Insured Persons** pursuant to Section 2 (g) (2) (B) of the Foreign Corrupt Practices Act 15 U.S.C. 78 dd-2 (g) (B); and
  6. attorney fees awarded to the prevailing plaintiff's counsel pursuant to a covered judgment.



**Loss**, other than **Defense Expenses**, shall not include:

1. any civil or criminal fines or penalties imposed by law, other than punitive or exemplary damages or the multiple portion of a judgment or award of multiplied damages or the civil fines or penalties assessed against **Insured Persons** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act 15 U.S.C. 78dd-2(g)(B);
2. taxes;
3. **Clean Up Costs**;
4. the cost of any non-monetary relief, including without limitation: any costs associated with complying with any injunctive relief of any kind or nature imposed by any judgment or settlement, and the costs associated with the modification of any building or property in order to provide any reasonable accommodation under the Americans With Disabilities Act or any similar foreign, federal, state, or local statute, regulation, or common law;
5. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; or
6. any matter deemed uninsurable under the law pursuant to which this Policy shall be construed;

The **Insureds'** good faith determination as to the insurability of matters otherwise included within this definition shall not be contested by the **Insurer**; such good faith determination shall be based upon the most favorable law bearing a reasonable relationship to the **Insured**, the **Insurer**, or the **Claim**.

- H. **Security Holder Derivative Demand** means a written demand by shareholders of the **Company**, other than an **Executive**, made upon its Board of Directors (or similar management body) which seeks to compel the Board of Directors (or similar management body) to bring, on behalf of the **Company**, a civil proceeding in a court of law against any **Executive** for such **Executive's Wrongful Act**.
- I. **Sox 304 Costs** means the reasonable and necessary costs, fees, and expenses consented to by the **Insurer** and incurred by an **Executive** that is the Chief Executive Officer or Chief Financial Officer of the **Named Insured** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002; provided, however, that **Sox 304 Costs** shall not include the reimbursement, payment, return, disgorgement, or restitution of any such amounts requested or required to be repaid by such **Executive**.
- J. **Wrongful Act** means:
1. any actual or alleged breach of duty, error, misstatement, act or omission of an **Executive** but solely while acting in his or her capacity as such;
  2. any actual or alleged breach of duty, error, misstatement, act or omission of an **Employee** but solely while acting in his or her capacity as such;
  3. any actual or alleged breach of duty, error, misstatement, act or omission by the **Company**; or
  4. any **Interrelated Wrongful Act**.

### III. EXCLUSIONS

The following Exclusions are applicable to all **INSURING AGREEMENTS**:

The **Insurer** shall not be liable to pay any **Loss** arising from any **Claim**:

- A. arising out of, based upon or in consequence of, resulting from or in any way involving any actual or alleged act or omission of an **Insured Person** taking place or allegedly taking place while (i) serving in any other capacity other than an **Insured Person** of the **Company**; including but not limited to his or her status as a director, officer, trustee, regent, governor, manager or member of the board of managers of any entity other than the **Company**; provided, however, that this exclusion shall not apply to any **Executive** while serving, with the knowledge and consent of the **Company**, as a director, officer, trustee, regent, governor, manager or member of the board of managers of any **Not for Profit Entity**;
- B. brought or maintained by or on behalf of any **Not for Profit Entity** which an **Insured Person** is or was serving with the knowledge and consent of the **Company**; provided, however, this exclusion shall not apply if the **Insured Person** has not served with, provided consultation in any capacity to, or has been employed by the **Not for Profit Entity** for at least two (2) years prior to the date such **Claim** is first made, and the **Claim** by the **Not for Profit Entity** is brought and maintained totally independent of and without the assistance, active participation or solicitation of the **Company** or any **Insured Person** who has served with, provided consultation in any capacity to, or has been employed by the **Company** in the last two (2);
- C. arising out of, based upon or in consequence of, resulting from or in any way involving any public offering of securities by the **Company**, or the solicitation, sale, purchase, distribution, or issuance of any such securities, or any **Wrongful Act** relating in any way to any such public offering, whether any such activity occurs or allegedly occurs prior to, during, or after such public offering of securities by the **Company**; provided, however, that this exclusion shall not apply to:
  1. the purchase or sale, or offer or solicitation of an offer to purchase or sell, any debt or equity securities in a private-placement transaction exempt from registration under the Securities Act of 1933, as amended;
  2. any of the following
    - a. any general solicitation or general advertising by or on behalf of any **Company** permitted pursuant to Title II, Access to Capital for Job Creators, of the Jumpstart Our Business Startups Act ("JOBS Act");
    - b. any offering, sale or purchase of securities that qualifies for a Securities Act registration exemption created pursuant to Title III Crowdfunding, of the JOBS Act; or
    - c. any offering, sale or purchase of securities that qualifies for a Securities Act registration exemption created pursuant to Title IV, Small Company Capital Formation, of the JOBS Act provided, however, that all such **Loss** payable as a result of this shall be limited per **Claim** and in the Aggregate to \$250,000 Sub-Limit of Liability;
  3. any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparations to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01a.m. on the date the **IPO** commences ("**IPO Effective Time**"), including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however, that the coverage otherwise afforded under this paragraph shall be deemed to be void *ab initio* effective the **IPO Effective Time** unless: (1) the **Claim** is first made and reported pursuant to the terms and conditions of this Policy prior to the **IPO Effective Time**; (2) the **IPO** fails to commence on the **IPO Effective Time**; and (3) a public company D&O policy is not applicable to such **Claim**;

- D. brought or maintained by or on behalf of any **Insured**, provided this exclusion shall not apply to:
1. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons**, where: (i) the **Claim** is brought and maintained without the participation, solicitation or active assistance of the **Company** or any **Insured Person**; or (ii) any such participation, solicitation or active assistance of the **Company** or any **Insured Person** is protected by any whistleblower statute or is solely pursuant to, or in compliance with, an enforceable subpoena or legal process;
  2. a **Claim** that is brought by an **Insured Person** for indemnity or contribution, provided the **Claim** directly results from another **Claim** that is covered under this Policy;
  3. a **Claim** that is brought by or on behalf of a bankruptcy trustee, examiner, receiver, or creditors' committee of the **Company** against which such **Claim** is made, or any assignee of such bankruptcy trustee, examiner, receiver, or creditors' committee;
  4. a **Claim** by an **Insured Person** who has not served as an **Insured Person** for at least two (2) years prior to the date such **Claim** is first made, and who brings and maintains such **Claim** without the participation, solicitation or active assistance of the **Company** or any other **Insured Person** who currently serves or has served within the past two (2) years as an **Insured Person**; or
  5. any **Claim** against an **Insured Person** resulting from "Whistleblowing." For purposes of the preceding sentence, "Whistleblowing" means the disclosure by an **Insured** of mismanagement, corruption, illegality or other wrongdoing;

The following Exclusions are applicable to **INSURING AGREEMENT C.**:

The **Insurer** shall not be liable to pay any **Loss** arising from any **Claim**:

- E. arising out of, based upon or in consequence of, resulting from or in any way involving any violation of any statutory, regulatory or common law, governing any of the following activities: unfair trade practices, anti-trust, unfair competition, or tortious interference in another's business or contractual relationships;
- F. arising out of, based upon or in consequence of, resulting from or in any way involving any **Insured's** performance of or failure to perform professional services for others; provided, however, that this exclusion shall not apply to any derivative action alleging failure to supervise those who performed or failed to perform such professional services;
- G. based upon or attributable to liability under any oral or written contract or agreement including but not limited to any express warranties or guarantees, or liability assumed under any oral or written contract or agreement; provided, however, that this exclusion shall not be applicable to an **Insured's** alleged liability that exists in the absence of such contract or agreement;
- H. for infringement or violation of patent, trademark, trade secret copyright, misappropriation, plagiarism or any other intellectual property rights;
- I. arising out of, based upon or in consequence of, resulting from or in any way involving any actual or alleged any libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
- J. arising out of, based upon or in consequence of, resulting from or in any way involving: (i) any violation of the Telephone Consumer Protection Act (TCPA), including any amendments or additions thereto, or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, local, or foreign statutory or common law; or

- K. arising out of, based upon or in consequence of, resulting from or in any way involving any of the following:
1. malfunction, defect, or failure of any goods or products manufactured, distributed, sold, installed, marketed, developed or processed by the **Insured**;
  2. failure of goods, products, brands or services to conform with any statements or misrepresentations of quality or performance made in the advertising, promotions, marketing or labeling; or
  3. incorrect or inadequate or misleading description of goods, products, brands or services in the advertising, marketing, promotions or labeling; or
  4. failure to warn or to provide any warnings relating to any risks associated with the use of any goods, products, brands or services, whether required by statute, law, ordinance, regulation or by common law, including but not limited to California Proposition 65, or any other similar or substantially similar federal, state, or local statute; or

#### IV. ADDITIONAL TERMS AND CONDITIONS

In addition to the provisions set forth in the GENERAL TERMS AND CONDITIONS, the following provisions shall apply to this **Coverage Part**:

A. Order of Payments

In the event a covered **Claim** results in **Loss** payable under this Policy, the **Insurer** shall:

1. first pay **Loss** for which coverage is provided under **Insuring Agreement A.**; then
2. only after payment of all applicable **Loss** is made pursuant to paragraph IV.A.1., above, whatever amounts remaining of the Aggregate Limit of Liability for this **Coverage Part**, and subject to the Policy Maximum Aggregate Limit of Liability, shall be paid by the **Insurer** for any **Loss** covered under **Insuring Agreements B., C., and D.**, if the **Insurer** is directed to do so in writing by the **Named Insured**.

B. If a **Company** fails or refuses, other than for reason of financial impairment, to indemnify an **Insured Person** for **Loss** to the fullest extent permitted by statutory or common law, then any payment by the **Insurer** of such **Loss** shall be excess of the Retention applicable to **INSURING AGREEMENT B.**

C. Fully Non-Rescindable

The coverage provided by this **Coverage Part** shall not be rescinded by the **Insurer** for any reason; but such coverage shall be subject to all terms, conditions, and exclusions of this Policy.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF THE DECLARATIONS PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

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## EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

THIS IS A "CLAIMS MADE AND REPORTED" COVERAGE PART. SUBJECT TO ITS TERMS AND PROVISIONS, THIS COVERAGE PART ONLY APPLIES TO CLAIMS FIRST MADE AGAINST THE INSURED, AND FIRST REPORTED TO THE INSURER IN THE TIME AND MANNER REQUIRED BY THIS POLICY. IN ADDITION, DEFENSE EXPENSES ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THIS ENTIRE COVERAGE PART CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS COVERAGE PART OR ANY OTHER PART OF THE POLICY.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insured** agree as follows:

### I. INSURING AGREEMENTS

#### A. Employment Practices Liability

The **Insurer** shall pay, on behalf of the **Insureds**, **Loss** arising from any **Employment Claim** for **Employment Practices Wrongful Acts** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

#### B. Third-Party Liability for Discrimination

Subject to the Sub-Limit of Liability set forth in Item 2. of the Declarations, the **Insurer** shall pay, on behalf of the **Insureds**, **Loss** arising from any **Third-Party Discrimination Claim** for **Third-Party Discrimination** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and is reported to the **Insurer** in the time and manner required by this Policy.

### II. DEFINITIONS

For the purposes of this **Coverage Part**:

#### A. **Claim** means:

1. a written demand for monetary, non-monetary, or injunctive relief made upon an **Insured** for a **Wrongful Act**;
2. a written demand for mediation, arbitration or any other alternative dispute resolution process made upon an **Insured**;
3. a civil, administrative, regulatory, arbitration or criminal proceeding for monetary or non-monetary relief against an **Insured** for a **Wrongful Act**, which is commenced by service of a complaint or similar pleading or return of an indictment or information in the case of a criminal proceeding;
4. an official request for **Extradition**, or the execution of a warrant for the arrest of any **Executive** where such execution is an element of **Extradition**, against an **Insured Person** for a **Wrongful Act**;
5. any administrative or regulatory proceeding for monetary or non-monetary relief against an **Insured** which is commenced by receipt of a notice of charges;
6. any civil, administrative, or criminal investigation of an **Insured** commenced by a written notice or subpoena from the Equal Employment Opportunity Commission ("EEOC") or any similar foreign, state, or local agency; or

7. any written request to toll or waive a statute of limitations received by an **Insured** concerning an **Employment Practices Wrongful Act** or **Third-Party Discrimination**.
- B. **Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or to otherwise answer any criminal allegations.
- C. **Insured** means:
1. the **Company**; and
  2. any **Insured Person**.
- D. **Insured Person** means any **Executive** or **Employee**, but solely in their respective capacities as such.
- E. **Loss** means **Defense Expenses** and the amounts an **Insured** is legally obligated to pay as a result of any **Employment Claim** or **Third-Party Discrimination Claim**, including:
1. settlements;
  2. compensatory damages;
  3. judgments, including awarded costs, prevailing plaintiff's attorney's fees, and pre-judgment and post-judgment interest;
  4. front pay and back-pay;
  5. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act;
  6. punitive, exemplary and multiplied damages; or
  7. attorney fees awarded to the prevailing plaintiff's counsel pursuant to a covered.

**Loss**, other than **Defense Expenses**, shall not include:

1. any civil or criminal fines or penalties imposed by law, other than punitive or exemplary damages or the multiple portion of a judgment or award of multiplied damages;
2. taxes;
3. **Clean Up Costs**;
4. the cost of any non-monetary relief, including without limitation: any costs associated with complying with any injunctive relief of any kind or nature imposed by any judgment or settlement, and the costs associated with the modification of any building or property in order to provide any reasonable accommodation under the Americans With Disabilities Act or any similar foreign, federal, state, or local statute, regulation, or common law;
5. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
6. payment of any benefits or other perquisites, including any payment of insurance benefits;
7. severance payments or any express written obligation to make payment in the event employment is terminated, or any damages owed under an express written employment contract, a leased employee contract, or an independent contractor service agreement; and
8. commissions, bonuses, profit sharing, return of distribution of profits, reimbursable expenses, redemption of shares or equity.

The **Insureds'** good faith determination as to the insurability of matters otherwise included within this definition shall not be contested by the **Insurer**; such good faith determination shall be based upon the most favorable law bearing a reasonable relationship to the **Insured**, the **Insurer**, or the **Claim**.

F. **Wrongful Act** means:

1. any **Employment Practices Wrongful Act**;
2. any **Third-Party Discrimination**; or
3. any **Interrelated Wrongful Act**.

### III. EXCLUSIONS

The **Insurer** shall not be liable to pay any **Loss** arising from any **Claim**:

- A. 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; or
- B. made against a **Subsidiary** or any **Insured Person** of such subsidiary for any **Employment Practices Wrongful Act** or **Third-Party Discrimination** committed or allegedly committed during any time when such entity was not a **Subsidiary**.
- C. brought or maintained by or on behalf of any **Insured**, provided this exclusion shall not apply to:
  1. a **Claim** that is brought by an **Insured Person** for indemnity or contribution, provided the **Claim** directly results from another **Claim** that is otherwise covered under this **Coverage Part**; or
  2. that portion of any **Claim** by an **Insured Person** that alleges an **Employment Practices Wrongful Act**;
- D. based upon or attributable to liability under any oral or written contract or agreement including but not limited to any express warranties or guarantees, or liability assumed under any oral or written contract or agreement; provided, however, this exclusion shall not be applicable to: (i) an **Insured's** alleged liability that exists in the absence of such contract or agreement; or (ii) any **Claim** against an **Insured** by a client or customer of the **Insured** alleging a breach of contractual obligations in the rendering of or failure to render services that are otherwise covered under this Policy.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF THE DECLARATIONS PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

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## FIDUCIARY LIABILITY COVERAGE PART

THIS IS A "CLAIMS MADE AND REPORTED" COVERAGE PART. SUBJECT TO ITS TERMS AND PROVISIONS, THIS COVERAGE PART ONLY APPLIES TO CLAIMS FIRST MADE AGAINST THE INSURED, AND FIRST REPORTED TO THE INSURER IN THE TIME AND MANNER REQUIRED BY THIS POLICY. IN ADDITION, DEFENSE EXPENSES ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THIS ENTIRE COVERAGE PART CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS COVERAGE PART OR ANY OTHER PART OF THE POLICY.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insured** agree as follows:

### I. INSURING AGREEMENTS

#### A. Fiduciary Liability

The **Insurer** shall pay, on behalf of the **Insureds**, **Loss** resulting from any **Claim** for a **Wrongful Act** taking place prior to the end of the **Policy Period**, and which is first made against the **Insured** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** in the time and manner required by this Policy.

#### B. Voluntary Settlement Programs

Subject to the Sub-Limit of Liability set forth in Item 2. of the Declarations, such sublimit being part of, and not in addition to, the Limit of Liability applicable to this **Coverage Part**, the **Insurer** shall pay, on behalf of an **Insured**, a **Voluntary Settlement Amount** and **Defense Expenses** resulting from a **Settlement Program Notice** first given to the **Insurer** during the **Policy Period** or the Discovery Period (if applicable), provided such **Voluntary Settlement Amount** and **Defense Expenses** are incurred after such **Settlement Program Notice** is first given to the **Insurer**.

### II. DEFINITIONS

For purposes of this **Coverage Part**:

- A. **Administration** means: (i) counseling or giving advice to **Employees**, beneficiaries or **Plan** participants with respect to any **Plan**; (ii) providing interpretations with respect to any **Plan**; (iii) handling records in connection with any **Plan**; (iv) calculating benefits any **Plan**, and preparing distributing or filing required documents with respect any **Plan**; and (iv) enrolling, terminating or canceling **Employees**, beneficiaries or participants under any **Plan**.
- B. **Claim** means:
1. a written demand for monetary, non-monetary, or injunctive relief made upon an **Insured** for a **Wrongful Act**;
  2. a civil or criminal proceeding for monetary or non-monetary relief against an **Insured** for a **Wrongful Act**, which is commenced by service of a complaint or similar pleading or return of an indictment or information in the case of a criminal proceeding;
  3. any administrative or regulatory proceeding for monetary or non-monetary relief against an **Insured** for a **Wrongful Act**, which is commenced by receipt of a notice of charges; or a formal administrative, regulatory, adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document;



4. an investigation of an **Insured** by the U.S. Department of Justice, the U.S. Pension Benefit Guarantee Corporation, or a similar state or foreign government authority once a subpoena issued by the SEC or similar state or foreign government authority is served upon such **Insured**;
5. an official request for **Extradition**, or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**, against an **Insured Person** for a **Wrongful Act** or
6. any written request to toll or waive a statute of limitations received by an **Insured** concerning any **Wrongful Act**.

**Claim** shall not include any **Settlement Program Notice** or any informal investigation.

C. **Financial Impairment** means the status of an **Insured** resulting from:

1. becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of another country, provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Insured**, or other party determined to have standing, for authorization of the **Insured** to indemnify an **Insured Person** for **Loss**; or
2. the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured**.

D. **Insured** means:

1. the **Company**;
2. any **Insured Person**; and
3. any **Plan**.

E. **Insured Person** means any **Executive, Employee, Plan** committee member, member of a **Plan** advisory board, or any other natural person who was, now is or shall be a duly elected or appointed trustee, director, officer or employee of any **Plan**, but solely while acting in their respective capacities as a fiduciary of such **Plan**.

F. **Loss** means the amounts an **Insured** is legally obligated to pay as a result of any **Claim**, including:

1. compensatory damages;
2. judgments, including awarded costs, fees, and pre-judgment and post-judgment interest;
3. **Defense Expenses**;
4. punitive, exemplary and multiplied damages; and
5. settlements.

**Loss** shall not include:

1. **Voluntary Settlement Amounts**;
2. any civil or criminal fines or penalties imposed by law, other than punitive or exemplary damages or the multiple portion of a judgment or award of multiplied damages, except:
  - i. the 5% or less civil penalties imposed under § 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA) or the 20% or less civil penalties imposed under § 502(l) of ERISA;
  - ii. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, provided that the **Insurer's** maximum aggregate liability for all such civil money penalties under this **Coverage Part** shall be subject to a sublimit of Two-Hundred-Fifty-Thousand Dollars (\$250,000) that shall be the maximum aggregate amount that the **Insurer** shall pay for all such penalties and shall be part of, and not in addition to, the Limit of Liability applicable to this **Coverage Part**;

3. taxes;
4. **Clean Up Costs**;
5. the cost of any non-monetary relief, including without limitation any costs associated with complying with any injunctive relief of any kind or nature imposed by any judgment or settlement;
6. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
7. benefits due or to become due under any **Plan**; benefits which would be due under any **Plan** if such **Plan** complied with all applicable law; or that portion of any settlement or judgment which constitutes such benefits; provided, however, that **Loss** shall include recovery for such benefits based upon a covered **Wrongful Act** by an **Insured Person** and provided such benefits are payable as a personal obligation of such **Insured Person**;
8. contributions owed by the **Company** to any **Plan** for which any **Insured** failed to collect from the **Company**;
9. the return or reversion to an employer of any contribution or asset of a **Plan** other than that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan** due to investment losses, lost investment opportunities, excessive costs or failure to comply with the participants' investment directions; or
10. any matter deemed uninsurable under the law pursuant to which this Policy shall be construed.

The **Insureds'** good faith determination as to the insurability of matters otherwise included within this definition shall not be contested by the **Insurer**; such good faith determination shall be based upon the most favorable law bearing a reasonable relationship to the **Insured**, the **Insurer**, or the **Claim**.

G. **Plan** means:

1. any employee benefit plan, pension benefit plan or welfare benefit plan, as each is defined in the Employee Retirement Income Security Act of 1974 (ERISA), which was, is now, or hereafter becomes sponsored either solely by the **Company** or sponsored jointly by the **Company** and a labor organization, and is solely for the benefit of the **Employees** of the **Company**;
2. any other employee benefit plan or program not subject to the Employee Retirement Income Security Act of 1974 (ERISA) sponsored solely by the **Company** for the benefit of the **Employees** of the **Company**, including any fringe benefit, excess benefit plan or voluntary **Employees'** beneficiary association;
3. any employee benefit plan or program otherwise described in paragraphs 1. or 2., above, while such plan or program is being actively developed, formed or proposed by the **Company** prior to the formal creation of such plan or program; provided, however, no coverage is afforded under this **Coverage Part** for any **Claim** against an **Insured** in a settlor or similar uninsured capacity with respect to any plan or program;
4. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for **Employees** of the **Company**; and
5. any other plan, fund or program specifically identified as a **Plan** by written endorsement attached to and made a part of this **Coverage Part**.

**Plan** shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by the Employee Retirement Income Security Act of 1974 (ERISA), unless such plan is specifically included as a **Plan** by endorsement to this Policy.

- H. **Settlement Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, Voluntary Fiduciary Correction Program, and any similar program administered by a governmental authority located outside the United States.
- I. **Settlement Program Notice** means prior written notice to the **Insurer** by any **Insured** of such **Insured's** intent to enter into a **Settlement Program**.
- J. **Voluntary Settlement Amount** means any fees, fines, or penalties paid by an **Insured** to a governmental authority pursuant to a **Settlement Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation.
- Voluntary Settlement Amount** shall not include:
1. any costs to correct any non-compliance, or any other charges, expenses, taxes or damages; or
  2. any fees, fines, or penalties relating to a **Plan** which, as of the earlier of the inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this Policy is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.
- K. **Wrongful Act** means:
1. any actual or alleged breach of duty, error, misstatement, act or omission by any **Insured** in the discharge of such **Insured's** duties in such **Insured's** capacity, or solely by reason of such **Insured's** status, as a fiduciary of any **Plan**;
  2. any actual or alleged negligent act, error or omission actually or allegedly committed or attempted by any **Insured** solely in the **Administration** of any **Plan**;
  3. any actual or alleged negligent act, error, or omission by an **Insured** in such **Insured's** capacity as a settlor of a **Plan**; or
  4. any **Interrelated Wrongful Act**.

### III. EXCLUSIONS

The **Insurer** shall not be liable to pay any **Loss** or **Voluntary Settlement Amounts** arising from any **Claim** or **Settlement Program Notice**:

- A. for any actual or alleged **Wrongful Acts** committed or attempted by or on behalf of a **Plan** or its **Insureds** before the date such **Plan** became an **Insured**;

For the purpose of determining the applicability of this Exclusion:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
  2. the **Wrongful Act** of any past, present, or future Chief Financial Officer, Chief Executive Officer, Chief Operating Officer or head of benefits (or any positions equivalent to the foregoing) of the **Company** shall be imputed to the **Company**.
- B. arising out of, based upon or in consequence of, resulting from, or in any way involving any actual or alleged negligent act, error, or omission by an **Insured** in such **Insured's** capacity as a settlor of a **Sponsored Plan**; provided, however, that this exclusion shall not apply to **Defense Expenses**.

#### IV. TERMINATION OF PLAN

If before or during the **Policy Period** a **Plan** is terminated, coverage with respect to such **Plan** and its **Insureds** shall continue until termination of this Policy. Such coverage continuation shall apply solely with respect to **Claims** for **Wrongful Acts** taking place prior to the date the **Plan** was terminated. In the event a **Plan** is terminated during the **Policy Period**, the entire premium for this **Coverage Part** shall be deemed fully earned immediately upon the consummation of such termination.

#### V. CREATION OR ACQUISITION OF A BENEFIT PLAN

If, during the **Policy Period**, the **Company** creates or acquires any employee benefit plan, welfare benefit plan or pension benefit plan (as defined in the Employee Retirement Income Security Act of 1974, as amended) sponsored solely by the **Company** for the benefit of **Employees** located anywhere in the world, such plan shall be deemed a **Plan**; provided, however, no coverage shall be afforded to the **Insureds** for any actual or alleged **Wrongful Act** taking place or allegedly taking place prior to the effective date of such creation or acquisition.

#### VI. NO RETENTION FOR NON-INDEMNIFIABLE LOSS

No Retention shall apply to any **Loss** which an **Insured Person** becomes legally obligated to pay under this **Coverage Part** and for which such **Insured Person** is not indemnified by the **Company** or **Plan** either because the **Company** or **Plan** is not permitted by statutory or common law to grant such indemnification or because of **Financial Impairment**.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF THE DECLARATIONS PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

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## COMMERCIAL CRIME COVERAGE PART

THIS COVERAGE PART, SUBJECT TO ITS TERMS AND CONDITIONS, ONLY APPLIES TO LOSSES FIRST **DISCOVERED** DURING THE POLICY PERIOD THAT ARE REPORTED TO THE INSURER IN THE TIME AND MANNER REQUIRED BY THIS POLICY.

PLEASE READ THIS ENTIRE COVERAGE PART CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS COVERAGE PART OR ANY OTHER PART OF THE POLICY.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insureds** agree as follows:

### A. Insuring Agreements

Coverage is provided under the following **Insuring Agreements** for which a Limit of Insurance is shown in the Declarations and applies to loss that the **Company** sustains resulting directly from an **Occurrence** taking place during the **Policy Period**, except as provided in Condition **E.1.k.** or **E.1.l.**, which is "**Discovered**" by the **Company** during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.f.**:

#### 1. Employee Theft

The **Insurer** will pay for loss of or damage to **Money, Securities** and **Other Property** resulting directly from **Theft** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

For the purposes of this **Insuring Agreement**, **Theft** shall also include **Forgery**.

#### 2. Forgery Or Alteration

a. The **Insurer** will pay for loss resulting directly from **Forgery** or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in **Money** that are:

- (1) Made or drawn by or drawn upon the **Company**; or
  - (2) Made or drawn by one acting as the **Company's** agent;
- or that are purported to have been so made or drawn.

For the purposes of this **Insuring Agreement**, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If the **Company** is sued for refusing to pay any instrument covered in Paragraph **2.a.**, on the basis that it has been forged or altered, and the **Company** have our written consent to defend against the suit, the **Insurer** will pay for any reasonable legal expenses that the **Company** incur and pay in that defense. The amount that the **Insurer** will pay for such legal expenses is in addition to the Limit of Insurance applicable to this **Insuring Agreement**.

#### 3. Inside The Premises - Theft Of Money And Securities

The **Insurer** will pay for:

a. Loss of **Money** and **Securities** inside the **Premises** or **Financial Institution Premises**:

- (1) Resulting directly from **Theft** committed by a person present inside such **Premises** or **Financial Institution Premises**; or
- (2) Resulting directly from disappearance or destruction.

- b. Loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Theft of Money and Securities**, if the **Company** is the owner of the **Premises** or is liable for damage to it.
- c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the **Premises** resulting directly from an actual or attempted **Theft** of, or unlawful entry into, those containers.

#### 4. Inside The Premises - Robbery Or Safe Burglary Of Other Property

The **Insurer** will pay for:

- a. Loss of or damage to **Other Property**:
  - (1) Inside the **Premises** resulting directly from an actual or attempted **Robbery** of a **Custodian**; or
  - (2) Inside the **Premises** in a safe or vault resulting directly from an actual or attempted **Safe Burglary**.
- b. Loss from damage to the **Premises** or its exterior resulting directly from an actual or attempted **Robbery** or **Safe Burglary of Other Property**, if the **Company** is the owner of the **Premises** or is liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the **Premises** resulting directly from an actual or attempted **Robbery** or **Safe Burglary**.

#### 5. Outside The Premises

The **Insurer** will pay for:

- a. Loss of **Money** and **Securities** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from **Theft**, disappearance or destruction.
- b. Loss of or damage to **Other Property** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from an actual or attempted **Robbery**.

#### 6. Computer And Funds Transfer Fraud

- a. The **Insurer** will pay for:
  - (1) Loss resulting directly from a fraudulent:
    - (a) Entry of **Electronic Data** or **Computer Program** into; or
    - (b) Change of **Electronic Data** or **Computer Program** within;  
any **Computer System** owned, leased or operated by the **Company**, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs **6.a.(1)(a)** and **6.a.(1)(b)**:
      - (i) **Money, Securities** or **Other Property** to be transferred, paid or delivered; or
      - (ii) The **Company's** account at a **Financial Institution** to be debited or deleted.
  - (2) Loss resulting directly from a **Fraudulent Instruction** directing a **Financial Institution** to debit the **Company's** "transfer account" and to transfer, pay or deliver **Money** or **Securities** from that account.
- b. As used in Paragraph **6.a.(1)**, fraudulent entry or fraudulent change of **Electronic Data** or **Computer Program** shall include such entry or change made by an **Employee** acting, in good faith, upon a **Fraudulent Instruction** received from a computer software contractor who has a written agreement with the **Company** to design, implement or service **Computer Programs** for a **Computer System** covered under this **Insuring Agreement**.

## 7. Money Orders And Counterfeit Money

The **Insurer** will pay for loss resulting directly from the **Company's** having, in good faith, accepted in exchange for merchandise, **Money** or services:

- a. **Money** orders issued by any post office, express company or **Financial Institution** that are not paid upon presentation; or
- b. **Counterfeit Money** that is acquired during the regular course of business.

## B. Limit Of Insurance

The most the **Insurer** will pay for all loss resulting directly from an **Occurrence** is the applicable Limit of Insurance shown in the Declarations.

If any loss is covered under more than one **Insuring Agreement** or coverage, the most the **Insurer** will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those **Insuring Agreements** or coverages.

## C. Deductible

The **Insurer** will not pay for loss resulting directly from an **Occurrence** unless the amount of loss exceeds the Deductible Amount shown in the Declarations. The **Insurer** will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

## D. Exclusions

1. This Policy does not cover:

### a. Acts Committed By The Company, The Company's Partners Or The Company's Members

Loss resulting from **Theft** or any other dishonest act committed by:

(1) The **Company**; or

(2) Any of the **Company's** partners or **Members**;

whether acting alone or in collusion with other persons.

### b. Acts Committed By Company Employees Learned Of By Company Prior To The Policy Period

Loss caused by an **Employee** if the **Employee** had also committed **Theft** or any other dishonest act prior to the effective date of this Policy and the **Company** or any of **Company** partners, **Members, Managers**, officers, directors or trustees, not in collusion with the **Employee**, learned of such **Theft** or dishonest act prior to the **Policy Period** shown in the Declarations.

### c. Acts Committed By The Company's Employees, Managers, Directors, Trustees Or Representatives

Loss resulting from **Theft** or any other dishonest act committed by any of the **Company's Employees, Managers**, directors, trustees or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) While performing services for the **Company** or otherwise;

except when covered under **Insuring Agreement A.1**.

**d. Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of the **Company's** confidential or personal information. However, this Paragraph 1.d.(2) does not apply to loss otherwise covered under this Policy that results directly from the use of the **Company's** confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by the **Company** which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**f. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**g. Indirect Loss**

Loss that is an indirect result of an **Occurrence** covered by this Policy including, but not limited to, loss resulting from:

- (1) The **Company's** inability to realize income that the **Company** would have realized had there been no loss of or damage to **Money, Securities or Other Property**;
- (2) Payment of damages of any type for which the **Company** is legally liable. But, the **Insurer** will pay compensatory damages arising directly from a loss covered under this Policy; or
- (3) Payment of costs, fees or other expenses the **Company** incurs in establishing either the existence or the amount of loss under this Policy.

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by the **Company** which are related to any legal action, except when covered under **Insuring Agreement A.2**.

**i. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**j. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.



**I. War And Military Action**

Loss or damage resulting from:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**2. Insuring Agreement A.1. does not cover:**

**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where the **Company** establishes wholly apart from such computations that the **Company** has sustained a loss, then the **Company** may offer the **Company's** inventory records and actual physical count of inventory in support of the amount of loss claimed.

**b. Trading**

Loss resulting from trading, whether in the **Company's** name or in any other genuine or fictitious account.

**c. Warehouse Receipts**

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

**3. Insuring Agreements A.3., A.4. and A.5. do not cover:**

**a. Accounting Or Arithmetical Errors Or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**b. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**c. Fire**

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to **Money** and **Securities**; and
- (2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any **Money** operated device unless the amount of **Money** deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

**f. Transfer Or Surrender Of Property**

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the **Premises** or **Financial Institution Premises**:
- (a) On the basis of unauthorized instructions; or
  - (b) As a result of a threat including, but not limited to:
    - (i) A threat to do bodily harm to any person;
    - (ii) A threat to do damage to any property;
    - (iii) A threat to introduce a denial of service attack into any **Computer System**;
    - (iv) A threat to introduce a virus or other malicious instruction into any **Computer System** which is designed to damage, destroy or corrupt **Electronic Data** or **Computer Programs** stored within the **Computer System**;
    - (v) A threat to contaminate, pollute or render substandard the **Company's** products or goods; or
    - (vi) A threat to disseminate, divulge or utilize:
      - i. The **Company's** confidential information;
      - ii. Confidential or personal information of another person or organization; or
      - iii. Weaknesses in the source code within any **Computer System**.
- (2) However, this exclusion does not apply under **Insuring Agreement A.5.** to loss of **Money, Securities** or **Other Property** while outside the **Premises** in the care and custody of a **Messenger** if the **Company**:
- (a) Had no knowledge of any threat at the time the conveyance began; or
  - (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or **Other Property** by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from the **Company**, or anyone else acting on the **Company's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement A.6.** does not cover:

**a. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of **Electronic Data** or **Computer Program** into; or
- (2) Change of **Electronic Data** or **Computer Program** within;

any **Computer System** owned, leased or operated by the **Company** by a person or organization with authorized access to that **Computer System**, except when covered under **Insuring Agreement A.6.b.**

**b. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**c. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**d. Fraudulent Instructions**

Loss resulting from an **Employee** or **Financial Institution** acting upon any instruction to:

- (1) Transfer, pay or deliver **Money, Securities** or **Other Property**; or
- (2) Debit or delete the **Company's** account;

which instruction proves to be fraudulent, except when covered under **Insuring Agreement A.6.a.(2)** or **A.6.b.**

**e. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

**E. Conditions**

**1. Conditions Applicable To All Insuring Agreements**

**a. Additional Premises Or Employees**

If, while this Policy is in force, the **Company** establishes any additional **Premises** or hires additional **Employees**, other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such **Premises** and **Employees** shall automatically be covered under this Policy. Notice to us of an increase in the number of **Premises** or **Employees** is not required, and no additional premium will be charged for the remainder of the **Policy Period** shown in the Declarations.

**b. Concealment, Misrepresentation Or Fraud**

This **Coverage Part** is void in any case of fraud by the **Company** as it relates to this Policy at any time. It is also void if the **Company** or any other **Insured**, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This Policy;
- (2) The property covered under this Policy;
- (3) The **Company's** interest in the property covered under this Policy; or
- (4) A claim under this Policy.

**c. Duties In The Event Of Loss**

After the **Company discovers** a loss or a situation that may result in loss of or damage to **Money, Securities** or **Other Property**, the **Company** must:

- (1) Notify the **Insurer** as soon as possible. If the **Company** has reason to believe that any loss (except for loss covered under **Insuring Agreement A.1.** or **A.2.**) involves a violation of law, the **Company** must also notify the local law enforcement authorities;
- (2) Give the **Insurer** a detailed, sworn proof of loss within 120 days;

- (3) Cooperate with the **Insurer** in the investigation and settlement of any claim;
- (4) Produce for the **Insurer's** examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of the **Company's** answers; and
- (6) Secure all of the **Company's** rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

**d. Employee Benefit Plans**

The **Employee Benefit Plans** shown in the Declarations (hereafter referred to as Plan) are included as **Insureds** under **Insuring Agreement A.1.**, subject to the following:

- (1) If any Plan is insured jointly with any other entity under this Policy, the **Company** or the Plan Administrator is responsible for selecting a Limit of Insurance for **Insuring Agreement A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.
- (2) With respect to loss sustained or **Discovered** by any such Plan, **Insuring Agreement A.1.** is replaced by the following:

The **Insurer** will pay for loss of or damage to **Money, Securities and Other Property** resulting directly from fraudulent or dishonest acts committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons.

- (3) If the **Named Insured** is an entity other than a Plan, any payment the **Insurer** make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (4) If two or more Plans are insured under this **Coverage Part**, any payment the **Insurer** make for loss:
  - (a) Sustained by two or more Plans; or
  - (b) Of commingled **Money, Securities or Other Property** of two or more Plans;

resulting directly from an **Occurrence**, will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

- (5) The Deductible Amount applicable to **Insuring Agreement A.1.** does not apply to loss sustained by any Plan.

**e. Examination Of Company Books And Records**

The **Insurer** may examine and audit **Company** books and records as they relate to this **Coverage Part** at any time during the **Policy Period** shown in the Declarations and up to three years afterward.

**f. Extended Period To Discover Loss**

The **Insurer** will pay for loss that the **Company** sustained prior to the effective date of cancellation of this Policy, which is **Discovered** by the **Company**:

- (1) No later than one year from the date of that cancellation. Provided, however, this extended period to **discover** loss terminates immediately upon the effective date of any other insurance obtained by the **Company**, whether from us or another insurer, replacing in whole or in part the coverage afforded under this **Coverage Part**, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any **Employee Benefit Plan**.

**g. Inspections And Surveys**

- (1) The **Insurer** has the right to:
  - (a) Make inspections and surveys at any time;
  - (b) Give the **Company** reports on the conditions the **Insurer** finds; and
  - (c) Recommend changes.
- (2) The **Insurer** is not obligated to make any inspections, surveys, reports or recommendations and any such actions undertaken by the **Insurer** relate only to insurability and the premiums to be charged. The **Insurer** does not make safety inspections. The **Insurer** does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public, and does not warrant that conditions:
  - (a) Are safe or healthful; or
  - (b) Comply with laws, regulations, codes or standards.
- (3) Paragraphs **g.(1)** and **g.(2)** apply not only to the **Insurer**, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

**h. Joint Insured**

- (1) If more than one **Insured** is named in the Declarations, the first **Named Insured** will act for itself and for every other **Insured** for all purposes of this **Coverage Part**. If the first **Named Insured** ceases to be covered, then the next **Named Insured** will become the first **Named Insured**.
- (2) If any **Insured**, or partner, **member**, **Manager**, officer, director or trustee of that **Insured** has knowledge of any information relevant to this Policy, that knowledge is considered knowledge of every **Insured**.
- (3) An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.
- (4) If this Policy or any of its coverages are cancelled as to any **Insured**, loss sustained by that **Insured** is covered only if it is **Discovered** by the **Company**:
  - (a) No later than one year from the date of that cancellation. However, this extended period to **discover** loss terminates immediately upon the effective date of any other insurance obtained by that **Insured**, whether from the **Insurer** or another insurer, replacing in whole or in part the coverage afforded under this Policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than one year from the date of that cancellation with regard to any **Employee Benefit Plan**.
- (5) The **Insurer** will not pay more for loss sustained by more than one **Insured** than the amount the **Insurer** would pay if all such loss had been sustained by one **Insured**.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "**Employee Benefit Plan**" for loss sustained by that Plan, shall fully release us on account of such loss.

**i. Legal Action Against Us**

The **Company** or any **Insured** may not bring any legal action against us involving loss:

- (1) Unless the **Company** have complied with all the terms of this Policy;
- (2) Until 90 days after the **Company** have filed proof of loss with us; and
- (3) Unless brought within two years from the date the **Company Discovered** the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

**j. Liberalization**

If the **Insurer** adopts any revision that would broaden the coverage under this Policy without additional premium within 45 days prior to or during the **Policy Period** shown in the Declarations, the broadened coverage will immediately apply to this Policy.

**k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

**(1) Loss Sustained Partly During This Policy And Partly During Prior Insurance**

If the **Company discovers** loss during the Policy Period shown in the Declarations, resulting directly from an **Occurrence** taking place:

- (a) Partly during the Policy Period shown in the Declarations; and
- (b) Partly during the policy period(s) of any prior cancelled insurance that the **Insurer** or any affiliate issued to the **Company** or any predecessor in interest;

and this Policy became effective at the time of cancellation of the prior insurance, the **Insurer** will first settle the amount of loss that the **Company** sustained during this Policy Period. The **Insurer** will then settle the remaining amount of loss that the **Company** sustained during the policy period(s) of the prior insurance.

**(2) Loss Sustained Entirely During Prior Insurance**

If the **Company discovers** loss during the **Policy Period** shown in the Declarations, resulting directly from an **Occurrence** taking place entirely during the policy period(s) of any prior cancelled insurance that the **Insurer** or any affiliate issued to the **Company** or any predecessor in interest, the **Insurer** will pay for the loss, provided:

- (a) This Policy became effective at the time of cancellation of the prior insurance; and
- (b) The loss would have been covered under this Policy had it been in effect at the time of the **Occurrence**.

The **Insurer** will first settle the amount of loss that the **Company** sustained during the most recent prior insurance. The **Insurer** will then settle any remaining amount of loss that the **Company** sustained during the policy period(s) of any other prior insurance.

**(3) In settling loss under Paragraphs o.(1) and o.(2):**

- (a) The most the **Insurer** will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this Policy or was written under the prior insurance issued by us.

- (b) The **Insurer** will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this Policy. If no loss was sustained under this Policy, the **Insurer** will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this Policy, or the most recent prior insurance, the **Insurer** will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

The **Insurer** will not apply any other Deductible Amount that may have been applicable to the loss.

- (4) The following examples demonstrate how the **Insurer** will settle losses subject to this condition:

**Example Number 1**

The **Insured** sustained a covered loss of \$10,000 resulting directly from an **Occurrence** taking place during the terms of Policy **A** and Policy **B**.

**Policy A**

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Policy B**

Issued prior to Policy **A**. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Settlement Of Loss**

The amount of loss sustained under Policy **A** is \$2,500 and under Policy **B**, \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy **A**. The Policy **A** Deductible Amount of \$5,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy **A** (\$2,500) is settled first. The amount the **Insurer** will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).
- (b) The remaining amount of loss sustained under Policy **B** (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy **A** of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most the **Insurer** will pay for this loss is \$5,000.

**Example Number 2**

The **Insured** sustained a covered loss of \$250,000 resulting directly from an **Occurrence** taking place during the terms of Policy **A** and Policy **B**.

**Policy A**

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

**Policy B**

Issued prior to Policy **A**. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

**Settlement Of Loss**

The amount of loss sustained under Policy **A** is \$175,000 and under Policy **B**, \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy **B**. The Policy **A** Deductible Amount of \$10,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy **A** (\$175,000) is settled first. The amount the **Insurer** will pay is the Policy **A** Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000, which is greater than the \$125,000 policy limit.
- (b) The remaining amount of loss sustained under Policy **B** (\$75,000) is settled next. The amount the **Insurer** will pay is \$25,000 (i.e., \$150,000 Policy **B** limit - \$125,000 paid under Policy **A** = \$25,000).

The most the **Insurer** will pay for this loss is \$150,000.

### Example Number 3

The **Insured** sustained a covered loss of \$2,000,000 resulting directly from an **Occurrence** taking place during the terms of Policies **A**, **B**, **C** and **D**.

#### Policy A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

#### Policy B

Issued prior to Policy **A**. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

#### Policy C

Issued prior to Policy **B**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

#### Policy D

Issued prior to Policy **C**. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

#### Settlement Of Loss

The amount of loss sustained under Policy **A** is \$350,000; under Policy **B**, \$250,000; under Policy **C**, \$600,000; and under Policy **D**, \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy **A**. The Policy **A** Deductible Amount of \$100,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy **A** (\$350,000) is settled first. The amount the **Insurer** will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
- (b) The amount of loss sustained under Policy **B** (\$250,000) is settled next. The amount the **Insurer** will pay is \$250,000 (no deductible is applied).
- (c) The amount of loss sustained under Policy **C** (\$600,000) is settled next. The amount the **Insurer** will pay is \$500,000, the policy limit (no deductible is applied).
- (d) The **Insurer** will not make any further payment under Policy **D**, as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy **A** has been satisfied.

The most the **Insurer** will pay for this loss is \$1,000,000.



**I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate**

- (1) If the **Company discovers** loss during the Policy Period shown in the Declarations, resulting directly from an **Occurrence** taking place during the policy period of any prior cancelled insurance that was issued to the **Company** or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, the **Insurer** will pay for the loss under this Policy, provided:
- (a) This Policy became effective at the time of cancellation of the prior insurance; and
  - (b) The loss would have been covered under this Policy had it been in effect at the time of the **Occurrence**.
- (2) In settling loss subject to this condition:
- (a) The most the **Insurer** will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this Policy or was written under the prior cancelled insurance.
  - (b) The **Insurer** will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.
- (3) The insurance provided under this condition is subject to the following:
- (a) If loss covered under this condition is also partially covered under Condition **E.1.k.**, the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition **E.1.k.**
  - (b) For loss covered under this condition that is not subject to Paragraph **p.(3)(a)**, the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this Policy and is limited to the lesser of the amount recoverable under:
    - (i) This Policy as of its effective date; or
    - (ii) The prior cancelled insurance had it remained in effect.

**m. Other Insurance**

If other valid and collectible insurance is available to the **Company** for loss covered under this Policy, the **Insurer's** obligations are limited as follows:

**(1) Primary Insurance**

When this Policy is written as primary insurance, and:

- (a) The **Company** has other insurance subject to the same terms and conditions as this Policy, the **Insurer** will pay our share of the covered loss. The **Insurer's** share is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.
- (b) The **Company** has other insurance covering the same loss other than that described in Paragraph **q.(1)(a)**, the **Insurer** will only pay for the amount of loss that exceeds:
  - (i) The Limit of Insurance and Deductible Amount of that other insurance, whether the **Company** can collect on it or not; or
  - (ii) The Deductible Amount shown in the Declarations;whichever is greater. The **Insurer's** payment for loss is subject to the terms and conditions of this Policy.

**(2) Excess Insurance**

- (a)** When this Policy is written excess over other insurance, the **Insurer** will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether the **Company** can collect on it or not. Our payment for loss is subject to the terms and conditions of this Policy.
- (b)** However, if loss covered under this Policy is subject to a deductible, the Deductible Amount shown in the Declarations will be reduced by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**n. Ownership Of Property; Interests Covered**

The property covered under this Policy is limited to property:

- (1)** That the **Company** owns or leases;
- (2)** That is held by the **Company** in any capacity; or
- (3)** For which the **Company** is legally liable, provided the **Company** were liable for the property prior to the time the loss was sustained.

However, this Policy is for the **Company's** benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this Policy must be presented by the **Company**.

**o. Premiums**

The first **Named Insured** shown in the Declarations:

- (1)** Is responsible for the payment of all premiums; and
- (2)** Will be the payee for any return premiums the **Insurer** pays.

**p. Records**

The **Company** must keep records of all property covered under this Policy so the **Insurer** can verify the amount of any loss.

**q. Recoveries**

- (1)** Any recoveries, whether effected before or after any payment under this Policy, whether made by us or by the **Company**, shall be applied net of the expense of such recovery:
  - (a)** First, to the **Company** in satisfaction of the **Company's** covered loss in excess of the amount paid under this Policy;
  - (b)** Second, to us in satisfaction of amounts paid in settlement of the **Company's** claim;
  - (c)** Third, to the **Company** in satisfaction of any Deductible Amount; and
  - (d)** Fourth, to the **Company** in satisfaction of any loss not covered under this Policy.
- (2)** Recoveries do not include any recovery:
  - (a)** From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (b)** Of original **Securities** after duplicates of them have been issued.

**r. Territory**

This Policy covers loss that the **Company** sustains resulting directly from an **Occurrence** taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**s. Transfer Of The Company's Rights And Duties Under This Policy**

- (1) The **Company's** rights and duties under this Policy may not be transferred without our written consent except in the case of death of an individual Named Insured.
- (2) If any **Insured** dies, such **Insured's** rights and duties will be transferred to such **Insured's** legal representative but only while acting within the scope of duties as the **Insured's** legal representative. Until the **Insured's** legal representative is appointed, anyone having temporary custody of the **Insured's** property will have **Insured's** rights and duties but only with respect to that property.

**t. Transfer Of The Company's Rights Of Recovery Against Others To Us**

The **Insured** must transfer to us all the **Insured's** rights of recovery against any person or organization for any loss the **Insured** sustained and for which the **Insurer** has paid or settled. The **Insureds** must also do everything necessary to secure those rights and do nothing after loss to impair them.

**u. Valuation - Settlement**

The value of any loss for purposes of coverage under this Policy shall be determined as follows:

**(1) Money**

Loss of **Money** but only up to and including its face value. The **Insurer** will, at the **Company's** option, pay for loss of **Money** issued by any country other than the United States of America:

- (a) At face value in the **Money** issued by that country; or
- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "**Discovered**".

**(2) Securities**

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 market value of such **Securities** or replace them in kind, in which event the **Company** must assign to us all the **Company's** rights, title and interest in and to those **Securities**; or
- (b) Pay the cost of any Lost **Securities** Bond required in connection with issuing duplicates of the **Securities**. However, the **Insurer** will be liable only for the 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 the:
  - (i) Market value of the **Securities** at the close of business on the day the loss was "**Discovered**"; or
  - (ii) Limit of Insurance applicable to the **Securities**.

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to **Other Property** or loss from damage to the **Premises** or its exterior for the replacement cost of the property without deduction for depreciation. However, the **Insurer** will not pay more than the least of the following:
  - (i) The Limit of Insurance applicable to the lost or damaged property;
  - (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
  - (iii) The amount the **Company** actually spend that is necessary to repair or replace the lost or damaged property.

(b) The **Insurer** will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **y.(3)(a)**:

(i) Until the lost or damaged property is actually repaired or replaced; and

(ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, the **Insurer** will pay on an actual cash value basis.

(c) The **Insurer** will, at the **Company's** option, pay for loss or damage to such property:

(i) In the **Money** of the country in which the loss or damage was sustained; or

(ii) In the United States of America dollar equivalent of the **Money** of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "**Discovered**".

(d) Any property that the **Insurer** pay for or replace becomes our property.

## 2. Conditions Applicable To Insuring Agreement A.1.

### a. Termination As To Any Employee

This **Insuring Agreement** terminates as to any **Employee**:

(1) As soon as:

(a) The **Company**; or

(b) Any of the **Company's** partners, **Members**, **Managers**, officers, directors or trustees not in collusion with the **Employee**;

learn of **Theft** or any other dishonest act committed by the **Employee** whether before or after becoming employed by the **Company**; or

(2) On the date specified in a notice mailed to the first **Named Insured**. That date will be at least 30 days after the date of mailing.

The **Insurer** will mail or deliver our notice to the first **Named Insured's** last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

### b. Territory

The **Insurer** will pay for loss caused by any **Employee** while temporarily outside the territory specified in Territory Condition **E.1.r.** for a period of not more than 90 consecutive days.

## 3. Conditions Applicable To Insuring Agreement A.2.

### a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under **Insuring Agreement A.2**.

### b. Electronic And Mechanical Signatures

The **Insurer** will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

### c. Proof Of Loss

The **Company** must include with its proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

**d. Territory**

The **Insurer** will cover loss that the **Company** sustains resulting directly from an **Occurrence** taking place anywhere in the world. Territory Condition **E.1.r.** does not apply to **Insuring Agreement A.2.**

**4. Conditions Applicable To Insuring Agreements A.4. And A.5.**

**a. Armored Motor Vehicle Companies**

Under **Insuring Agreement A.5.**, the **Insurer** will only pay for the amount of loss the **Company** cannot recover:

- (1) Under the **Company's** contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

**b. Special Limit Of Insurance For Specified Property**

The **Insurer** will only pay up to \$5,000 for any one **Occurrence** of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**5. Conditions Applicable To Insuring Agreement A.6.**

**a. Special Limit Of Insurance For Specified Property**

The **Insurer** will only pay up to \$5,000 for any one **Occurrence** of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**b. Territory**

The **Insurer** will cover loss that the **Company** sustains resulting directly from an **Occurrence** taking place anywhere in the world. Territory Condition **E.1.r.** does not apply to **Insuring Agreement A.6.**

**F. Definitions**

1. **Computer Program** means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send **Electronic Data**.
2. **Computer System** means:
  - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;
  - b. Systems and applications software; and
  - c. Related communications networks;by which **Electronic Data** is collected, transmitted, processed, stored or retrieved.
3. **Counterfeit Money** means an imitation of **Money** which is intended to deceive and to be taken as genuine.
4. **Custodian** means the **Company**, or any of the **Company's** partners or **Members**, or any **Employee** while having care and custody of property inside the **Premises**, excluding any person while acting as a "watchperson" or janitor.

5. **Discovers** or **Discovered** means the time when the **Insured** first becomes aware of facts which would cause a reasonable person to assume that a loss of a type covered by this Policy has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

**Discovers** or **Discovered** also means the time when the **Insured** first receive notice of an actual or potential claim in which it is alleged that the **Insured** is liable to a third party under circumstances which, if true, would constitute a loss under this Policy.

6. **Electronic Data** means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

7. **Employee:**

a. Means:

(1) Any natural person:

(a) While in the **Company's** service and for the first 30 days immediately after termination of service, unless such termination is due to **Theft** or any other dishonest act committed by the **Employee**;

(b) Whom the **Company** compensates directly by salary, wages or commissions; and

(c) Whom the **Company** has the right to direct and control while performing services for the **Company**;

(2) Any natural person who is furnished temporarily to the **Company**:

(a) To substitute for a permanent **Employee**, as defined in Paragraph 7.a.(1), who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to the **Company's** direction and control and performing services for the **Company**;

(3) Any natural person who is leased to the **Company** under a written agreement between **Company** and a labor leasing firm, to perform duties related to the conduct of the **Company's** business, but does not mean a temporary **Employee** as defined in Paragraph 7.a.(2);

(4) Any natural person who is:

(a) A trustee, officer, **Employee**, administrator or **Manager**, except an administrator or **Manager** who is an independent contractor, of any **Employee Benefit Plan**; or

(b) The **Company's** director or trustee while that person is engaged in handling **Money**, **Securities** or **Other Property** of any **Employee Benefit Plan**;

(5) Any natural person who is a former **Employee**, partner, "member", "**Manager**", director or trustee retained by the **Company** as a consultant while performing services for the **Company**;

(6) Any natural person who is a guest student or intern pursuing studies or duties;

(7) Any natural person employed by an entity merged or consolidated with the **Company** prior to the effective date of this Policy; and

(8) Any natural person who is the **Company's Manager**, director or trustee while:

(a) Performing acts within the scope of the usual duties of an **Employee**; or

- (b) Acting as a member of any committee duly elected or appointed by resolution of the **Company's** board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on the **Company's** behalf.
- b. Does not mean:
- Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **7.a**.
8. **Employee Benefit Plan** means any welfare or pension **Benefit Plan** shown in the Declarations that the **Company** sponsor and that is subject to the **Employee** Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
9. **Financial Institution** means:
- a. With regard to **Insuring Agreement A.3.**:
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
- (2) An insurance company.
- b. With regard to **Insuring Agreement A.6.**:
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
- (2) An insurance company; or
- (3) A stock brokerage firm or investment company.
- c. Other than **Insuring Agreements A.3.** and **A.6.**, any **Financial Institution**.
10. **Financial Institution Premises** means the interior of that portion of any building occupied by a **Financial Institution** as defined in Paragraph **F.9.a**.
11. **Forgery** means the signing of the name of another person or organization with intent to deceive; it 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.
12. **Fraudulent Instruction** means:
- a. With regard to **Insuring Agreement A.6.a.(2)**:
- (1) A computer, telefacsimile, telephone or other electronic instruction directing a **Financial Institution** to debit the **Company's transfer account** and to transfer, pay or deliver **Money** or **Securities** from that **transfer account**, which instruction purports to have been issued by the **Insured**, but which in fact was fraudulently issued by someone else without the **Insured's** knowledge or consent; or
- (2) A written instruction (other than those covered under **Insuring Agreement A.2.**) issued to a **Financial Institution** directing the **Financial Institution** to debit the **Company's transfer account** and to transfer, pay or deliver **Money** or **Securities** from that **transfer account**, through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by the **Insured**, but which in fact was issued, forged or altered by someone else without the **Insured's** knowledge or consent.
- b. With regard to **Insuring Agreement A.6.b.**:
- A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an **Employee** to enter or change **Electronic Data** or **Computer Programs** within a **Computer System** covered under the **Insuring Agreement**, which instruction in fact was fraudulently issued by the **Company's** computer software contractor.

- 13. Insured** means the **Company** and any **Executive** or **Employee**.
- 14. Manager** means a natural person serving in a directorial capacity for a limited liability company.
- 15. Member** means an owner of a limited liability company represented by its **Membership** interest who, if a natural person, may also serve as a "**Manager**".
- 16. Messenger** means the **Insured**, or the **Insured's** relative, or any of the **Company's** partners or **Members**, or any **Employee** while having care and custody of property outside the **Premises**.
- 17. Money** means:
- a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and **Money** orders held for sale to the public; and
  - c. In addition, includes:
    - (1) Under **Insuring Agreements A.1.** and **A.2.**, deposits in the **Company's** account at any **Financial Institution**; and
    - (2) Under **Insuring Agreement A.6.**, deposits in the **Company's** account at a **Financial Institution** as defined in Paragraph **F.9.b.**
- 18. Occurrence** means:
- a. Under **Insuring Agreement A.1.**:
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related;committed by an **Employee** acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - b. Under **Insuring Agreement A.2.**:
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related;committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - c. Under all other **Insuring Agreements**:
    - (1) An individual act or event;
    - (2) The combined total of all separate acts or events whether or not related; or
    - (3) A series of acts or events whether or not related;committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
- 19. Other Property** means any tangible property other than **Money** and **Securities** that has intrinsic value. **Other Property** does not include **Computer Programs**, **Electronic Data** or any property specifically excluded under this Policy.



- 20. Premises** means the interior of that portion of any building the **Company** occupies in conducting its business.
- 21. Robbery** means the unlawful taking of property from the care and custody of a person by one who has:
- a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
- 22. Safe Burglary** means the unlawful taking of:
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the **Premises**.
- 23. Securities** means negotiable and nonnegotiable instruments or contracts representing either **Money** or property and includes:
- a. 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 **Company**;
- but does not include **Money**.
- 24. Theft** means the unlawful taking of property to the deprivation of the **Insured**.
- 25. Transfer account** means an account maintained by the **Company** at a **Financial Institution** from which the **Company** can initiate the transfer, payment or delivery of **Money** or **Securities**:
- a. By means of computer, telefacsimile, telephone or other electronic instructions; or
  - b. By means of written instructions (other than those covered under **Insuring Agreement A.2.**) establishing the conditions under which such transfers are to be initiated by such **Financial Institution** through an electronic funds transfer system.
- 26. Watchperson** means any person the **Company** retains specifically to have care and custody of property inside the **Premises** and who has no other duties.

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## CYBER LIABILITY COVERAGE PART

SUBJECT TO ITS TERMS AND PROVISIONS, THIS COVERAGE PART ONLY APPLIES TO MATTERS THAT FIRST ARISE, AND ARE FIRST REPORTED TO THE INSURER, IN THE TIME AND MANNER REQUIRED BY THIS POLICY. IN ADDITION, DEFENSE EXPENSES ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF INSURANCE.

PLEASE READ THIS ENTIRE COVERAGE PART CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS COVERAGE PART OR ANY OTHER PART OF THE POLICY.

In consideration of the payment of Premium, and subject to the agreement of the **Named Insured** to pay the retention amount stated in the Declarations and as set forth in this Policy, and in reliance upon the **Application**, which shall be deemed incorporated herein, and subject to all of the terms, conditions, limitations, exclusions, and endorsements to this Policy, the **Insurer** and the **Insured** agree as follows:

### I. INSURING AGREEMENTS

#### A. Network Security Liability Coverage

The **Insurer** shall pay, on behalf of the **Insureds**, **Loss** arising from any **Claim** for the failure of **Network Security** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** in the time and manner required by this Policy.

#### B. Privacy Liability Coverage

The **Insurer** shall pay, on behalf of the **Insureds**, **Loss** resulting from a **Privacy Claim** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** in the time and manner required by this Policy.

#### C. Regulatory Coverage

The **Insurer** shall pay, on behalf of the **Insureds**, **Defense Expenses** and **Penalties** resulting from any **Regulatory Proceeding** for an actual or alleged violation of any **Privacy Law** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** in the time and manner required by this Policy.

#### D. Breach Remediation Costs Coverage

The **Insurer** shall pay, on behalf of the **Insureds**, **Breach Remediation Costs** resulting from a violation of any **Privacy Law** taking place prior to the end of the **Policy Period**, and which is first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** in the time and manner required by this Policy.

#### E. Cyber Extortion Coverage

The **Insurer** shall pay, on behalf of the **Insureds**, **Extortion Expenses** resulting from any **Security Threat** or **Privacy Threat** which is first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in the time and manner required by this Policy.

## II. DEFINITIONS

For the purposes of this **Coverage Part**:

- A. **Breach Remediation Costs** mean the following reasonable and necessary costs incurred by the **Company** within one (1) year from first reporting to the **Insurer** the **Company's** violation or suspected violation of a **Privacy Law** to the **Insurer**:
1. subject to the Sub-Limit of Liability set forth in Item 2. of the Declarations, amounts incurred to retain a computer security expert to determine the existence and cause of any electronic data breach that resulting in an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information** which may require the **Company** to comply with a **Privacy Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and attorneys' fees charged to determine the applicability of and actions necessary by the **Company** to comply with any applicable **Privacy Law** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure of Personally Identifiable Non-Public Information**;
  2. amounts incurred by the **Company** to comply with the notification requirements of a **Privacy Law**, including, in the **Insurer's** discretion, expenses incurred in providing notice to other individuals affected by the same incident whose unsecured **Personally Identifiable Non-Public Information** has been or is reasonably believed to have been disclosed, accessed, acquired, or used as a result of such incident in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to such individuals;
  3. amounts incurred, including mailing and other reasonable third-party administrative costs, in implementing a credit file monitoring program, to be approved by the **Insurer**, consisting of the offering of one (1) year of credit monitoring services to those individuals whose **Personally Identifiable Non-Public Information** was compromised or reasonably believed to have been compromised as a result of theft, loss or **Unauthorized Disclosure** of information giving rise to a notification requirement pursuant to a **Privacy Law**; and
  4. the costs of a public relations consultancy for the purpose of averting or mitigating material damage to the **Company's** reputation.
- B. **Claim** means a written demand for monetary, non-monetary, or injunctive relief made upon an **Insured**. **Claim** shall not include any **Regulatory Proceeding**, **Security Threat**, or **Privacy Threat**.
- C. **Client** means any natural person or entity for whom or for which the **Insured** provides **Technology Services** or access or the ability to otherwise utilize **Technology Products**, for a fee, commission, or other remuneration or financial consideration which inures to the benefit of the **Company**.
- D. **Extortion Expenses** means reasonable and necessary expenses incurred by the **Insured**, with the **Insurer's** prior consent, resulting directly from a **Security Threat** or **Privacy Threat** and that are expended solely for the purposes of resolving the **Security Threat** or **Privacy Threat**.
- E. **Insured** means:
1. the **Company**; and
  2. any **Insured Person**.

- F. **Insured Person** means any **Executive** or **Employee**, but solely while acting in their respective capacities as such.
- G. **Loss** means the amounts an **Insured** is legally obligated to pay as a result of any **Claim** for a **Media Incident**, failure of **Network Security**, or any **Privacy Violation**, including:
1. compensatory damages;
  2. judgments, including awarded costs, fees, and pre-judgment and post-judgment interest;
  3. **Defense Expenses**; and
  4. punitive, exemplary and multiplied damages.

**Loss** shall not include:

1. any civil or criminal fines, **Penalties**, or other penalties imposed by law, other than punitive or exemplary damages or the multiple portion of a judgment or award of multiplied damages, and the civil fines or penalties assessed against **Insured Persons** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act 15 U.S.C. 78dd-2(g)(B);
2. taxes;
3. **Clean Up Costs**;
4. the cost of any non-monetary relief, including without limitation any costs associated with complying with any injunctive relief of any kind or nature imposed by any judgment or settlement;
5. loss of the actual money, securities, property or other items of value in the custody or control of the **Insureds**;
6. coupons, prizes, awards, discounts, or other incentives offered to the **Insured's** customers or clients;
7. the return, restitution, reduction, compromise or refund of commissions, fees or charges;
8. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; or
9. any matter deemed uninsurable under the law pursuant to which this Policy shall be construed.

The **Insureds'** good faith determination as to the insurability of matters otherwise included within this definition shall not be contested by the **Insurer**; such good faith determination shall be based upon the most favorable law bearing a reasonable relationship to the **Insured**, the **Insurer**, or the **Claim**.

- H. **Network Security** means activities performed by the **Insured**, or by others on the **Insured's** behalf, to prevent: (i) transmission of a **Virus** to a third party; (ii) denial of service attacks against the **Insured** which prevents an authorized third party from accessing the **Insured's** website; (iii) a denial of service attack against an authorized third party; or (iv) unauthorized access to or unauthorized use of the **Insured's Network System**.
- I. **Network Systems** means computers, network equipment, associated input and output devices, data storage devices, and back up facilities that are (i) operated by and owned or leased by the **Company**; or (ii) pursuant to a written contract or agreement with the **Company**, operated by third-party service provider and used solely for hosting computer application services to the **Company**, or for processing, storing, maintaining, or hosting the **Company's** electronic data.

- J. **Penalties** means any civil fine or monetary penalty payable to a governmental entity that was imposed in a **Regulatory Proceeding**; provided, however, **Penalties** shall not include **Breach Remediation Costs**.

The **Insureds'** good faith determination as to the insurability of **Penalties** otherwise included within this definition shall not be contested by the **Insurer**; such good faith determination shall be based upon the most favorable law bearing a reasonable relationship to the **Insured**, the **Insurer**, or the **Regulatory Proceeding**.

- K. **Personally Identifiable Non-Public Information** means:

1. information constituting "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, including regulations issued pursuant to such Act;
2. medical or health care information regarding any individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, including regulations issued pursuant to such Act;
3. information defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information defined as private personal information under any **Privacy Law**; or
5. an individual's driver's license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins;

if such information allows an individual to be uniquely and reliably identified or contacted, or allows access to the individual's financial account or medical record information; provided, however, that **Personally Identifiable Non-Public Information** shall not include publicly available information that is lawfully made available to the general public.

- L. **Privacy Claim** means a **Claim** for a **Privacy Violation**.

- M. **Privacy Law** means any federal, state or foreign statute or regulation requiring the **Company** to protect the confidentiality and/or security of **Personally Identifiable Non-Public Information**.

- N. **Privacy Threat** means any threat or series of connected threats to unlawfully use or disclose to the public **Personally Identifiable Non-Public Information** that was misappropriated from an **Insured** for the purpose of demanding money, securities, or other property of value from an **Insured**; provided, however, that **Privacy Threat** shall not include any such threat made by any governmental entity or public authority.

- O. **Privacy Violation** means the **Insured's** failure to properly protect, manage, store or handle **Personally Identifiable Information**, sensitive third party corporate information subject to a non-disclosure agreement or similar agreement, or the unintentional violation of a **Privacy Law**.

- P. **Regulatory Proceeding** means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar process brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any State or Federal regulatory or administrative agency or bureau or any other governmental, quasi-governmental or self-regulatory entity, brought in such entity's regulatory or official capacity in connection with such proceeding.

- Q. **Security Threat** means any threat or series of connected threats to intentionally attack **Network Systems** for the purpose of demanding money, securities, or other property of value from an **Insured**; provided, however, that **Security Threat** shall not include any such threat made by any governmental entity or public authority.

- R. **Technology Products Failure** means the inability of the **Insured's** customers or **Clients** to access or otherwise utilize, within rights conferred pursuant to a contract or agreement for a fee, commission, or other remuneration or financial consideration which inures to the benefit of the **Company, Technology Products**.
- S. **Technology Products** means computer or telecommunications hardware, software, firmware, or related electronic equipment, including the design, development, manufacturing, assembly, manufacturing, assembly, distribution, licensing, leasing, sale, installation, repair or maintenance thereof.
- T. **Technology Services** means the following services provided to or for a **Client**:
1. information technology consulting and information systems or network analysis, design, programming or integration;
  2. database design and the caching, collecting, compiling, processing, mining, or recording or analysis of data; or
  3. other related services, including:
    - a. information systems outsourcing;
    - b. website design, programming or maintenance;
    - c. information system or website hosting;
    - d. internet access services;
    - e. internet search or navigational tool provision;
    - f. electronic mail services;
    - g. electronic data destruction services; and
    - h. application software services delivery.
- U. **Unauthorized Disclosure** means the disclosure of or access to information in a manner that is not authorized by the **Company**.
- V. **Virus** means any malicious code, script, worm, Trojan horse, or similar software intentionally designed to enter or insert itself into computer memory or storage media and spread itself from one computer to another.
- W. **Wrongful Act** means:
1. any actual or alleged breach of duty, error, misstatement, act or omission by an **Insured**; or
  2. any **Interrelated Wrongful Act**,
- by an **Insured** or an independent contractor for whom the **Insured** is legally responsible.

### III. EXCLUSIONS

The **Insurer** shall not be liable to pay any **Breach Remediation Costs, Extortion Expenses, Loss, or Penalties**:

- A. arising out of, based upon or in consequence of, resulting from or in any way involving any **Wrongful Act** by any **Executive** in his or her respective capacities as such if the matter is brought by the **Company**, or any **Employee, Executive**, or shareholder of the **Company**;

- B. arising from any violation of any statutory, regulatory or common law, governing any of the following activities: unfair trade practices, anti-trust, unfair competition, or tortious interference in another's business or contractual relationships;
- C. arising out of, based upon or in consequence of, resulting from or in any way involving the unlawful collection or acquisition of **Personally Identifiable Non - Public Information** by, on behalf of, or with the consent or cooperation of the **Company**; or the failure to comply with any legal requirement to provide individuals with the ability to assent to or withhold assent from the collection, disclosure or use of **Personally Identifiable Non - Public Information**; provided, however, that this exclusion shall not apply to the actual or alleged unlawful collection or acquisition of **Personally Identifiable Non - Public Information** by a third-party undertaken or committed without the knowledge of the **Insureds**;
- D. arising out of, based upon or in consequence of, resulting from or in any way involving any of the following undertaken by or on behalf of the **Company**: wiretapping, eavesdropping, audio or video recording; telemarketing, including but not limited to actions brought under the Telephone Consumer Protection Act, any federal or state anti-spam statutes, or any federal or state statute, law or regulation relating to a person's or entity's right of seclusion; or the distribution of unsolicited email, direct mail, or facsimiles;
- E. arising out of, based upon or in consequence of, resulting from or in any way involving any of the following: (i) trading losses, trading liabilities or change in value of accounts; (ii) any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Company**; or (iii) the monetary value of any transactions or electronic fund transfers by or on behalf of the **Insured** which is lost, diminished, or damaged during transfer from, into or between accounts;
- F. arising out of, based upon or in consequence of, resulting from or in any way involving **Technology Services, or Technology Products Failure**;
- G. arising out of, based upon or in consequence of, resulting from or in any way involving any production costs of, or the cost or expenses of, any recall, reproduction, retracting, removal, disposal, reprinting or correction of, any content, media, material or information by any person or entity;
- H. arising out of, based upon or in consequence of, resulting from or in any way involving the inability to use, or lack of performance of, software programs: (i) due to the expiration or withdrawal of technical support by the software vendor; or (ii) that are in development, or are in 'beta' or similar testing stage, and/or have not yet been authorized for general commercial release;
- I. arising out of, based upon or in consequence of, resulting from or in any way involving any actual or suspected presence of **Pollutants**, or for the actual discharge, dispersal, release or escape of **Pollutants**;
- J. arising out of, based upon or in consequence of, resulting from or in any way involving any price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;
- K. for any **Claim** by, on behalf of, or in the right of any **Insured**, in any respect and whether or not collusive, or by a receiver, liquidator, rehabilitator, trustee in bankruptcy, or successor to the rights of any **Insured** under this Policy; provided, however, that this exclusion shall not apply to:
  - 1. any **Claim** brought by an **Employee** in his or her capacity as a customer, client, or **Employee**; or
  - 2. any **Extortion Event** alleged by an **Employee**;

- L. arising out of, based upon or in consequence of, resulting from or in any way involving:
1. any electrical or mechanical failures or interruption, including but not limited to any electrical disturbance, surge, spike, brownout or blackout, and outages to gas, water, telephone, cable, satellite, telecommunications or other infrastructure; provided, however, this exclusion L.1. shall not apply to failures, interruptions, disturbances or outages of telephone, cable or telecommunications infrastructure under the Insured's operational control which are a result of a Wrongful Act;
  2. any failure, interruption, or outage to Internet access service provided by the Internet service provider that hosts the Insured's website, unless such infrastructure is under the Insured's direct operational control; provided, however, that this exclusion L.2. shall not apply to Insuring Agreement E.;
  3. fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, tsunami, landslide, hail, act of God or any other physical event, however caused;
  4. war, invasion, terrorism, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  5. any failure, outage or interruptions of telephone, cable, telecommunications, any Internet service provider, data transmission lines or networking infrastructure comprising or supporting the Internet not under the direct operational control of the Company; or
- M. based upon or attributable to liability under any oral or written contract or agreement including but not limited to any express warranties or guarantees, or liability assumed under any oral or written contract or agreement; provided, however, this exclusion shall not be applicable to: (i) an **Insured's** alleged liability that exists in the absence of such contract or agreement; or (ii) any **Claim** against an **Insured** by a client or customer of the **Insured** alleging a breach of contractual obligations in the rendering of or failure to render services that are otherwise covered under this Policy;

Provided, however, that this exclusion shall also not be applicable with respect to any obligation of the **Company** to maintain the security and confidentiality of **Personally Identifiable Non-Public Information**.

#### IV. ADDITIONAL TERMS AND CONDITIONS

Solely for purposes of this **Coverage Part**:

- A. Section II. **GENERAL DEFINITIONS**, Subsection H. **Defense Expenses** of the GENERAL TERMS AND CONDITIONS is deleted and replaced with the following:
- H. **Defense Expenses** means reasonable and necessary legal fees and expenses incurred in the defense of a **Claim** or a **Regulatory Proceeding** for an alleged violation of any **Privacy Law**, resulting from the failure of the **Insured's Network Security** to prevent transmission of a **Virus**, or from a **Privacy Claim**. **Defense Expenses** shall not include: (i) any of the **Insured's** overhead expenses, or any wages, salaries, benefits, or costs of **Insured Persons** or any other representative, agent or servant of any **Insured**; (ii) other charges by the **Insured** for cooperating in the defense and investigation of any matter that might lead to coverage under this policy; and (iii) costs to comply with any regulatory orders. **Defense Expenses** shall not include **Breach Remediation Costs** or **Extortion Expenses**.



B. Section **III. GENERAL POLICY EXCLUSIONS** of the GENERAL TERMS AND CONDITIONS is amended as follows:

1. The preamble is deleted and replaced with the following:

The Insurer shall not be liable to pay any **Breach Remediation Costs, Extortion Expenses, Loss, or Penalties** in connection with any: (i) **Claim**; (ii) actual or alleged failure of **Network Security**; (iii) **Regulatory Proceeding**; (iv) violation of any **Privacy Law**; or (v) **Security Threat or Privacy Threat**;

2. Exclusion B. is amended by adding the following:

Provided, however, this exclusion shall not apply to emotional distress and mental anguish damages resulting from a **Security Incident**; and

3. Exclusion E. is deleted.

C. The following is added to the first paragraph of Section **VI. RETENTIONS**, Subsection A.:

With respect to each **Claim, Privacy Claim, Regulatory Proceeding**, violation of any **Privacy Violation Law, Security Threat or Privacy Threat, or Security Incident**, or failure of **Network Security**, the **Insurer** shall only pay **Breach Remediation Costs, Extortion Expenses, Loss, or Penalties** which is in excess of the applicable Retention listed in the Declarations for the **CYBER LIABILITY Coverage Part** (or Insuring Agreement subject to a separate Retention under such **Coverage Part**, if indicated) as set forth in Item 2. of the Declarations, such Retention shall be borne by the **Insureds**.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF A DECLARATION PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.