



GENERAL TERMS AND CONDITIONS

In consideration of the premium charged for this Policy, it is hereby understood and agreed that the following GENERAL DEFINITIONS, EXCLUSIONS and GENERAL CONDITIONS are attached to and become a part of the above captioned Policy. Unless otherwise stated, the GENERAL DEFINITIONS, EXCLUSIONS and GENERAL CONDITIONS apply to all Coverage Sections. It is further understood and agreed that this Policy is being issued in reliance on the Application which is incorporated herein by reference and attached hereto.

The terms and conditions of each Coverage Section apply only to that Coverage Section and shall not apply to any other Coverage Section. If any provision in the GENERAL TERMS AND CONDITIONS is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control for purposes of that Coverage Section. Any term used in the GENERAL TERMS AND CONDITIONS but not defined therein is given every meaning attributed to it in each Coverage Section.

I. GENERAL DEFINITIONS – Applicable to All Coverage Sections

A. Application means:

- (1) the application for this Policy or any policy of which this Policy is a renewal, and
- (2) any materials submitted therewith, which shall be retained on file by Underwriters and be deemed attached hereto, as if physically attached hereto.

B. Company means:

- (1) the **Named Insured**, and
- (2) any **Subsidiary**.

C. Domestic Partner means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.

D. Named Insured means the entity named in Item A. of the Declarations.

E. Policy Period means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item B. of the Declarations, or its earlier cancellation or termination date and hour, if any, and does not include any Extended Reporting Period.

F. Subsidiary means any company, at or prior to the inception of this Policy, in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for election of or to appoint directors of such organization are owned or controlled by the **Named Insured** directly or indirectly, in any combination, or

- (1) becomes so owned after the inception date of this Policy provided the assets of the entity do not exceed 25% of the consolidated assets of the **Named Insured** as set forth in Item A of the Declarations; or
- (2) becomes so owned after the inception date of this Policy provided that if the assets of the entity exceed 25% of the consolidated assets of the **Named Insured** as set forth in the **Named Insured's** most recent audited financial statement, the provisions of Clause III.H. herein must be fulfilled.

II. GENERAL EXCLUSIONS – Applicable to All Coverage Sections

A. RETROACTIVE EXCLUSION (FULL)

This Insurance shall not indemnify the **Insured** in respect of any **Claim** or **Loss** involving or arising out of any actual or alleged acts, omissions, transactions, circumstances or events (hereinafter referred to as "Acts") which occurred or commenced (or are alleged to have occurred or commenced) prior to the retroactive date, if any, as set forth in Item H. of the Declarations, or any Acts being part of an interrelated series of such Acts where any one or more Acts in that series occurred or commenced (or are alleged to have occurred or commenced) prior to the date set forth in the Declarations.

B. PRIOR AND PENDING LITIGATION EXCLUSION

Underwriters shall not be liable to make any payments for **Loss** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving: 1) any prior or pending civil or criminal litigation, administrative proceeding or **Claim** against any **Insured** prior to the Prior or Pending Litigation Date set forth in Item I. of the Declarations, or 2) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, proceeding or **Claim**. This exclusion applies regardless of the claimants involved in or legal theory upon which the litigation, proceeding or **Claim** is predicated.

C. NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

This Policy does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

 - (a) any nuclear reactor,
 - (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
 - (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
 - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-

supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

D. RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

E. WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

F. OFAC EXCLUSION

Underwriters shall not be liability for the payment of any **Loss** directly or indirectly arising from, in connection with, or in any way involving an alleged or actual violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC").

III. GENERAL CONDITIONS – Applicable to All Coverage Sections

A. CANCELLATION CLAUSE

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy only for non-payment of premium by mailing to the **Named Insured** written notice stating when, not less than 30 days thereafter, such cancellation shall be effective. If payment is not received within the thirty (30) day period, then this Policy will be cancelled *ab initio* meaning coverage is null and void from inception. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
3. If this Policy is cancelled pursuant to 1. herein above, Underwriters shall retain the short rate proportion of the premium hereon as reflected in Short Rate Cancellation Table. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation. If at the time of cancellation there are or have been notified **Claims** or circumstances, then the premium shall be deemed fully earned and no return premium will be forthcoming.

B. ENTIRE AGREEMENT

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

C. CHOICE OF LAW

This insurance shall be governed in accordance with the laws designated in Item J. of the Declarations.

D. TERRITORY

Coverage shall apply worldwide.

E. COORDINATION AMONG COVERAGE PARTS

Subject always to the applicable Limit of Liability, should two or more Coverage Sections apply to the same **Claim**; Underwriters will not pay more than the actual **Loss** incurred by the **Insureds**.

F. SUPPLEMENTARY PAYMENT – PAYMENT REIMBURSEMENT

If Underwriters request the presence at trial hearing or deposition, mediation or arbitration of a **Director and Officer** or **Insured Person**, Underwriters will pay up to USD 250.00 per day per person for reimbursement of costs and expenses incurred in connection with such presence, subject to a maximum aggregate amount of USD 2,500 per **Claim** per **Policy Period**. Such payments are in addition to the limits of liability and do not erode any retention.

G. APPLICATION WARRANTY CLAUSE

It is warranted that the particulars and statements contained in the **Application**, a copy of which is attached hereto, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

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

1. that the statements in the **Application** are their representations, that they shall be deemed material to the acceptance of the risk or the hazard assumed by Underwriters under this Policy and that this Policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall be void and of no effect whatsoever with respect to those **Insureds** who made or had knowledge of such misrepresentations; and

3. that, except as provided in Clause III.G.2., this Policy shall be deemed to be a single unitary contract and neither a severable contract of insurance nor a series of individual contracts of insurance with each of the **Insureds**.

H. CHANGES IN EXPOSURE

If before or during the **Policy Period** any **Company**:

1. acquires securities or voting rights in another organization, or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires another organization by merger into or consolidation with a **Company**, such that the **Company** is the surviving entity,

then such other organization and its **Insured Persons** shall be **Insureds** under this Policy, but only with respect to **Wrongful Acts** after such acquisition or creation, unless Underwriters agree, after presentation of a complete application and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** before such acquisition or creation.

If the total assets of any such acquired or created organization or new **Subsidiary** exceeds twenty five percent (25%) of the total assets of the **Named Insured** (as reflected in the most recent audited consolidated financial statements of such organization and the **Named Insured**, respectively, as of the date of such acquisition or creation, then the **Named Insured** shall give written notice of such acquisition or creation to Underwriters as soon as practicable, but in no event later than thirty (30) days after the date of such acquisition or creation, together with such other information as Underwriters may require, and shall pay any additional premium required by Underwriters. If the **Named Insured** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by Underwriters, then coverage for such acquired or created organization and its **Insured Persons** shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for the **Insured Persons** of such organization, shall be subject to such additional or different terms, conditions and limitations of coverage as Underwriters in their sole discretion may require.

I. CESSATION OF A SUBSIDIARY

If an organization ceases to be a **Subsidiary** before or during the **Policy Period**, then coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** while such organization was a **Subsidiary**.

J. MERGER, CONSOLIDATION, CESSATION AND FINANCIAL IMPAIRMENT OF NAMED INSURED

If during the **Policy Period**:

1. the **Named Insured** merges into or consolidates with another organization and the **Named Insured** is not the surviving entity;
2. another organization, person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors of the **Named Insured**;
3. the **Named Insured** completely ceases to actively engage in its primary business; or
4. **Financial Impairment** occurs,

then coverage under this Policy shall continue until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** before such merger, consolidation, acquisition, cessation or **Financial Impairment**. Upon the occurrence of any event described in 1 through 4 above, the entire premium for this Policy shall be deemed fully earned.

The **Named Insured** shall give written notice of such merger, consolidation, acquisition, cessation or **Financial Impairment** to Underwriters as soon as practicable, but in no event later than sixty (60) days after the date of such merger, consolidation, acquisition, cessation or **Financial Impairment**, together with such other information as Underwriters may require. Upon receipt of such notice and information and at the request of the **Named Insured**, Underwriters shall provide to the **Named Insured** a quotation for an extension of coverage (for such period as may be negotiated between Underwriters and the **Named Insured**) with respect to **Claims** for **Wrongful Acts** before such merger, consolidation, acquisition, cessation or **Financial Impairment**. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage, and payment of additional premium, as Underwriters in their sole discretion may require.

K. NOTIFICATION

1. The **Named Insured** shall, as a condition precedent to their rights to coverage under this Policy, give to Underwriters notice in writing of any **Claim** as soon as practicable after the **Named Insured's** Chief Executive Officer, Chairperson, Chief Financial Officer, President, Risk Manager, In-House General Counsel, Human Resource Manager (or any equivalent position) first becomes aware of the **Claim**, but in no event later than ninety (90) days after the end of the **Policy Period**.
2. If during the **Policy Period** the **Insureds** first become aware of a specific **Wrongful Act**, and if the **Insureds** during the **Policy Period** give written notice to Underwriters as soon as practicable of:
 - (a) the specific **Wrongful Act**;
 - (b) the consequences which have resulted or may result therefrom; and
 - (c) the circumstances by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

Notice to Underwriters provided for hereunder shall be given to the firm shown under Item L. of the Declarations.

L. SETTLEMENTS, DEFENSE AND PRE-SUIT MEDIATION

1. The **Insureds** shall not admit liability, consent to any judgment, agree to any settlement, make any settlement offer or incur any **Defense Costs** without Underwriters' prior written consent, such consent not to be unreasonably withheld. Underwriters shall not be liable for any **Loss** to which it has not consented. The **Insureds** agree that they shall not knowingly take any action which increases Underwriters' exposure for **Loss** under this Policy.
2. It shall be the duty of the **Insureds** and not the duty of the Underwriters to defend **Claims**.
3. If Underwriters recommend a settlement of a **Claim** within the Policy's applicable Limit of Liability which is acceptable to the claimant, and the **Insureds** refuse to consent, then Underwriters' liability for all **Loss** including **Defense Costs** on account of such **Claim** shall not exceed the total sum of:
 - (a) the amount for which Underwriters could have settled such **Claim**, plus **Defense Costs** incurred up to the date of the Insured's refusal to consent to such settlement; and
 - (b) eighty percent (80%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (1) above, incurred in connection with such **Claim**. The remaining twenty percent (20%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (a) above will be borne uninsured and at the **Insured's** own risk;

which amount shall not exceed the applicable Limit of Liability set forth in the Declarations for the applicable Coverage Section.

4. If, prior to institution of arbitration proceedings or service of suit against any **Insured**, or within sixty (60) days of the institution of such proceedings or service of suit, the **Named Insured**, with Underwriters' prior written consent, participates together with the claimant in non-binding mediation by a neutral third party to resolve any covered **Claim** reported to Underwriters consistent with the terms of this Policy, and if such **Claim** is resolved in its entirety through such process, Underwriters will reduce the retention applicable to such **Claim** by fifty percent (50%) or ten thousand dollars (USD 10,000.00), whichever is less.

M. ASSISTANCE, COOPERATION, SUBROGATION AND RECOVERIES

1. The **Insureds** agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that they shall not take any action which in any way increases Underwriters' exposure under this Policy.
2. In the event of any payments under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery therefor against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require. The **Insured** shall do nothing after an incident reasonably likely to give rise to a **Claim** to prejudice such rights.
3. All recoveries from third parties with respect to **Claims** that resulted in payments by Underwriters under this Policy shall be applied (after first deducting the attorneys' fees costs and expenses incurred in obtaining such recovery) in the following order of priority:

- (a) the **Insured** shall first be reimbursed for the amount of its legal liability that would be covered under this Policy but for the fact that it exceeds the applicable Limit of Liability available under the Policy
 - (b) Underwriters shall then be reimbursed for the amount of their liability under this Policy, and
 - (c) any remaining sum shall be applied towards reimbursement of the Retention borne by the Insured as specified in Item E. of the Declarations.
4. Attorneys' fees, costs and expenses associated with the recovery from third-parties shall be apportioned pro rata, *i.e.*, in proportion to the respective recoveries of Underwriters and the **Insured** according to sub-section 3 above.

N. OVERALL POLICY AGGREGATE CLAUSE

Underwriters maximum aggregate liability for **Loss** or **Defense Costs** on account of all **Claims** covered under the Coverage Sections that are subject to the Overall Policy Aggregate, is the amount set forth in Item D. (Overall Policy Aggregate) of the Policy Declarations. The Overall Policy Aggregate is Underwriters' maximum aggregate liability for all **Claims** that are first made against the **Insureds** during the same Policy Period, including any **Extended Reporting Period**, if exercised, and reported to Underwriters as required by the applicable Coverage Section, whether covered under one or more of such Coverage Sections. The Overall Policy Aggregate Limit of Liability shall be reduced by payment of **Loss** or **Defense Costs** under any Coverage Section subject to the Overall Policy Aggregate. In the event of more than one Claim under more than one Coverage Section, the payment of Loss and/or Defense Costs will be made in the order such Loss and/or Defense Costs are incurred, regardless of the order in which the various Claims are first made, until erosion of the Overall Policy Aggregate.

O. ALLOCATION

1. If both **Loss** covered by this Policy and loss not covered by this Policy are incurred by an **Insured** on account of any **Claim** either because such **Claim** against the **Insured** includes both covered and non-covered matters, or because such **Claim** is made against both covered and non-covered parties, then coverage under this Policy shall apply as follows:
- (a) Underwriters may advance on a current basis **Defense Costs** which the Underwriters believe to be covered under this **Policy**, until a different allocation is negotiated, arbitrated or judicially determined; and
 - (b) **Loss** other than **Defense Costs**: all remaining **Loss** incurred by the Insured on account of such **Claim** shall be allocated by Underwriters between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to covered and uncovered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insured** from such settlement.
2. If the **Insured** and Underwriters cannot agree on an allocation:
- (a) No presumption as to what allocation should be made shall exist in any arbitration, suit or other proceeding;
 - (b) Disputes arising out of the allocation of **Loss** shall be subject to the ADR process set forth in Clause III. P. of the GENERAL TERMS AND CONDITIONS.
 - (c) Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

P. ALTERNATIVE DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this Policy that cannot be resolved by and between Underwriters and the **Named Insured**, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, must first be submitted to the non-binding mediation process set forth in this Clause III. P. The non-binding mediation will proceed in any manner mutually agreed by and between Underwriters and the **Named Insured**, in which all implicated **Insureds** and Underwriters shall try in good faith to settle the dispute by mediation. If the Named Insured and Underwriters cannot agree on the process of the mediation, it shall proceed in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator versed in the legal and/or insurance issues relevant to the matter(s) in dispute.

In the event that such non-binding mediation does not result in a settlement of the subject dispute:

- (a) either party shall have the right to commence a judicial proceeding; or
- (b) either party shall have the right, with all other parties' consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three (3) arbitrators selected as follows: (i) the **Named Insured** shall select one (1) arbitrator; (ii) Underwriters shall select

one (1) arbitrator; and (iii) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then prevailing Commercial Arbitration Rules.

Notwithstanding the foregoing, no such judicial or arbitration proceeding shall be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated by the mediator. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in New York, NY; Chicago, IL; Los Angeles, CA; or in the state indicated in Item B. of the Declarations as the mailing address for the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any non-binding mediation under this Clause, the selection of arbitration or judicial proceeding or the selection of mediators or arbitrators.

Q. OTHER INSURANCE

The coverage afforded under this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over the **Overall Policy Aggregate** provided by this Policy. This Policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a claim for which this Policy may be obligated to pay **Loss**.

R. PREMIUM

Premium shown in Item G. of the Declarations of this policy is for the **Policy Period** as shown in Item B. of the Declarations. Payment of premium is a condition precedent to any coverage provided. In the event that a **Claim** is reported within the first ten (10) days of this policy, then payment of the premium must be evidenced to have been remitted to the **Insured's** agent along with the **Claim** report.

S. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES.

Subject to the limitations, conditions, provisions and other terms of this Policy, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured** made against:

1. the estate, heirs, legal representatives or assigns of such **Insured** if such **Insured** is deceased, or the legal representatives or assigns of such **Insured**, if such **Insured** is incompetent, insolvent or bankrupt; or
2. The lawful spouse or **Domestic Partner** of such **Insured** solely by reason of such spouse or **Domestic Partner's** status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured**.

All terms and conditions of this Policy, including without limitation, the Retention, applicable to **Loss** incurred by the **Insured**, shall also apply to **Loss** incurred by the estates, heirs, legal representatives, assigns, spouses and **Domestic Partner** of such **Insured**. The coverage provided by this Clause shall not apply with respect to any **Loss** arising from **Wrongful Act** by an **Insured's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**, except as provided in Clause II.G.3. of the Employment Practices Liability Coverage Section.

T. BANKRUPTCY

Bankruptcy or insolvency of the **Named Insured** will not relieve Underwriters of their obligations under this policy.

U. EXTENDED REPORTING PERIOD

1. If this Policy is not renewed by the **Named Insured** or by Underwriters, then the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item K. of the Declarations for this Policy, to an extension of the coverage granted by this Policy for a period of one (1) year with respect to any **Claim** first made during the period of time set forth in Item K. of the Declarations after the Policy expiration date, but only with respect to any **Wrongful Act** or **Third Party Wrongful Act** committed before such date.

This period shall be referred to as the Extended Reporting Period.

2. An Extended Reported Period of more than one (1) year but not more than three (3) years may be purchased by the **Named Insured** for a price to be agreed by Underwriters at the time of purchase.
3. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase the Extended Reporting Period shall terminate unless written notice together with full payment of the premium for the Extended Reporting Period is given to Underwriters within 30 days after the Policy expiration date. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the Extended Reporting Period.

4. In the event of the purchase of the Extended Reporting Period, the entire premium therefor shall be deemed earned at its commencement.
5. The exercise of the Extended Reporting Period shall not in any way increase the Limit of Liability of Underwriters.

V. SERVICE OF SUIT & JURISDICTION

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters at the request of any person or entity insured hereunder will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. The Insured likewise agree to submit to the jurisdiction of any court of competent jurisdiction. It is further agreed that service of process in such suit may be made upon the firm shown under Item M. of the Declarations, and that in such suit instituted against any one of the Underwriters upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal. The terms of this provision are not intended to and do not conflict with or override the terms of the ADR provision contained herein at Clause III.P.

The firm shown under Item M. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of any person or entity insured hereunder to give a written undertaking to such person or entity that it will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to the statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officers specified for that purpose in the statute, or any of their successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate the firm shown in Item M. of the Declaration as the firm to whom the said officer is authorized to mail such process or a true copy thereof.

W. LEGAL ACTION AGAINST UNDERWRITERS

No person or organization has a right under this Policy to (1) join Underwriters as a party or otherwise bring Underwriters into a suit asking for damages from an **Insured**, or (2) sue Underwriters on this Policy unless all of its terms have been fully complied with.

A person or organization may sue Underwriters to recover on an agreed settlement or on a final judgment against an **Insured** obtained after an actual trial, but Underwriters will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of liability. An agreed settlement means a settlement and release of liability signed by Underwriters, the Insured and the claimant(s) or plaintiff(s) in the underlying action giving rise to coverage under this Policy.

X. SMALL ADDITIONAL OR RETURN PREMIUM CLAUSE

NOTWITHSTANDING anything to the contrary herein and in consideration of the premium for which this Insurance is written, it is understood and agreed that whenever an additional or return premium of \$2 or less becomes due from or to the **Insured** on account of the adjustment of a deposit premium, or of any alteration in coverage or rate during the term or for any other reason, the collection of such premium from the **Insured** will be waived or the return of such premium to the **Insured** will not be made, as the case may be.

Y. NEW SHORT RATE CANCELLATION TABLE (U.S.A.)

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:

SHORT RATE CANCELLATION TABLE

A. For insurance written for one year:

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1	5	154 - 156	53
2	6	157 - 160	54
3 -- 4	7	161 - 164	55
5 -- 6	8	165 - 167	56
7 -- 8	9	168 - 171	57
9 - 10	10	172 - 175	58

11 - 12	.....	11	176 - 178	.....	59
13 - 14	.....	12	179 - 182	(6 months)	60
15 - 16	.....	13	183 - 187	.....	61
17 - 18	.....	14	188 - 191	.....	62
19 - 20	.....	15	192 - 196	.....	63
21 - 22	.....	16	197 - 200	.....	64
23 - 25	.....	17	201 - 205	.....	65
26 - 29	.....	18	206 - 209	.....	66
30 - 32	(1 month)	19	210 - 214	(7 months)	67
33 - 36	.....	20	215 - 218	.....	68
37 - 40	.....	21	219 - 223	.....	69
41 - 43	.....	22	224 - 228	.....	70
44 - 47	.....	23	229 - 232	.....	71
48 - 51	.....	24	233 - 237	.....	72
52 - 54	.....	25	238 - 241	.....	73
55 - 58	.....	26	242 - 246	(8 months)	74
59 - 62	(2 months)	27	247 - 250	.....	75
63 - 65	.....	28	251 - 255	.....	76
66 - 69	.....	29	256 - 260	.....	77
70 - 73	.....	30	261 - 264	.....	78
74 - 76	.....	31	265 - 269	.....	79
77 - 80	.....	32	270 - 273	(9 months)	80
81 - 83	.....	33	274 - 278	.....	81
84 - 87	.....	34	279 - 282	.....	82
88 - 91	(3 months)	35	283 - 287	.....	83
92 - 94	.....	36	288 - 291	.....	84
95 - 98	.....	37	292 - 296	.....	85
99 - 102	.....	38	297 - 301	.....	86
103 - 105	.....	39	302 - 305	(10 months)	87
106 - 109	.....	40	306 - 310	.....	88
110 - 113	.....	41	311 - 314	.....	89
114 - 116	.....	42	315 - 319	.....	90
117 - 120	.....	43	320 - 323	.....	91
121 - 124	(4 months)	44	324 - 328	.....	92
125 - 127	.....	45	329 - 332	.....	93
128 - 131	.....	46	333 - 337	(11 months)	94
132 - 135	.....	47	338 - 342	.....	95
136 - 138	.....	48	343 - 346	.....	96
139 - 142	.....	49	347 - 351	.....	97
143 - 146	.....	50	352 - 355	.....	98
147 - 149	.....	51	356 - 360	.....	99
150 - 153	(5 months)	52	361 - 365	(12 months)	100

B. For Insurance written for more or less than one year:

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
 - (a) Determine full annual premium as for an insurance written for a term of one year.
 - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

DIRECTORS, OFFICERS AND COMPANY LIABILITY COVERAGE SECTION

In consideration of the payment of the premium, in reliance on the **Application** and subject to all of the provisions of this Policy, Underwriters and the **Insureds** agree as follows:

I. INSURING CLAUSES

- A. Underwriters shall pay on behalf of the **Directors and Officers**, **Loss** resulting from any **Claim** first made against the **Directors and Officers** during the **Policy Period** for an **Individual Act** to the extent not indemnified by the Company.
- B. Underwriters shall pay on behalf of the **Company Loss** which the **Company** is required or permitted to pay as indemnification to any of the **Directors and Officers** resulting from any **Claim** first made against the **Directors and Officers** during the **Policy Period** for an **Individual Act**.
- C. Underwriters shall pay on behalf of the **Company Loss** resulting from any **Claim** first made against the **Company** during the **Policy Period** for a **Corporate Act**.

II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

- A. **"Insured(s)"** means the **Company** and the **Directors and Officers**.
- B. **"Claim"** means:
 - 1. any written or oral demand for damages or other relief against any of the **Insureds**,
 - 2. any civil, criminal, administrative or regulatory proceeding initiated against any of the **Insureds**, including
 - (a) any appeal therefrom;
 - (b) any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body with jurisdiction over any **Employment Practice Violation**; or
 - (c) any formal investigatory proceeding before the Securities and Exchange Commission or any similar federal, state or local governmental body with jurisdiction over any **Securities Law Violation**.
- C. **"Corporate Act"** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Company** involving a **Securities Law Violation**.
- D. **"Corporate Takeover"** means:
 - 1. the acquisition by any person or entity of more than 50% of the outstanding securities of the **Named Insured** representing the present right to vote for the election of directors; or
 - 2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity;
- E. **"Defense Costs"** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim** and the premium for appeal and cost of attachment or similar bonds, but shall not include:
 - 1. fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**, or
 - 2. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- F. **"Directors and Officers"** means:
 - 1. all persons who were, now are, or shall be directors or officers of the **Company** and all persons serving in a functionally equivalent role for the **Named Insured** or any **Subsidiary** operating or incorporated outside the United States;
 - 2. management committee member if the **Company** is part of a joint venture;
 - 3. the lawful spouse or **Domestic Partner** of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or **Domestic Partner** is a party to any **Claim** solely in the capacity as spouse or **Domestic Partner** of any such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or **Domestic Partner**, or property transferred from any such person to the spouse or **Domestic Partner**,

including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- G. **"Individual Act"** means any actual or alleged error, omission, misstatement, misleading statement, neglect or breach of duty by any of the **Directors and Officers**, while acting in their capacity as:
1. a director or officer of the **Company** or a person serving in a functionally equivalent role for the **Named Insured** or any **Subsidiary** operating or incorporated outside the United States;
 2. a director, officer, trustee, governor, executive director of any not-for-profit organization where such **Directors and Officers** serve with such not-for-profit organization with the knowledge and consent of the Board of Directors of the **Company**;
 3. a director or officer of any of the entities specified in Item I. of the Declarations; or
 4. an employee of the **Company** but only if the **Claim** is for an **Employment Practice Violation** or a **Securities Law Violation**.
- H. **"Interrelated Wrongful Acts"** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
- I. **"Loss"** means damages, judgments, settlements and **Defense Costs** incurred by any **Insured**, including punitive and exemplary damages, where insurable by law, as a result of any Claim first made against such Insured during the Policy Period. With respect to punitive damages, the applicable law for insurability will be the law most favorable to the **Insured**, provided the most favorable law has a reasonable relationship to the **Claim**. Law which will be deemed reasonably related includes the law (1) of the state where the **Insured** is incorporated or has its principal place of business; (2) of the state where the **Claim** is pending; or (3) of the state where any **Wrongful Act** happened as alleged in the Claim.
- Loss shall not include:
1. that portion of any multiplied damages award which exceeds the amount multiplied;
 2. taxes, criminal or civil fines or penalties imposed by law, statute, regulation or court rule, other than those civil fines or penalties imposed under 42 USC 1320d-5(a) of the Health Insurance Portability and Accountability Act of 1996, provided however that the maximum limit of Underwriters' liability for all such fines and penalties shall be USD100,000 per **Claim**. This sublimit of Liability is part of and not in addition to the applicable Limits of Liability;
 3. matters deemed uninsurable under the law pursuant to which this Policy shall be construed; or
 4. any wages, salary or benefits owed pursuant to the terms of any employment contract the portion of any settlement or damages that constitutes increased consideration.
- J. **"Securities Law Violation"** means any violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission under either or both Acts, similar securities laws or regulations of any state, or any common law relating to any transaction arising out of, involving, or relating to the purchase or sale of or offer to purchase or sell any securities, whether on the open market or through a public or private offering.
- K. **"Whistleblower Activity"** means the kind of activity protected under a federal or state whistleblower statute or any regulation promulgated thereunder, regardless of whether or not such activity is done by an employee.
- L. **"Wrongful Act"** means any **Corporate Act** or **Individual Act**.

III. EXCLUSIONS

Underwriters shall not be liable to make any payment in connection with any **Claim**:

- A. for actual or alleged sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of use thereof) or, for bodily injury, assault, battery, invasion of privacy, mental anguish, emotional distress, libel, slander or defamation;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other policy, or
 2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, actual or alleged seepage, pollution or contamination of any kind; provided, however, this exclusion shall not apply to the coverage afforded under Insuring Clause I.A.

- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way relating to any act, error or omission in connection with the performance of any professional services by or on behalf of any **Insured(s)** for the benefit of any other entity or person.
- E. for violation of the Employee Retirement Income Security Act of 1974 as amended (or any regulations promulgated thereunder) or similar provisions of any federal, state or local law;
- F. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
1. is brought derivatively by a security holder of the **Company** who, when such **Claim** is first made, is acting independently of and without the solicitation, assistance, active participation or intervention of any of the **Insureds** (unless such solicitation, assistance, participation or intervention is **Whistleblower Activity**), or
 2. is brought by any of the **Insureds** in the form of a cross-claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy, or
 3. by a past director or officer whose duties as a director or officer ceased over 36 months prior to making any **Claim**;
- G. brought about or contributed to by:
1. any deliberately dishonest, fraudulent, criminal act, written admission/guilty plea or omission by any of the **Insureds**, or
 2. any personal profit or advantage gained by any of the **Directors and Officers** to which they were not legally entitled
- as determined by a final adjudication in the underlying action or in a separate action or proceeding;
- H. for the return by any of the **Directors and Officers** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Company**, which payment without such previous approval shall be determined by a final adjudication in the underlying action or in a separate action or proceeding to be in violation of the law;
- I. against any of the **Directors and Officers** of any **Subsidiary** or against any **Subsidiary** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
 2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- J. based upon, arising out of, directly or indirectly, resulting from or in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Corporate Takeover**, or
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, service as a director, officer, trustee, employee, governor, executive director or in a functionally equivalent position with any entity other than the **Company**; provided, however, this exclusion shall not apply to **Loss** resulting from any **Claim** to the extent that such **Claim** is based on the service of one of the **Directors and Officers** as:
1. a director, officer, trustee, governor or executive director of any not-for-profit organization where such service is with the knowledge and consent of the Board of Directors of the **Company** and such **Loss** is not indemnified by such not-for-profit organization or any of its insurers, or
 2. a director or officer of any of the entities specified in Item I. of the Declarations if the **Loss** resulting from the **Claim** is not indemnified by the specified entity or any of its insurers.

No **Wrongful Act** shall be imputed to any of the other natural persons for the purpose of determining the applicability of any of the Exclusions.

IV. LIMIT OF LIABILITY, RETENTIONS AND ORDER OF PAYMENTS

- A. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item F. of the Declarations in excess of the amount of the applicable Retention up to the Limit of Liability, it being warranted that the remaining percentage of **Loss** shall be uninsured. The Retention applicable to Insuring Clause I.B. shall apply to **Loss** payable under Insuring Clause I.A. if indemnification by the **Company** is required by law or is legally permissible to the fullest extent permitted by law, regardless of whether or not actual indemnification is made, unless the **Company** is unable to make such actual indemnification by reason of its insolvency
- B. The amount shown in Item D. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under the Policy.

- C. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts**, regardless of the causes of action plead or the number or identity of claimants involved, shall be deemed to constitute a single **Claim**, and shall be deemed to have been made at the earliest of the following times:
1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
 2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause K of the General Terms and Conditions.
- D. In the event more than one of the Insuring Clauses set forth in Clause I. are applicable to a **Claim**, the Retentions set forth in Item E. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim**.
- E. Payments of **Loss** by Underwriters shall reduce the Limit of Liability. Underwriters shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** payable under Insuring Clause I.A. and one or more of the other Insuring Clauses is incurred contemporaneously, Underwriters first shall pay **Loss** payable under Insuring Clause I.A. The **Named Insured** may elect through its chief executive officer to decline or defer payment under Insuring Clause I.B. or Insuring Clause I.C. Underwriters shall have no obligation to pay **Loss** after exhaustion of the Limit of Liability regardless of whether the **Named Insured** has declined or deferred payment.
- F. Underwriters shall pay **Defense Costs** no more than once every 90 days.

V. ADDITIONAL LIMIT OF LIABILITY FOR NON-INDEMNIFIABLE LOSS

Solely with respect to Insuring Clause I.A., there is an additional Limit of Liability which shall not exceed USD1,000,000 for the **Policy Period**. This non-indemnifiable **Loss** limit is available only after the Overall Policy Aggregate Limit of Liability set forth in Clause III. N. of the Policy's General Terms and Conditions has been completely exhausted by payment of **Loss** by Underwriters under any Coverage Section or combination of Coverage Sections, and only with respect to any **Claim** first made against the **Directors and Officers** triggering coverage under Insuring Clause I.A. after the complete exhaustion of the Overall Policy Aggregate.

FIDUCIARY LIABILITY COVERAGE SECTION

In consideration of the payment of the premium, in reliance on the **Application** and subject to all of the provisions of this Policy, Underwriters and the **Insureds** agree as follows:

I. INSURING CLAUSE

Underwriters shall pay on behalf of the **Insureds** all **Loss** which they shall be legally obligated to pay resulting from any **Claim** first made during the **Policy Period**, or any Extended Reporting Period, if purchased, for a **Wrongful Act**. It shall be the duty of the **Insureds** and not the duty of the Underwriters to defend any such **Claims**.

II. DEFINITIONS

The following terms whenever used in this Coverage Section in boldface type shall have the meanings indicated.

A. "**Administration**" means:

1. Giving counsel to participants or beneficiaries of the **Plan**; and
2. Interpreting the **Plan**; and
3. Handling records of the **Plan**; and
4. Effecting enrollment, termination, or cancellation of participants under the **Plan**.

B. "**Claim**" means any proceeding initiated against any of the **Insureds** before any governmental body which is legally authorized to render an enforceable judgment or order for money damages or other relief, including any appeal from such proceeding. **Claim** shall not include any criminal proceeding or any internal appeal process provided for in the **Plan** documents or otherwise required by law.

C. "**Defense Costs**" means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim** and the premium for appeal, and cost of attachment or similar bonds, but shall not include:

1. fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**, or
2. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

D. "**Insured(s)**" means:

1. The **Plan**; and
2. The **Sponsor**; and
3. Any past, present, or future director, officer, or employee of the **Sponsor** or of the **Plan** while acting in their capacities as such, and

Including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

E. "**Loss**" means damages, judgments, settlements and **Defense Costs** incurred by any of the **Insureds**, including punitive and exemplary damages, where insurable by law. With respect to punitive damages, the applicable law for insurability will be the law most favorable to the **Insured** provided the most favorable law has a reasonable relationship to the **Claim**. Law which will be deemed reasonably related includes the law (1) of the state where the **Insured** is incorporated or has its principal place of business; (2) of the state where the **Claim** is pending; or (3) of the state where any **Wrongful Act** happened.

Loss shall not include:

1. Taxes, criminal or civil fines, or penalties imposed by law except:
 - (a) **Compliance Costs**;
 - (b) for the 5% or less or 20% or less civil penalties imposed upon any of the **Insureds** as a fiduciary under Sections 502(i) or 502(l), respectively, of the Employee Retirement Income Security Act of 1974 as amended; or
 - (c) for those civil fines or penalties imposed under 42 USC 1320d-5(a) of the Health Insurance Portability and Accountability Act of 1996, provided however that the maximum limit of Underwriters' liability for all such fines and penalties shall be USD100,000 per **Claim**. This sublimit of Liability is part of and not in addition to the applicable Limits of Liability.

2. that portion of any multiplied damages award which exceeds the amount multiplied;
 3. Any matter deemed uninsurable under the law pursuant to which this Policy shall be construed; or
 4. Any amount for which the **Insureds** are not financially liable, whether the **Insureds** are absolved from payment by any covenant, agreement, court order or otherwise; or
 5. Benefits due or to become due under the terms of the **Plan**, except to the extent that recovery for such benefits is based on a **Wrongful Act** and the payment constitutes a personal obligation of the **Insured**.
- F. "**Plan**" means any employee benefit plan named in the **Application** and all future plans provided the **Insureds** provide written notice to Underwriters of the acquisition of such plan within 30 days of such acquisition and pay any additional premium required.
- G. "**Sponsor**" means the **Company** and any **Subsidiary**.
- H. "**Wrongful Act**" means:
1. Any actual or alleged breach of fiduciary duty, neglect, error, misstatement, misleading statement, omission or other act done or wrongfully attempted by the **Insureds** in the discharge of their duties solely in their capacity as:
 - (a) A fiduciary of the plan (as the term fiduciary is defined in the Employee Retirement Income Security Act of 1974 and amendments thereto) in connection with the management and/or administration of the **Plan** or assets of the **Plan**; or
 - (b) An authorized agent of the **Sponsor** with respect to the **Administration** of the **Plan**; or
 2. Any matter claimed against any of the **Insureds** solely by reason of their fiduciary capacity with the **Plan** or by reason of their capacity as authorized agent of the **Sponsor** with respect to the **Administration** of the **Plan**.

Any such breach of fiduciary duty, neglect, error, misstatement, misleading statement, omission or other act or the conduct that is the subject of such matter must have been committed, attempted or allegedly committed or attempted on or after the Retroactive Date, if applicable, and prior to the end of the **Policy Period**.

III. EXCLUSIONS

- A. Underwriters shall not be liable to make any payment in connection with any **Claim**:
1. Arising out of the failure to effect or maintain any insurance or bonds or to effect or maintain adequate limits of coverage of insurance or bond on the assets or obligations of the **Plan**; or
 2. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged obligation of any **Insured** under any workers' compensation, unemployment insurance, social security, disability benefits or similar law; or
 3. Based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than the Employee Retirement Income Security Act of 1974 as amended; or
 4. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the service of any of the **Insureds** as a fiduciary or administrator of any plan other than the **Plan** or the status of any of the **Insureds** as a fiduciary of such other plan.
 5. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the rendering of investment advice, including advice given by any **Insured** to make any investment or to refrain from doing so.
- B. Underwriters shall not be liable to make any payment for that part of **Loss** other than **Defense Costs**:
1. Based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the failure to collect contributions owed by an employer to the **Plan** unless such failure is due to the negligence of any of the **Insureds**; or
 2. Which constitutes the return or reversion of any contributions or assets of the **Plan** to an employer; or
 3. If the **Claim** alleges that a covered **Wrongful Act** caused or contributed to a reduction or loss in the value of the **Plan's** assets and/or to the accounts of such **Plan's** participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as benefits or held by a court to be benefits.

The **Wrongful Act** of any of the **Insureds** shall not be imputed to any other of the **Insureds** for the purpose of determining the applicability of the above Exclusions.

IV. LIMIT OF LIABILITY AND RETENTION

- A. Underwriters will pay 100% of Loss in excess of the Retention amount set forth in the Item E. of the Declarations up to the Limit of Liability set forth in the Item D. of the Declarations.
- B. The Retention amount set forth in Item E. of the Declarations shall apply to each and every **Claim**. The Retention shall be paid by the **Insureds**.
- C. No retention shall apply with respect to any **Claim** if there is a determination of "No Liability" of such **Insured** with respect to such **Claim**, or if such **Claim** is dismissed, or there is a stipulation to dismiss such **Claim**, with prejudice and without the payment of any consideration.
"No Liability" means a final judgment of no liability obtained in favor of an **Insured** after the exhaustion of all appeals.
- D. **Defense Costs** shall be part of and not in addition to the Limit of Liability set forth in Item D. of the Declarations. **Defense Costs** Underwriters pay shall reduce the Limit of Liability. **Defense Costs** paid by the **Insureds** shall be applied against the Retention.
- E. The amount shown in Item D. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under this Coverage Section and is part of and not in addition to the Overall Policy Aggregate shown in Item D. of the Declarations.

V. SUPPLEMENTARY PAYMENTS

Underwriters shall reimburse the Insured, subject to the aggregate Limit of Liability, up to USD 150,000 for "Compliance Costs" incurred during the **Policy Period** in connection with any "Voluntary Compliance Programs" provided the **Insured** gives prior written notice to Underwriters of its intent to enter into such "Voluntary Compliance Programs" during the **Policy Period**. The supplementary payment is part of and not in addition to the Limit of Liability for the Fiduciary Liability Coverage Section stated in the Declarations. No retention applies to this supplementary payment.

"Compliance Costs" means:

- 1. "Consulting Fees" incurred in connection with, or
- 2. Any fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to,

A "Voluntary Compliance Program" for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Compliance Costs** shall not include: (i) any costs to correct the non-compliance, or (ii) any "Consulting Fees", fines, penalties or sanctions relating to a **Plan** which as of the earlier of inception of this Policy or inception of the first policy in an uninterrupted series of policies issued by Underwriters of which this Policy is a direct or indirect renewal or replacement, any **Insured** knew to be actually or allegedly non-compliant.

"Consulting Fees" means reasonable and necessary fees, costs and expenses incurred by the **Insureds** with the prior written consent of Underwriters, including the fees charged by a third party actuary, benefits consultant, accountant or legal counsel, resulting solely from the correction of an actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. However, "Consulting Fees" shall not include fees, costs or expenses relating to a **Plan** audit or relating to finding, assessing or identifying such violation.

"Voluntary Compliance Program" means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, the United States Department of Labor or other similar governmental authority located outside the United States, including without limitation:

- 1. the Employee Plans Compliance Resolution System consisting of the Self-Correction Program, the Voluntary Compliance Resolution Program and the Audit Closing Agreement Program all as set forth in IRS Revenue Procedure 2003-44 (as amended, modified, expanded or superseded by any successor Revenue Procedure); or
- 2. Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program administered by the Department of Labor.

VI. TRANSFER OR TERMINATION OF A PLAN

If a sponsorship of a **Plan** is transferred so that the **Company** is no longer the sole employer **Sponsor** of such **Plan** or if a **Plan** is terminated, coverage under this Policy shall continue for the remainder of the **Policy Period** or any Extended Reporting Period, if purchased, for any **Wrongful Act** by or with respect to such **Plan** occurring prior to the date of such transfer or termination.

FINANCIAL PROFESSIONAL INDEMNITY COVERAGE SECTION

In consideration of the payment of the premium, in reliance on the statements in the Application and subject to all of the provisions of this Policy, Underwriters and the **Insured** agree as follows.

I. INSURING CLAUSE

A. LOAN SERVICING AND PROFESSIONAL SERVICES INDEMNITY INSURING CLAUSE

Underwriters shall reimburse the **Insured** for **Loss** resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported in accordance with General Conditions Clause III. K. "NOTIFICATION" for a **Wrongful Act** while performing **Loan Servicing** or **Professional Services**, including failure to perform **Loan Servicing** or **Professional Services**.

B. LENDING SERVICES INDEMNITY INSURING CLAUSE

Underwriters shall reimburse the **Insured** for **Loss** resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported in accordance with General Conditions Clause III. K. "NOTIFICATION" for a **Wrongful Act** while performing **Lending Services**, including failure to perform **Lending Services**.

II. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated.

A. **Claim** means:

- (1) a written or oral demand for monetary damages or non-monetary relief;
 - (2) a civil proceeding commenced by the service of a complaint or similar pleading;
 - (3) an arbitration proceeding commenced by the submission of a statement of claim or similar document; or
- by or on behalf of a customer or any other party against an **Insured** for a **Wrongful Act**, including any appeal therefrom.

B. **Corporate Takeover** means:

1. the acquisition by any person or entity of more than 50% of the outstanding securities of the **Named Insured** representing the present right to vote for the election of directors, or
2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity, or
3. the consolidation of the **Named Insured** with another entity, or the acquisition of substantially all of the assets of the **Named Insured** by another entity, or
4. the appointment of a conservator, receiver or administrator to manage the affairs of the **Named Insured**, or
5. the **Named Insured** ceasing to be publicly held.

C. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds, but shall not include:

- (1) fees, salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**, or
- (2) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.

D. **Interrelated Wrongful Acts** means **Wrongful Acts** which have as a common nexus, fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

E. **Insured(s)** means the **Company** and any **Insured Person**.

F. **Insured Person** means any natural person, who was, is or shall become:

- (1) a full time, part time, temporary, leased or seasonal employee or volunteer of the **Company**, but only while acting in his or her capacity as such;

(2) a duly elected or appointed director or officer of any **Company**, but only while acting in his or her capacity as such.

G. **Lending Customer** means any person or entity which is not affiliated with the **Company** and to which an extension of credit, agreement to extend credit, or refusal to extend credit was made or negotiated on behalf of the **Company**.

H. **Lending Services** means any act performed by an **Insured** for or with respect to a **Lending Customer** of the **Company** in the course of:

- (1) The origination of any **Loan**, including making or refusing to make any **Loan**;
- (2) Credit reporting or statements of creditworthiness in connection with any **Loan** or **Lending Customer**.
- (3) The restructuring of any **Loan** or refusing or failing to restructure any **Loan**;
- (4) The termination or transfer of any **Loan**; and
- (5) The repossession of or foreclosure on any property.

Lending Services does not include **Loan Servicing**.

I. **Loan** means any mortgage, credit line or other extension of credit, loan or any transaction in the nature of a loan, whether in the context of consumer lending, commercial lending, mortgage banking or otherwise, but not including financing for investment banking, or for leveraged management buyouts.

J. **Loan Servicing** means the administration of any existing **Loan**, and includes the following servicing activities:

- (1) Collecting, receiving or recording payments on **Loans** held by a **Lending Customer**;
- (2) The exercise of any contractual, statutory or other right arising from a late payment, breach of condition or default on any **Loan**;
- (3) Establishing or administering tax or insurance escrow accounts on mortgage loans held by a **Lending Customer**; and
- (4) managing real property owned by or under the supervision or control of an **Insured**. **Loan Servicing** does not include **Lending Services**.

K. **Loss** means damages, judgments, settlements and **Defense Costs** incurred by any of the **Insureds**, including punitive or exemplary damages where insurable by law. With respect to punitive damages, the applicable law for insurability will be the law most favorable to the **Insured** provided the most favorable law has a reasonable relationship to the **Claim**. Law which will be deemed reasonably related includes the law (1) of the state where the **Insured** is incorporated or has its principal place of business; (2) of the state where the **Claim** is pending; or (3) of the state where any **Wrongful Act** happened.

Loss shall not include:

- (1) any amount not indemnified by the **Company** for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
- (2) any costs incurred by the **Company** to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- (3) taxes, criminal or civil fines or penalties imposed by law, or the multiple portion of any multiplied damage award;
- (4) any amount not insurable under the law pursuant to which this Policy is construed;
- (5) any amount allocated to non-covered loss pursuant to Clause III. O. of this Policy's GENERAL TERMS AND CONDITIONS;
- (6) loss of cash, securities, property or other items of value in the custody or control of any **Insured**, its agent, or in transit; or
- (7) amounts otherwise reimbursable to any **Insured** by any trust, estate, plan or fund or any similar entity, or the sponsor of any such trust, estate, plan or fund.

L. **Professional Services** means those services other than **Loan Servicing** and **Lending Services** that are performed or required to be performed by an **Insured** for or on behalf of a customer of an **Insured**:

- (1) for a fee, commission or other monetary consideration;
- (2) where a fee, commission or other monetary consideration would usually be received by the **Insured** but for business or other reasons is waived by the **Insured**; or

(3). for other remuneration which inures to the benefit of such **Insured**.

M. **Wrongful Act(s)** means any actual or alleged negligent act, error or omission or breach of professional duty in rendering or failing to render **Professional Services, Lending Services** or **Loan Servicing**.

III. EXCLUSIONS

Underwriters shall not be liable to make any payment in connection with any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible or intangible property (including loss of use thereof), including but not limited to property represented by securities, documents, or other written instruments, whether owned by the **Company**, held by the **Company** in any capacity, or for which the **Company** may be liable;
- B. based upon, arising from, or in consequence of:
 - 1. any **Wrongful Act**, or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any other insurance policy, or
 - 2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- C. based upon, arising from, or in consequence of any actual or alleged seepage, pollution or contamination of any kind;
- D. based upon, arising from, or in consequence of:
 - 1. any deliberately dishonest, fraudulent, criminal act, written admission/guilty plea or omission by any of the **Insureds**, or
 - 2. any personal profit or advantage gained by any **Insured(s)** to which they were not legally entitled as determined by a final adjudication in the underlying action or in a separate action or proceeding;

With respect to this Exclusion, in order to determine if coverage is available:

 - (a) no fact pertaining to or knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**; and
 - (b) all facts pertaining to and knowledge possessed by any past, present or future Chief Financial Officer, in house General Counsel, Chief Executive Officer, Risk Manager, President or Chairman of any **Company** shall be imputed to the **Company**;
- E. against any **Insured Person** of any **Subsidiary**, or against any **Subsidiary** based upon, arising from, or in consequence of:
 - 1. any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
 - 2. any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**;
- F. based upon, arising from, or in consequence of any **Wrongful Act** actually or allegedly committed subsequent to a **Corporate Takeover**;
- G. for any actual or alleged violation of the responsibilities, obligations or duties imposed on fiduciaries by the Employee Retirement Income Security Act of 1974, or any amendments thereto, or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
- H. for discrimination, libel, slander, wrongful termination of employment, disparagement, retaliation, sexual harassment, violation of rights of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, assault or battery;
- I. made against any of the **Insureds** by or at the behest of any federal or state government, governmental body or governmental agency, except when acting solely in the capacity of a customer or client of the **Company**;

- J. by or on behalf of or at the behest of any security holder of the **Company** when such **Claim** is in any way related to any interest in such security;
- K. based upon, arising from, or in consequence of depreciation (or failure to appreciate) in value of any investments, including but not limited to securities, commodities, currencies, leased products or services, options, derivatives and futures transactions, or as a result of any actual or alleged representation, guarantee or warranty provided by or on behalf of any of the **Insureds** as to the performance of any such investments, unless such **Claim** is due solely to negligence on the part of an **Insured Person** in failing to effect a specific investment transaction in accordance with the specific prior instructions of a client of the **Insured**.
- L. for the reimbursement of fees, commissions, costs or other charges paid or payable to any of the **Insureds**, or based upon allegations against any of the **Insureds** of excessive, improper or unauthorized fees, commissions, costs or other charges;
- M. based upon, arising from, or in consequence of:
1. the underwriting, securitizing, syndicating, promoting, or market making (as defined in section 3(A)(38) of the Securities Exchange Act of 1934 as amended) of any debt or equity security or other evidence of indebtedness, or any other similar investment banking activity;
 2. rendering advice or recommendations regarding any actual, attempted or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy out, going private transaction, insolvency proceeding, reorganization, capital restructuring, recapitalization, spin off, primary or secondary offering of debt or equity securities or other evidence of indebtedness, dissolution or sale of all or substantially all of the assets, debt or securities of a business entity or any effort to raise or furnish capital or financing for any enterprise or entity;
 3. the rendering of fairness opinions regarding the valuation of any assets or business entity not held by the **Insured** as trustee;
 4. any acquisition or sale of securities by the **Insured** for such **Insured's** own account, or any disclosure requirements or **Professional Services** in connection with any of the foregoing.
- N. based upon, arising from, or in consequence of:
1. Medical or health care services, real estate appraisal services, architectural or construction management services, the practice of law or the rendering of legal services or
 2. Services performed by any entity which the **Insured** shall have acquired ownership or control as security for a loan, lease or other extension of credit;
- O. for legal liability assumed by the **Company** under the terms, conditions or warranties of any contract or agreement, or by virtue of any waiver or release from liability of any third party, except to the extent that liability would have attached to any of the **Insureds** in the absence thereof;
- P. based upon, arising from, or in consequence of any function or activity as a receiver, trustee in bankruptcy, conservator or assignee for the benefit of creditors;
- Q. based upon, arising from, or in consequence of the notarization of any signature without the physical appearance at the time of notarization of the person who is or claims to be the person signing the instrument;
- R. by or on behalf of or at the behest of any of the **Insureds**, or any affiliate of any of the **Insureds**, or any entity in which any of the **Insureds** have a controlling interest, or by the **Named Insured** or by any entity which has a controlling interest in the **Named Insured**;
- S. for any legal liability arising from or contributed to by the deliberate breach of any law, enactment or regulation relating to the constitution, operation and conduct of the **Insured** while performing **Professional Services**, **Lending Services** or **Loan Servicing** anywhere in the world that are consistent with the charter and or business operations of the **Insured**; provided, however, this exclusion shall only apply upon a final and unappealable adjudication adverse to the **Insured(s)** establishing that such deliberate and knowing violation of any law, enactment or regulation occurred.
- T. based upon, arising from, or in consequence of:
1. any mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data processing media failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
 2. any shortcoming in the **Insured's** computer system; or

3. an **Insured's** failure to take reasonable steps to maintain and upgrade the **Insured's** computer system; or
4. breakdown or malfunction of any machine or system of machines including any electrical power interruption, surge, brown out or black out; or failure of telephone lines, data transmission line, satellites or other infrastructure compromising or supporting the Internet.

U. based upon, arising from, or in consequence of projections of or an appraisal for residual or future value of property.

IV. LIMIT OF LIABILITY, RETENTIONS AND DATE OF CLAIM

- A. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item F. of the Declarations in excess of the amount of the Retention shown in Item E. of the Declarations up to the Limit of Liability, it being warranted by and on behalf of all **Insureds** that the remaining percentage of **Loss** shall be uninsured.
- B. The amount shown in Item D. of the Declarations shall be the maximum aggregate Limit of Liability of Underwriters under this Policy.
- C. The amount shown in Item D. of the Declarations shall be the maximum Limit of Liability of Underwriters for each **Claim** and in the aggregate under Insuring Clause 1.A. (Loan Servicing and Professional Services Indemnity). This limit of liability is part of, and not in addition to, the Limit of Liability specified in Clause IV. (B) above.
- D. The amount shown in Item D. of the Declarations shall be the maximum Limit of Liability of Underwriters for each **Claim** and in the aggregate under Insuring Clause 1.B (Lending Services Indemnity). This limit of liability is part of, and not in addition to, the Limit of Liability specified in Clause IV. (B) above.
- E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - (1) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - (2) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to General Conditions Clause III. K. "NOTIFICATION" provision of the Policy.
- F. A **Claim** is considered to be made at the earliest date of its filing.
- G. Payments of **Loss** by Underwriters shall reduce the Limit of Liability.
- H. Underwriters shall reimburse **Loss** only upon the final disposition of any **Claim**; provided, however, that Underwriters at their sole discretion may elect to advance **Defense Costs** at any time.

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

In consideration of the payment of the premium, in reliance on the statements in the Application and subject to all of the provisions of this Policy, Underwriters and the **Insured** agree as follows.

I. INSURING AGREEMENTS.

- A. Underwriters agree to pay **Loss** and **Punitive Damages** on behalf of the **Insured(s)** on account of a **Claim** first made against an **Insured** during the **Policy Period** or any extension thereof by a **Claimant** for a **Wrongful Act**.
- B. Underwriters agree to pay **Loss** and **Punitive Damages** on behalf of the **Insured(s)** on account of a **Claim** first made against an **Insured** during the **Policy Period** or any extension thereof by a **Third Party Claimant** for a **Third Party Wrongful Act**.
- C. Underwriters agree to pay **Loss** and **Punitive Damages** on behalf of directors and officers of the **Named Insured** who serve as directors, officers or trustees of a not for profit entity at the request of the **Named Insured** on account of a **Claim** first made against such director or officer during the policy period or any extension thereof by or on behalf of an employee, former employee or applicant for employment of such not for profit entity for a **Wrongful Act**. Any coverage will be excess of any indemnity provided by such not for profit entity and excess any other insurance available through the not for profit entity.

II. DEFINITIONS.

- A. **Claim** means (1) a written complaint; (2) a written demand in which damages are alleged; (3) a request to toll any applicable statute of limitations; (4) a civil action or an administrative proceeding or a governmental investigation; or (5) an arbitration proceeding, a mediation proceeding, or other alternative dispute resolution proceeding to which any **Insured** must submit or to which any **Insured** submits with Underwriters' consent. **Claim** includes the defense of a civil action requesting an injunction or other non-monetary relief. Notwithstanding the foregoing, **Claim** shall not include criminal proceedings or labor or grievance arbitration subject to a collective bargaining agreement. The date of **Claim**, for purposes of Clause I above, will be the date a written **Claim** is first served on or received by any **Insured**. All **Interrelated Claims** will be considered to have been made on the date that the first of those **Claims** was first served on or received by any **Insured**.
- B. **Claimant** means a current or former **Employee**, an applicant for employment with an insured entity, or the Equal Employment Opportunity Commission or a similar state or federal agency.
- C. **Defense Costs** means those reasonable and necessary expenses that result from the investigation, settlement or defense of a specific **Claim**, including but not limited to attorney fees and expenses, expert fees, the cost of legal proceedings, the cost of appeal bonds and the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the limit of liability of this policy that apply; Underwriters have no obligation to furnish such bonds). Underwriters agree not to seek to allocate **Defense Costs** between covered and uncovered Claims for any covered party.

Defense Costs do not include salaries and expenses of any **Insureds** or any fees and expenses of Underwriters' attorneys.
- D. **Discrimination** means termination of the employment relationship, a demotion or failure or refusal to hire or promote or denial of an employment benefit or the taking of any adverse or differential employment action, including but not limited to retaliation, because of race, color, religion, age, sex, sexual orientation, sexual preference, disability (including AIDS), pregnancy, national origin, family care-giving responsibilities, or any other basis prohibited by federal, state or local law.
- E. **Employee(s)** means an individual, including directors and officers, whose labor or service is engaged by and directed by an insured entity. This includes but is not limited to part-time, seasonal, volunteer, temporary and leased **Employees** as well as any individual employed in a supervisory, managerial or confidential position. If the **Named Insured** is a law firm, **Employee** also includes partners, associates, attorneys in "counsel" or "of counsel" positions. Independent contractors of an insured entity will be considered **Employees**, but solely while acting in a professional capacity on behalf of the **Named Insured**. No coverage is available for **Claims** by independent contractors for overtime pay, vacation pay, or any employee benefits.
- F. **Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that (1) explicitly or implicitly are made a condition of employment, (2) are used as a basis for employment decisions, or (3) create a work environment that interferes with performance. **Harassment** includes allegations of assault and battery, but only if they are related to a charge of sexual harassment.
- G. **Insured(s)** means the **Named Insured** shown in Item A. of the Declarations and:
 - 1. If the **Named Insured** is a proprietorship, all owners and current or former **Employees** of the **Named Insured**, but only in their respective capacities with the **Named Insured**.

2. If the **Named Insured** is a corporation, any current or former directors, officers, or **Employees** of the **Named Insured**, but only in their respective capacities with the **Named Insured**. Additionally, any entity more than 50% owned by the **Named Insured** is an **Insured** along with such entity's current or former managers, directors, officers and **Employees** in their respective capacities with the **Named Insured**, provided that such **Insureds** were included in the employee count of the application. Stockholders and members are also **Insureds** but only with respect to their liability as stockholders or members.
 3. If the **Named Insured** is a limited liability corporation, any current or former managers or **Employees** of the **Named Insured** are **Insureds**, but only in their respective capacities with the **Named Insured**. Additionally, any entity more than 50% owned by the **Named Insured** is an **Insured** along with such entity's current or former managers, directors, officers and **Employees** in their respective capacities with the **Named Insured**, provided that such **Insureds** were included in the employee count of the application. Members and stockholders are also **Insureds**, but only with respect to their liability as members or stockholders. Spouses or **Domestic Partners** of **Insureds** are also covered, but only for a **Wrongful Act** or **Third Party Wrongful Act** in connection with the **Named Insured's** business.
 4. If the **Named Insured** is a partnership or joint venture, any current or former partners, co-venture or **Employees** of the **Named Insured** are **Insureds**, but only in their respective capacities with the **Named Insured**. However, no person or entity is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.
- H. **Interrelated Claim(s)** means (1) one or more covered **Claims** which are related by an unbroken chain of events; (2) related **Claims** made by or on behalf of the same person; or (3) class action or other multiple plaintiff **Claims**.
- I. **Loss** means (1) damages, liquidated damages, back pay, front pay and damages representing lost insurance benefits; (2) judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid or to be paid by Underwriters); (3) settlements; and (4) statutory attorney fees, except as excluded below.
- Loss** shall not include (1) civil or criminal fines or penalties imposed by law, or taxes; (2) payment of insurance plan benefits claimed by or on behalf of retired **Employees**, or that a **Claimant** would have been entitled to as an **Employee** had the **Insured** provided the **Claimant** with a continuation of insurance, however, this shall not apply to any amount awarded as damages on account of lost insurance benefits; (3) costs incurred by any **Insured** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person; (4) amounts owed under federal, state or local wage and hour laws, however, this shall not apply to any **Claim** under the Federal Equal Pay Act or similar state laws; (5) commissions, bonuses, profit sharing or benefits pursuant to a contract of employment, however, this does not apply to any coverage under Insuring Agreement C; (6) severance payments; or (7) amounts owed under a written or express contract of employment for a definite period of time, except **Defense Costs** for **Claims** of breach of a written or express contract of employment for a definite period of time are covered. **Loss** shall not include statutory attorneys fees if awarded as a result of any **Loss** not otherwise covered under this Policy.
- J. **Management** means directors, owners of a sole proprietorship, partners, chief executive officer, chief financial officer, chief operating officer, executive director, in-house attorneys, risk manager, human resources manager or any **Employee** performing the human resources management function.
- K. **Negligent Hiring** means an allegation by a **Claimant** that an **Insured** is liable for **Discrimination** or **Harassment** because of negligence in the employment of any **Employee**.
- L. **Punitive Damages** means punitive damages, exemplary damages, and multiple damages, where insurable by law. With respect to **Punitive Damages**, the applicable law for purposes of insurability will be the law most favorable to the **Insured**, provided the most favorable law has a reasonable relationship to the **Claim**. Law which will be deemed reasonably related includes the law (1) of the state where the **Insured** is incorporated or has a place of business; (2) of the state where the **Claim** is pending; or (3) of the state where any **Wrongful Act** or **Third Party Wrongful Act** happened.
- M. **Third Party Claimant** means any natural person who is not an **Employee** who makes a **Claim**.
- N. **Third Party Wrongful Act** shall mean actual or alleged acts of discrimination against or sexual harassment of a **Third Party Claimant** by an **Insured** which violate any federal, state or local statute which prohibits discrimination or sexual harassment.
- O. **Wrongful Act** means actual or alleged acts of **Discrimination**, **Harassment** and/or a **Wrongful Employment Practice**, by an **Insured**.
- P. **Wrongful Employment Practice** means:
- (1) termination, actual or constructive, of an employment relationship in any manner which is allegedly against the law or wrongful;
 - (2) wrongful demotion, wrongful evaluation, wrongful discipline, wrongful failure to promote, retaliation,

promissory estoppel, and intentional interference with contract, which arise from an employment relationship;

- (3) defamation, infliction of emotional distress or mental anguish, humiliation, false imprisonment, invasion of privacy, which arise from the employment relationship;
- (4) breach of an implied employment contract and breach of the covenant of good faith and fair dealing in the employment contract;
- (5) employment terminations, disciplinary actions, demotions, which violate public policy or the Family Medical Leave Act or similar state law;
- (6) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (7) breach of an **Employee's** federal, state or local civil rights including but not limited to any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983;
- (8) retaliation against any **Insured** including but not limited to retaliation for filing claims under the Federal False Claims Act, retaliation in connection with whistle blowing, retaliation for union activities or in connection with strikes or lockouts;
- (9) wrongful deprivation of career opportunity or failure to grant tenure or failure to make partner; and
- (10) **Negligent Hiring.**

III. EXCLUSIONS.

A. **Prior Notice.**

This Policy does not cover any **Claim**, **Wrongful Act** or **Third Party Wrongful Act**, which has been the subject of any notice given under any other policy prior to the inception date of this policy.

B. **Prior Knowledge Exclusion.**

If any **Management Employee** of the **Named Insured** shown in Item I of the Declarations is aware prior to the Continuity Date set forth in Item ____ of the Declarations, of any fact, circumstance or situation indicating the possibility of a **Claim** for **Discrimination**, **Harassment**, **Negligent Hiring**, **Wrongful Employment Practice** or **Third Party Wrongful Act** being brought against any proposed **Insured**, then any **Claim** subsequently arising therefrom shall be excluded from coverage.

C. **Workers' Compensation.**

This Policy does not cover any **Loss** arising out of any obligation under any workers' compensation law, disability benefits or unemployment compensation law or any similar law. This exclusion shall not apply to any **Claim** for retaliation or **Discrimination** on account of filing a workers' compensation claim, an unemployment compensation claim, or a claim for disability benefits.

D. **Liability Assumed by Contract.**

This Policy does not cover any **Loss** which any **Insured** is obligated to pay by reason of the assumption of another's liability for a **Wrongful Act** or **Third Party Wrongful Act** in a contract or agreement. This exclusion will not apply to liability for damages because of a **Wrongful Act** or **Third Party Wrongful Act** that any **Insured** would have without such contract or agreement.

E. **Employee Retirement Income Security Act.**

This Policy does not cover any **Loss** arising from the Employee Retirement Income Security Act of 1974, or any amendments thereto, or any similar federal, state or local law. This exclusion shall not apply to any **Claim** under Section 510 of ERISA.

F. **W.A.R.N. Act.**

This Policy does not cover any **Loss** arising out of the Workers Adjustment and Retraining Notification Act, or any amendment thereto, or any similar federal, state or local law. This exclusion shall not apply if the **Named Insured** consulted with legal counsel and made a good faith attempt to comply with the law.

G. **Class Action Wage and Hour.**

This Policy does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any actual or purported class action lawsuit alleging violation of any federal, state or local wage and hour law. This exclusion applies to exclude coverage for the entirety of the lawsuit even if other covered allegations are made. This exclusion also applies to any governmental or administrative proceeding instituted under any federal, state or local wage and hour law or regulation.

H. **Unfair Business Practices.**

This Policy does not cover any **Loss** arising out of any Unfair Business Practices Act, including without limitation California Business and Professions Code Section 17200.

IV. **LIMIT OF LIABILITY.**

- A. The limits shown in Item D. of the Declarations is the most Underwriters will pay under this Policy, regardless of the number of **Insureds, Claimants, Third Party Claimants, Claims** or **Interrelated Claims** made.
- B. If the **Policy Period** is extended by either a limited reporting period or an extended reporting period, the limits shown in Item D. of the Declarations shall not in any way increase. For purposes of the limit of liability, any policy extension is considered to be part of and not in addition to the preceding **Policy Period**.

V. **SELF-INSURED RETENTION.**

Underwriters' obligation to pay under this policy applies only to the amount of **Defense Costs** or **Loss** in excess of any self-insured retention amount shown in Item E. of the Declarations, and the limit of liability will not be reduced by the amount of such self-insured retention.

The self-insured retention amount applies separately to each **Claim**. However, only one self-insured retention will apply to all **Interrelated Claims**.

The self-insured retention will be reduced by 25% for a **Claim** for wrongful termination in the event that the **Insured** consulted with and followed the recommendations of labor and employment law counsel prior to the actual termination of an **Employee**, with such recommendations having been reduced to writing in advance of such termination.

VI. **TERMS AND CONDITIONS**

Underwriters have no duty to provide coverage under this Policy unless there has been full compliance with all the conditions contained in this policy.

VII. **OPTIONAL DEFENSE OF CRIMINAL CLAIMS**

At the request of the **Named Insured**, Underwriters shall have the option, but not the duty, to defend any criminal proceedings brought against any **Insured**. Should Underwriters in their sole discretion exercise the option to defend any criminal proceeding, any **Defense Costs** incurred therein shall reduce and may exhaust the policy Limits of Liability. The exercise of the option to defend any criminal proceeding shall not serve to render Underwriters liable for any other **Loss** incurred in connection with any criminal proceedings, and Underwriters shall retain the right to withdraw from the defense upon giving thirty (30) days notice. Whether or not Underwriters exercise the option to defend criminal proceedings, Underwriters shall defend, subject to the policy's terms and conditions, any civil proceeding brought against an **Insured** which alleges the same or similar **Wrongful Acts** or **Third Party Wrongful Acts** as a criminal proceeding.



LLOYD'S

THIS INSURANCE is effected with certain Underwriters at Lloyd's, London (not incorporated).

THIS CERTIFICATE is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose names and the proportions underwritten by them can be ascertained from the office of said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters do hereby bind themselves each for his own part, and not for one another, their heirs, executors and administrators.

THE ASSURED is requested to read this certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

Correspondent:

In the event of a claim under this certificate, please notify the following Authorized Representative:

CERTIFICATE PROVISIONS

1. **Signature Required.** This Certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.
2. **Correspondent Not Insurer.** The Correspondent is not an Insurer of the insurance described herein and neither is nor shall be liable for any loss or claim whatsoever. The Insurers of such insurance are those Underwriters at Lloyd's, London, whose names can be ascertained as hereinbefore set forth. As used in this Certificate "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.
3. **Cancellation.** If the insurance described herein provides for cancellation and if said insurance is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.
4. **Assignment.** The insurance described herein shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
5. **Attached Conditions Incorporated.** The insurance described in this Certificate is subject to all provisions, conditions and warranties set forth herein, attached, or endorsed, all of which are to be considered incorporated herein as further descriptive of the insurance the placement of which is evidenced by this Certificate.
6. The Certificate is intended for use as evidence of the placement of the insurance described herein, in accordance with Section 1764 of the California Insurance Code.