

U.S. SPECIALTY INSURANCE COMPANY

MAG+ INSURANCE POLICY

This is a claims-made policy. Please read it carefully.

In consideration of the payment of the premium, and in reliance upon the **Application** and subject to the terms and conditions of this Policy (including the Declarations and any endorsements), the Insurer and the **Insureds** agree as follows:

GENERAL DEFINITIONS, EXTENSIONS AND CONDITIONS

NOTE: Unless expressly indicated otherwise in this Policy, these GENERAL DEFINITIONS, GENERAL EXTENSIONS and GENERAL CONDITIONS apply to all Coverage Sections. Any endorsement issued to form a part of this Policy also applies to all Coverage Sections, unless indicated otherwise in such endorsement. No coverage is provided under any Coverage Section that has not been purchased.

GENERAL DEFINITIONS

(A) **Application** means:

- (1) the application, information or other materials submitted by or on behalf of the **Insureds** in connection with the underwriting of this Policy, and
 - (2) any warranty submitted to the Insurer by or on behalf the **Insureds** within the last three years in connection with any policy of which this Policy is a renewal or replacement,
- all of which are deemed attached to and part of this Policy.

(B) **Claim** means:

- (1) a civil proceeding commenced by service of a complaint or similar pleading,
- (2) an arbitration, mediation or other similar dispute resolution proceeding,
- (3) an administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,
- (4) a criminal proceeding commenced by the return of an indictment, information or similar document,
- (5) the receipt by an **Insured Person** of a target letter or similar document, including a subpoena, in connection with an investigation of such **Insured Person**,
- (6) an official request for **Extradition** of an **Insured Person**, including the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**,
- (7) a written request or agreement to toll or waive any applicable statute of limitations in connection with any of the foregoing, or
- (8) any written demand for monetary, non-monetary or injunctive relief that is not encompassed in Subsections (1) through (7) above and is not included as a **Claim** elsewhere in this Policy;

provided, that **Claim** will not include any labor or grievance proceeding subject to a collective bargaining agreement.

- (C) **COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended).
- (D) **Crisis Costs** means reasonable fees, costs and expenses charged by a **Crisis Firm** and incurred by the **Insured Organization** during the pendency of or within 60 days of a **Crisis Event** to minimize the reputational harm from such **Crisis Event** and restore public confidence in the **Insured Organization** in response to the **Crisis Event**, including travel expenses for **Insured Persons** and **Crisis Firm** personnel and costs to advertise, print and mail written materials in response to the **Crisis Event**.
- (E) **Crisis Event** means any **D&O Crisis, EPL Crisis** or **Fiduciary Crisis**.
- (F) **Crisis Firm** means any public relations firm, crisis management firm or law firm retained by the **Insured Organization** solely to provide advice and related services in response to a **Crisis Event**.
- (G) **Defense Costs** means reasonable legal fees, costs and expenses consented to by the Insurer (which consent will not be unreasonably withheld) and incurred by an **Insured** in the investigation, adjustment, defense or appeal of a **Claim** against the **Insured**, including:
- (1) expert witness fees,
 - (2) fees, costs and expenses incurred by an **Insured Person** to oppose or challenge his or her **Extradition**, and
 - (3) premiums for appeal bonds, attachment bonds or similar bonds;
- provided, that **Defense Costs** will not include any overhead expenses, or any compensation or benefits of an **Insured Person**.
- (H) **Designated Penalties** means:
- (1) punitive and exemplary damages and the multiplied portion of any multiplied damage award, and
 - (2) any other amount included as **Designated Penalties** in any Coverage Section (but only for purposes of the coverage afforded under that Coverage Section).
- (I) **Director** means a natural-person director of a corporation or natural-person (i) member of the management board of an entity that is a limited liability company, (ii) member of the management committee of an entity that is a joint venture, or (iii) general partner of an entity that is a limited partnership.
- (J) **Domestic Partner** means a natural person qualifying as a domestic partner under the provisions of any applicable law or under the provisions of a formal program established by the **Insured Organization**.
- (K) **Employee** means any natural person compensated by the **Insured Organization** whose labor or service is engaged and directed by the **Insured Organization**, including part-time and seasonal employees. **Employee** also means any natural-person volunteer for the **Insured Organization** whose labor or service is engaged and directed by the **Insured Organization**.
- (L) **ERISA** means the Employee Retirement Income Security Act of 1974 (as amended).
- (M) **Executive** means any duly elected or appointed:
- (1) **Director** or natural-person officer of the **Insured Organization**, or

- (2) natural person serving in a position with the **Insured Organization** that is functionally equivalent to **Director** or officer (including a functionally equivalent position with an **Insured Organization** located in a **Foreign Jurisdiction**).
- (N) **Extradition** means any formal process by which a natural person is surrendered (or sought to be surrendered) from one country to another to face a criminal trial or otherwise answer a criminal accusation.
- (O) **Financial Insolvency** means the status of an entity resulting from:
- (1) the appointment by a state or federal official, agency or court of a trustee, receiver, conservator, rehabilitator, liquidator or other similar official to take control of, supervise, manage or liquidate such entity, or
 - (2) such entity becoming a debtor-in-possession pursuant to United States bankruptcy law.
- (P) **Foreign Jurisdiction** means any jurisdiction other than the United States (or any subdivision, territory or possession thereof).
- (Q) **Foreign Policy** means:
- (1) with respect to the Directors, Officers and Private Company Coverage Section (if purchased), the standard private directors and officers liability policy approved by the Insurer or another member company of HCC Insurance Holdings, Inc. to be sold in a particular **Foreign Jurisdiction**, if such policy provides coverage substantially equivalent to the Directors, Officers and Private Company Coverage Section and has been registered with the applicable regulatory body in such **Foreign Jurisdiction**;
 - (2) with respect to the Employment Practices Coverage Section (if purchased), the standard employment practices liability policy approved by the Insurer or another member company of HCC Insurance Holdings, Inc. to be sold in a particular **Foreign Jurisdiction**, if such policy provides coverage substantially equivalent to the Employment Practices Coverage Section and has been registered with the applicable regulatory body in such **Foreign Jurisdiction**; or
 - (3) with respect to the Fiduciary Responsibility Coverage Section (if purchased), the standard fiduciary liability policy approved by the Insurer or another member company of HCC Insurance Holdings, Inc. to be sold in a particular **Foreign Jurisdiction**, if such policy provides coverage substantially equivalent to the Fiduciary Responsibility Coverage Section and has been registered with the applicable regulatory body in such **Foreign Jurisdiction**;
- provided, that **Foreign Policy** will not include any professional liability, errors and omissions, or partnership liability insurance.
- (R) **Insured** means the **Insured Organization** and any **Insured Person**.
- (S) **Insured Organization** means the **Named Organization** and any **Subsidiary**. In the event a bankruptcy proceeding is instituted by or against the **Named Organization** or any **Subsidiary**, **Insured Organization** will also include the resulting debtor-in-possession (or equivalent status in a **Foreign Jurisdiction**), if any.
- (T) **Insured Person** means any past, present or future:
- (1) **Executive** or **Employee**, or
 - (2) natural-person member of an Advisory Board formed by the **Insured Organization**.

(U) **Loss** means **Defense Costs** and any damages, settlements, judgments or other amounts an **Insured** becomes legally obligated to pay as a result of a **Claim**, including:

- (1) pre- and post-judgment interest,
- (2) claimants' attorneys fees awarded pursuant to a court order or judgment and that portion of a settlement which represents claimants' attorneys fees, and
- (3) **Designated Penalties**, if and where insurable by law (as described below);

provided, that **Loss** will not include any:

1. wages;
2. severance pay, payment for stock option or stock appreciation rights, or payment of insurance or employee benefits (other than as expressly provided in the Fiduciary Responsibility Coverage Section pursuant to Subsections (1), (2) and (3) of FIDUCIARY EXCLUSION (H));
3. taxes, fines or penalties, other than **Designated Penalties**;
4. amounts which constitute or are in the nature of disgorgement or restitution (including any profit or financial advantage to which an **Insured** was not legally entitled);
5. amounts incurred or imposed in connection with non-monetary or injunctive relief; or
6. amounts uninsurable under applicable law.

Nothing in this GENERAL DEFINITION (U) will preclude coverage for **Defense Costs** incurred in **Claims** seeking amounts described in Subsections 3, 4, 5 and 6 above. For purposes of determining the insurability of **Designated Penalties**, the Insurer agrees to abide by the law of whichever jurisdiction is applicable to the **Claim** and is most favorable to the **Insureds** in that regard, including the jurisdiction where (i) the **Designated Penalties** were awarded or imposed, (ii) the **Wrongful Acts** giving rise to the **Claim** were committed, (iii) the **Insured Organization** or Insurer is incorporated or has its principal place of business, (iv) the **Insured Person** resides, or (v) this Policy was issued.

(V) **Management Control** means:

- (1) owning more than 50% of the issued and outstanding securities representing the right to vote for election of an entity's **Directors**, or
- (2) having the right, pursuant to written contract with an entity or the entity's certificate of incorporation, charter, articles of association or other organizational documents (including bylaws and resolutions):
 - (a) to appoint or designate a majority of such entity's board of **Directors** (or equivalent governing body), or
 - (b) with respect to an entity that is a limited partnership, to appoint or designate a majority of the board of **Directors** (or equivalent governing body) of the general partner of such limited partnership.

(W) **Media Report** means the publication of unfavorable information regarding the **Insured Organization** which has lessened or is reasonably likely to lessen public confidence in the **Insured Organization's** competence, if such information is published in (i) a daily newspaper of general circulation in the geographic area of the **Insured Organization**, or (ii) a radio or television newscast in the geographic area of the **Insured Organization**.

(X) **Named Organization** means the entity designated as such in Item 1 of the Declarations.

(Y) **Non-Indemnifiable Loss** means **Loss** incurred by an **Insured Person** with respect to which indemnification or advancement by the **Insured Organization** is not legally permissible or is not possible by reason of the **Insured Organization's Financial Insolvency**. The certificate of incorporation, charter, articles of association or other organizational documents (including bylaws and resolutions) of each **Insured Organization** will be deemed to have been adopted or amended to provide indemnification and advancement to the **Insured Persons** to the fullest extent permitted by law.

(Z) **Outside Capacity** means service by an **Insured Person**:

- (1) as a **Director**, officer or trustee of an **Outside Entity**, or
- (2) in a position with an **Outside Entity** that is functionally equivalent to **Director**, officer or trustee (including a functionally equivalent position with an **Outside Entity** located in a **Foreign Jurisdiction**),

during such time that such service is at the request of the **Insured Organization**.

(AA) **Outside Entity** means any organization or entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (as amended), or any other not-for-profit organization; provided, that **Outside Entity** will not include any **Insured Organization**.

(BB) **Policy Period** means the period set forth in Item 2 of the Declarations, subject to prior cancellation pursuant to GENERAL CONDITION (E).

(CC) **Subsidiary** means any entity (including any corporation, limited liability company, joint venture or limited partnership):

- (1) during any time on or before inception of this Policy in which the **Named Organization** has or had **Management Control**, or
- (2) subject to GENERAL CONDITION (F)(3), created or acquired during the **Policy Period** during any time in which, as a result of such creation or acquisition, the **Named Organization** has **Management Control**,

either directly or indirectly through one or more other **Subsidiaries**.

An entity ceases to be a **Subsidiary** when the **Named Organization** ceases to have **Management Control** over such entity, either directly or indirectly through one or more other **Subsidiaries**. Coverage under this Policy as to any **Subsidiary** (including, if applicable, its **Employee Benefit Plans**) and the **Insured Persons** thereof will only be available with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, after the effective time such entity became a **Subsidiary** and prior to the time such entity ceases to be a **Subsidiary**.

(DD) **Wage & Hour Violation** means any actual or alleged violation of any provision of the Fair Labor Standards Act or any federal, state, local or foreign law (statutory or common) governing wages, hour or payroll practices (including but not limited to any law concerning compensation earned but not paid, unpaid wages, improper payroll deductions, misclassification of exempt/non-exempt employee status, overtime pay, sick pay, vacation pay, pay for legally required meal or rest breaks, or wage and hour recordkeeping), or any amendment to or rule or regulation promulgated under any of the foregoing.

(EE) **Wrongful Act** means any actual or alleged **D&O Act, EPL Act** or **Fiduciary Act**.

Any other **bolded terms** in this Policy will have the meanings ascribed to such terms in the applicable Coverage Section(s).

GENERAL EXTENSIONS

(A) **Discovery Period:** If the **Named Organization** cancels this Policy, or if the Insurer or **Named Organization** fails or refuses to renew this Policy, any **Insured** will have the right, upon payment of the Discovery Period Premium set forth in Item 7(a) the Declarations, to an extension of the coverage granted by this Policy for the period set forth in Item 7(b) of the Declarations following the effective date of such cancellation or non-renewal (the “Discovery Period”). If purchased, the Discovery Period will operate as an extension of coverage only with respect to **Claims** first made during the Discovery Period for **Wrongful Acts** committed or allegedly committed before the effective date of cancellation or non-renewal (or before the effective date of any Change in Control described in GENERAL CONDITION (F)(1), if earlier). A written request for the Discovery Period, together with payment of the Discovery Period Premium, must be made within 30 days of the effective date of cancellation or non-renewal. The Discovery Period Premium will be deemed fully earned as of inception of the Discovery Period. No Discovery Period will be available if this Policy is cancelled for non-payment of premium. For purposes of any Limit of Liability under this Policy, the Discovery Period will be deemed part of, and not in addition to, the **Policy Period**; accordingly, the Discovery Period does not provide new or reinstated Limits of Liability.

(B) **Estates and Representatives:** Subject to its terms and conditions, this Policy will afford coverage for **Claims** for **Wrongful Acts** of an **Insured Person** if such **Claims** are made against:

- (1) the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased,
- (2) the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, or
- (3) the trusts or estate planning vehicles established for the benefit of an **Insured Person** who is deceased, incompetent, insolvent or bankrupt,

to the extent that such **Claims**, if brought against such **Insured Person**, would have been covered in the absence of his or her death, incompetence, insolvency or bankruptcy. This GENERAL EXTENSION (B) will not apply to the extent that a **Claim** alleges any act, error, omission or other wrongdoing by any party other than the **Insured Person**.

(C) **Spouse or Domestic Partner:** Subject to its terms and conditions, this Policy will afford coverage for **Claims** for **Wrongful Acts** of an **Insured Person** if such **Claims** are made against such **Insured Person’s** lawful spouse or **Domestic Partner** solely by reason of such person’s status as spouse or **Domestic Partner** or his or her ownership interest in property which the claimant seeks as recovery for the **Wrongful Acts** of such **Insured Person**. This GENERAL EXTENSION (C) will not apply to the extent that a **Claim** alleges any act, error, omission or other wrongdoing by any party other than the **Insured Person**.

(D) **Global Liberalization:** If a **Claim** against an **Insured** is brought and maintained solely and entirely in a **Foreign Jurisdiction** and is subject to the substantive and procedural laws of the **Foreign Jurisdiction**, and a **Foreign Policy** exists for such **Foreign Jurisdiction**, and a provision of this Policy is inconsistent with the same or equivalent provision in such **Foreign Policy**, then where permitted by law and solely with respect to such **Claim**, the provision of this Policy will be deemed amended to be no less favorable to such **Insured** than such provision in the **Foreign Policy**. This GENERAL EXTENSION (D) will not apply to (and therefore no liberalization will be afforded

with respect to): (i) any information or terms set forth in the Declarations; (ii) GENERAL CONDITION (A), (B), (C), (D), (E)(3), (F), (G), (H), (J), (K) or (L); (iii) D&O EXCLUSION (I), EPL EXCLUSION (G) or FIDUCIARY EXCLUSION (E); (iv) any D&O CONDITION, EPL CONDITION or FIDUCIARY CONDITION; (v) any provision added or amended by endorsement to this Policy; or (vi) any provision establishing the defense-within-limits or claims-made nature of this Policy.

GENERAL CONDITIONS

(A) Limits of Liability and Retention

- (1) The Insurer will have no obligation to pay **Loss** under this Policy after the applicable Limit(s) of Liability have been exhausted. If the Limit(s) of Liability have been exhausted, the premium will be fully earned.
- (2) Except as expressly provided in GENERAL CONDITION (A)(4) below with respect to the Additional **Defense Costs** Limit and in D&O CONDITION (D) with respect to the Additional A-Side **Executive** Limit:
 - (a) If the Schedule under Item 3(a) of the Declarations indicates that a Coverage Section has been purchased and is subject to a Separate Limit, then the Insurer's maximum aggregate liability for all **Loss** under such Coverage Section will not exceed the applicable Separate Limit stated in the Schedule.
 - (b) If the Schedule under Item 3(a) of the Declarations indicates that two or more Coverage Sections have been purchased and are subject to a Shared Limit, then the Insurer's maximum aggregate liability for all **Loss** under all such Coverage Sections combined will not exceed the Shared Limit stated in the Schedule.
- (3) If the Schedule under Item 3(a) of the Declarations indicates that two or more Coverage Sections have been purchased and are subject to Separate Limits, and a single **Claim** gives rise to coverage under more than one such Coverage Section, then the Insurer's maximum aggregate liability under this Policy for all **Loss** on account of such **Claim** will not exceed the largest applicable Separate Limit. If the Schedule under Item 3(a) of the Declarations indicates that two or more Coverage Sections have been purchased and are subject to a Shared Limit, but the amount stated as the Shared Limit for one such Coverage Section is less than the amount stated for such other Coverage Section(s), then such lesser amount will be the Insurer's maximum aggregate liability for all **Loss** under the Coverage Section to which such lesser amount applies (and such lesser amount will be subject to reduction and potential exhaustion due to prior payments of **Loss** under such other Coverage Section(s)). Moreover, certain categories of **Loss** are subject to Sublimits of Liability, as indicated under Item 3(b) of the Declarations and described more fully in D&O CONDITION (C), EPL CONDITION (C) and FIDUCIARY CONDITION (C).
- (4) Subject to its terms and conditions, this Policy will provide an additional aggregate Limit of Liability for **Defense Costs** incurred in **Claims** under the purchased Coverage Section(s), up to the Additional **Defense Costs** Limit set forth in Item 3(c)(i) of the Declarations. The Additional **Defense Costs** Limit will be shared among all purchased Coverage Sections. The Additional **Defense Costs** Limit will be separate from, and in addition to, the Separate D&O Limit, Separate EPL Limit and Separate Fiduciary Limit (if applicable) and any Shared Limit set forth in the Schedule under Item 3(a) of the Declarations; provided, that the Additional **Defense Costs** Limit will apply excess of: (i) the Separate D&O Limit, Separate EPL Limit and Separate Fiduciary Limit (if applicable) and any Shared Limit set forth in such Schedule, and (ii) all insurance written specifically

excess over this Policy. In no event will more than one Additional **Defense Costs** Limit be provided by this Policy. If the entry for Item 3(c)(i) of the Declarations is blank or states “0,” “Not Available” or “N/A” (or a similar notation), then no Additional **Defense Costs** Limit is provided.

- (5) **Defense Costs** are a part of **Loss** and any payment of **Defense Costs** under this Policy will reduce the applicable Limit(s) of Liability. **Defense Costs**, as incurred, will also be applied against any applicable Retention.
 - (6) With respect to each **Claim** (including related **Claims**, as described in GENERAL CONDITION (C)), the Insurer will be liable only for the amount of **Loss** in excess of the applicable Retention stated in Item 4 of the Declarations. Such Retention is to be borne by the **Insureds** and remain uninsured. One Retention amount will apply to the covered portion of each **Claim**; if a single **Claim** is subject to multiple Retentions under this Policy, each Retention will be applied separately to the relevant portion of the **Claim**, which in total will not exceed the largest of the applicable Retentions.
 - (7) No Retention applies to **Non-Indemnifiable Loss, Crisis Costs, Derivative Demand Investigation Costs** or **Compliance Program Costs**. Moreover:
 - (a) If the **Insureds** incur **Defense Costs** within the Retention amount applicable to a **Claim** under this Policy, and such **Claim** is subsequently resolved by a determination of no liability, then the Insurer will reimburse the **Insureds** for such **Defense Costs** (For purposes of the foregoing, “determination of no liability” means a final non-appealable judgment in favor of all defendant **Insureds** by reason of a motion to dismiss, motion for summary judgment or trial).
 - (b) If the Insurer recommends settlement of a **Claim** within the applicable Limit of Liability under this Policy, and such settlement is acceptable to the claimant, and the **Insureds** consent to such settlement within 30 days of the Insurer’s recommendation, then the Retention applicable to such **Claim** will be retroactively reduced by 10% (If the **Insureds** do not consent to such settlement within this 30-day period, then the **Claim** will be subject to the full Retention amount, even if the **Insureds** consent to a subsequent settlement of such **Claim**).
- (B) Notice and Reporting Provisions
- (1) As a condition precedent to coverage for any **Claim** under this Policy, the **Insureds** must give written notice of such **Claim**, including full details, to the Insurer as soon as practicable after the **Insured Organization’s** risk manager or general counsel (or functionally equivalent position) becomes aware of the **Claim**, but in no event later than 60 days after the end of the **Policy Period** or the Discovery Period (if applicable). As long as written notice of a **Claim** is provided to the Insurer no later than 60 days after the end of the **Policy Period** or the Discovery Period (if applicable), the Insurer will not be entitled to deny coverage for such **Claim** based solely on late notice unless the Insurer can demonstrate that its interests were materially prejudiced by reason of such late notice.
 - (2) As a condition precedent to coverage for any **Crisis Event** under this Policy, the **Insureds** must give written notice of such **Crisis Event**, including full details, to the Insurer as soon as practicable after the **Insured Organization’s** risk manager or general counsel (or functionally equivalent position) becomes aware of the **Crisis Event**, but in no event later than 60 days after the end of the **Policy Period**. As long as written notice of a **Crisis Event** is provided to the Insurer no later than 60 days after the end of the **Policy Period**, the Insurer will not be entitled to deny coverage for such **Crisis Event** based solely on late

notice unless the Insurer can demonstrate that its interests were materially prejudiced by reason of such late notice.

- (3) If, during the **Policy Period** or the Discovery Period (if applicable), the **Insureds** become aware of circumstances which may reasonably be expected to give rise to a **Claim** against the **Insureds** and if, before the end of the **Policy Period** or the Discovery Period (if applicable), the **Insureds** give written notice to the Insurer of such circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, potential claimants and the consequences which have resulted or may result from such circumstances, then any **Claim** subsequently made against the **Insureds** arising out of, based upon or attributable to such circumstances, or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** described in such notice, will be considered to have been first made at the time such notice of circumstances was given to the Insurer; provided, that no coverage will be available for any fees, costs, expenses or other amounts incurred or imposed prior to the time such subsequent **Claim** is actually made against an **Insured** and reported to the Insurer as required by this Policy.
- (4) All notices under this GENERAL CONDITION (B) must refer to the Policy Number, must request coverage under this Policy, and must be given by prepaid express courier, facsimile or electronic mail to the street address, facsimile number or e-mail address set forth in Item 8 of the Declarations. The date of the Insurer's receipt of such notice will constitute the date of notice.

(C) Interrelationship of Claims and Crisis Events

- (1) All **Claims** alleging or arising out of, based upon or attributable to the same fact, circumstance, situation, transaction, event or **Wrongful Act**, or a series of related facts, circumstances, situations, transactions, events or **Wrongful Acts**, will be considered a single **Claim** under this Policy and will be considered to have been first made at the time the earliest such **Claim** was made (whether before or during the **Policy Period**).
- (2) All **Crisis Events** arising out of, based upon or attributable to the same fact, circumstance, situation, transaction or event, or a series of related facts, circumstances, situations, transactions or events, will be considered a single **Crisis Event** under this Policy and will be considered to have first commenced at the time the earliest such **Crisis Event** commenced (whether before or during the **Policy Period**).

(D) Defense Costs and Settlements; Allocation; Priority of Payments; Bankruptcy

- (1) The Insurer has no duty to defend under this Policy. The **Insureds** must defend and respond to **Claims** against them. The **Insureds** may not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs** without the Insurer's prior written consent; only those settlements, stipulated judgments and **Defense Costs** to which the Insurer has consented will be recoverable as **Loss** under this Policy. The Insurer's consent may not be unreasonably withheld; provided, that the Insurer will be entitled to effectively associate in the defense and settlement of any **Claim** and must be given notice of and the opportunity to participate in any settlement negotiations. If the Insurer has consented to the **Insured Organization's** choice of **Crisis Firm** in connection with a **Crisis Event** (which consent will not be unreasonably withheld), then the **Insured Organization** is not required to obtain the Insurer's consent before incurring **Crisis Costs** in response to such **Crisis Event**.
- (2) The Insurer will advance covered **Defense Costs** on a quarterly basis. If it is finally determined that any **Defense Costs** paid by the Insurer are not covered under this Policy,

each **Insured** agrees to repay such non-covered amounts to the Insurer, severally according to his, her or its respective interests.

- (3) If the **Insured Organization** refuses in writing to indemnify or advance covered **Loss** incurred by an **Insured Person**, or if an **Insured Person** submits a written request to the **Insured Organization** for indemnification or advancement of covered **Loss** incurred by him or her and the **Insured Organization** fails to provide, agree to provide or acknowledge an obligation to provide such indemnification or advancement within 60 days of such request, then the Insurer will advance such **Loss** constituting **Defense Costs** to or on behalf of such **Insured Person** until either (i) the **Insured Organization** agrees to provide such indemnification or advancement, or (ii) the applicable Retention under this Policy has been satisfied. Any such payment by the Insurer will reduce the applicable Limit(s) of Liability under this Policy. In no event will any advancement or payment by the Insurer relieve the **Insured Organization** of any duty to provide indemnification or advancement to **Insured Persons**. If the Insurer advances or pays any **Defense Costs** within the applicable Retention, the **Insured Organization** must reimburse the Insurer for all such amounts, which will be immediately due and payable as a direct obligation of the **Insured Organization** to the Insurer.
- (4) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred in connection with a single **Claim**, either because the **Claim** includes both covered and uncovered matters or is made against both **Insureds** and parties who are not insured under this Policy, the **Insureds** and the Insurer will use their best efforts to determine a fair and proper allocation of all such amounts, taking into account the relative legal and financial exposures presented and the relative benefits to be obtained by resolution of such **Claim**. The Insurer will be obligated to pay only those amounts or portions of **Loss** allocated to covered matters claimed against the **Insureds**. If the **Insureds** and the Insurer are unable to agree upon an allocation, then until a final allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law, the Insurer will be obligated to make an interim payment of that amount or portion of **Loss** which the **Insureds** and the Insurer agree is not in dispute.
- (5) If the Insurer is obligated to pay **Loss** under more than one Coverage Section or INSURING AGREEMENT of this Policy, the Insurer will first pay such **Loss** constituting **Non-Indemnifiable Loss** and, if the Insurer concludes that the amount of all **Loss** is likely to exceed the applicable Limit(s) of Liability, the Insurer will be entitled to withhold payment of some or all **Loss** to ensure that as much of the Limit(s) of Liability as possible is available for the payment of **Non-Indemnifiable Loss**. If no **Non-Indemnifiable Loss** is payable under this Policy, or if the Insurer's obligations to pay **Non-Indemnifiable Loss** have been satisfied, then subject to the applicable Limit(s) of Liability, the Insurer will pay such other **Loss** (and, in the event of multiple matters, will apportion such **Loss** among such matters) as the **Named Organization** directs in writing. The bankruptcy or insolvency of an **Insured** will not relieve the Insurer of its obligation to prioritize payments as described in this GENERAL CONDITION (D)(5), and the **Insureds** agree to be bound by such prioritization of payments.
- (6) In the event a liquidation or reorganization proceeding is commenced by or against the **Insured Organization** pursuant to the U.S. Bankruptcy Code or any similar state, local or foreign law, the **Insureds** (i) will waive and release any automatic stay or injunction that may apply in such proceeding to the proceeds of this Policy, and (ii) agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from such stay or injunction.

(E) Cancellation

- (1) The Insurer may cancel this Policy for non-payment of premium by sending not less than 20 days' written notice to the **Named Organization** at its last known address. The Insurer may not otherwise cancel this Policy.
- (2) The **Named Organization** may cancel this Policy by sending the Insurer written notice stating when such cancellation will be effective; provided, that the **Named Organization** may not cancel this Policy after the effective time of any Change in Control described in GENERAL CONDITION (F)(1). If the **Named Organization** cancels this Policy, the Insurer will retain the customary short rate premium, unless the Insurer's A.M. Best rating has fallen below "A-", in which case the Insurer will be entitled to retain only a pro rata portion of the premium. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment of unearned premium is not a condition of cancellation.
- (3) If the Insurer elects not to renew this Policy, the Insurer must give the **Named Organization** written notice of non-renewal no less than 60 days before the end of the **Policy Period**.
- (4) If any notice period referenced in this GENERAL CONDITION (E) is prohibited or made void by any law controlling the construction thereof, such period will be deemed amended to be equal to the minimum period permitted by such law.

(F) Changes in Exposure

- (1) If, during the **Policy Period**, any of the following transactions or events (each a "Change in Control") occurs with respect to the **Named Organization**:
 - (a) the **Named Organization** merges into or consolidates with another entity such that the **Named Organization** is not the surviving entity, or
 - (b) another entity or person (or group of entities and/or persons acting in concert) acquires: (i) **Management Control** over the **Named Organization**, or (ii) all or substantially all of the **Named Organization's** assets,then the premium for this Policy will be fully earned and coverage will continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, before the effective time of the Change in Control. Coverage will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, after the effective time of the Change in Control.
- (2) If, during the **Policy Period**, an entity ceases to be a **Subsidiary**, then coverage as to such entity (including, if applicable, its **Employee Benefit Plans**) and the **Insured Persons** thereof will continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, before the effective time of such event. Coverage as to such entity (including, if applicable, its **Employee Benefit Plans**) and the **Insured Persons** thereof will cease with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, after the effective time of such event.
- (3) If, during the **Policy Period**, the **Insured Organization** creates or acquires an entity as described in Subsection (2) of GENERAL DEFINITION (CC) (a "New Entity") and at the effective time of such transaction, the New Entity's assets and/or liabilities exceed 35% of the total assets and/or liabilities of the **Insured Organization** as reflected in the **Insured Organization's** most recent audited consolidated financial statements, then the New Entity

will be deemed a **Subsidiary** under this Policy for a period of 90 days following the effective time of such transaction, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and **Crisis Events** first commencing, after the effective time of such transaction. The New Entity will not be deemed a **Subsidiary** and coverage as to such New Entity (including, if applicable, its **Employee Benefit Plans**) and the **Insured Persons** thereof will cease upon expiration of this 90-day period unless the Insurer has received written notice containing full details of such transaction and has agreed to continue such coverage, subject to such additional terms and conditions, including additional premium, as the Insurer may require.

(G) Other Insurance and Other Indemnification

- (1) Except for personal umbrella policies maintained by **Insured Persons** and policies written specifically excess over this Policy, such coverage as is provided by this Policy will apply only as excess over and will not contribute with any other valid and collectible insurance. This Policy will apply specifically excess over and will not contribute with any valid and collectible insurance under which there is a duty to defend.
- (2) Any coverage provided under the Directors, Officers and Private Company Coverage Section and/or the Employment Practices Coverage Section for **Claims** against an **Insured Person** for **D&O Acts** and/or **Employment Practices Wrongful Acts** (as applicable) in his or her **Outside Capacity** will apply specifically excess over and will not contribute with:
 - (a) any other insurance available to the **Insured Person** by reason of his or her service in such **Outside Capacity**, and
 - (b) any indemnification available to the **Insured Person** from the **Outside Entity** or any other source (other than the **Insured Organization**).

(H) Cooperation and Subrogation

- (1) In the event of any notice under GENERAL CONDITION (B), the **Insureds** will give the Insurer all information, assistance and cooperation that the Insurer may reasonably request with respect thereto. The failure of an **Insured Person** to give the Insurer information, assistance or cooperation as required in the preceding sentence will not impair the rights of any other **Insured Person** under this Policy.
- (2) In the event of any payment under this Policy, the Insurer will be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, including but not limited to any right to indemnification or advancement from the **Insured Organization**. The **Insureds** must execute all papers required and do everything necessary to secure the Insurer's rights and enable the Insurer to bring suit in their name. However, the Insurer will not seek subrogation from any **Insured Person**.

(I) No Action Against the Insurer: No action may be taken against the Insurer unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy. No person or entity will have any right to join the Insurer as a party to any action against the **Insureds** to determine the Insurer's liability under this Policy, nor may the Insurer be impleaded into any such action by the **Insureds**.

(J) Entire Agreement; Amendments; Authority: The **Insureds** and the Insurer agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between the **Insureds** and the Insurer with respect to this insurance (The titles and headings to various provisions of this Policy are solely for ease of reference and form no part of the terms and conditions of coverage). This Policy cannot be amended or assigned, and no provision of it may be

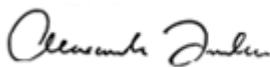
waived, except by written endorsement issued to form a part of the Policy. Notice to any agent or knowledge possessed by any other person acting on behalf of the Insurer will not effect an amendment to or waiver of any provision of this Policy, nor will it estop the Insurer from asserting any right under this Policy. By acceptance of the Policy, the **Insureds** agree that the **Named Organization** may act on behalf of all **Insureds** with respect to this insurance.

- (K) **Representations and Severability; Non-Rescindable as to Non-Indemnifiable Loss:** The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the truth of such representations. If any information in the **Application** is untrue in any material respect, no coverage will be available with respect to any **Insured** who knew the particular or statement that was not truthfully disclosed (or to whom such knowledge is imputed) for any **Claim** arising out of, based upon or attributable to such particular or statement. For purposes of the foregoing sentence:
- (1) no knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
 - (2) except for knowledge or information possessed by an **Executive**, no knowledge or information possessed by any **Insured Person** will be imputed to the **Insured Organization** (or if applicable, to an **Employee Benefit Plan**).

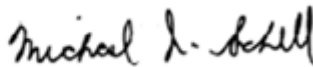
The Insurer will not be entitled to rescind or void the coverage afforded for **Non-Indemnifiable Loss** under this Policy.

- (L) **Territory and Currency:** This Policy applies worldwide. All monetary amounts in this Policy are expressed and payable in the currency of the United States. If a judgment is rendered, a settlement is denominated or other element of **Loss** is stated or incurred in a currency other than U.S. dollars, payment under this Policy may be made in such other currency (if agreeable to the Insurer and the **Named Organization**) or in U.S. dollars at the rate of exchange published in the *Wall Street Journal* on the date the Insurer's obligation to pay such **Loss** is established (or if not published on such date, the next publication date of the *Wall Street Journal*).
- (M) **Conformity to Statute:** Any terms or conditions of this Policy which conflict with applicable laws construing this Policy, including any endorsement required by a state Department of Insurance or equivalent authority ("State Amendatory Endorsement") to be issued as part of the Policy, will be deemed amended to conform to such laws. Nothing in this Policy will be construed to restrict the terms and conditions of any State Amendatory Endorsement, and to the extent permitted by law, nothing in any State Amendatory Endorsement will be construed to restrict the terms and conditions of this Policy. If there is an inconsistency between a provision in a State Amendatory Endorsement and a provision of this Policy, then where permitted by law, the Insurer will apply whichever provision is more favorable to the **Insureds**.

In witness whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.



Secretary



President

**DIRECTORS, OFFICERS AND PRIVATE COMPANY
COVERAGE SECTION**

D&O INSURING AGREEMENTS

- (A) The Insurer will pay, to or on behalf of the **Insured Persons, Non-Indemnifiable Loss** arising from **Claims** first made against the **Insured Persons** during the **Policy Period** or the Discovery Period (if applicable) for **D&O Acts**.
- (B) The Insurer will pay, to or on behalf of the **Insured Organization, Loss** arising from **Claims** first made against the **Insured Persons** during the **Policy Period** or the Discovery Period (if applicable) for **D&O Acts**, if and to the extent the **Insured Organization** has paid such **Loss** to or on behalf of the **Insured Persons** as indemnification or advancement.
- (C) The Insurer will pay, to or on behalf of the **Insured Organization, Loss** arising from **Claims** first made against the **Insured Organization** during the **Policy Period** or the Discovery Period (if applicable) for **D&O Acts**.
- (D) The Insurer will pay, to or on behalf of the **Insured Organization, Derivative Demand Investigation Costs** arising from **Derivative Demands** first made during the **Policy Period** or the Discovery Period (if applicable), up to the **Derivative Demand Investigation Costs** Sublimit set forth in Item 3(b)(iii) of the Declarations.
- (E) The Insurer will pay, to or on behalf of the **Insured Organization, Crisis Costs** arising from **D&O Crises** first commencing during the **Policy Period**, up to the **D&O Crisis Costs** Sublimit set forth in Item 3(b)(iv) of the Declarations.

D&O DEFINITIONS

For purposes of this Directors, Officers and Private Company Coverage Section:

- (A) **Asset Protection Costs** means reasonable fees, costs and expenses consented to by the Insurer (which consent will not be unreasonably withheld) and incurred by an **Executive** to:
 - (1) oppose any effort by an **Enforcement Body** to seize or otherwise enjoin such **Executive's** personal assets or real property, or
 - (2) obtain the discharge or revocation of a court order impairing the use of such **Executive's** personal assets or real property.
- (B) **D&O Act** means:
 - (1) any actual or alleged act, error, misstatement, misleading statement, neglect, omission or breach of duty by:
 - (a) an **Insured Person** (other than an **Employed Lawyer**) in his or her capacity as such or in an **Outside Capacity**,
 - (b) an **Employed Lawyer** in rendering (or failing to render) professional legal services to the **Insured Organization**, or
 - (c) the **Insured Organization**;

and

- (2) any matter claimed against an **Insured Person** (other than an **Employed Lawyer**) by reason of his or her service in such capacity or in an **Outside Capacity**, or any matter asserted against an **Insured Person** (other than an **Employed Lawyer**) solely by reason of his or her status as such;

provided, that **D&O Act** will not include any **EPL Act** (as defined in the Employment Practices Coverage Section) or **Fiduciary Act** (as defined in the Fiduciary Responsibility Coverage Section).

- (C) **D&O Crisis** means any of the following events which has resulted in, or is reasonably likely to result in, a **Media Report**:

- (1) death, incapacity or criminal indictment of any:
- (a) **Executive**, or
 - (b) **Employee** on whom the **Insured Organization** maintains “key person” life insurance;
- (2) public announcement that the **Insured Organization** has defaulted on or intends to default on its debt;
- (3) public announcement that:
- (a) the **Insured Organization** intends to file for bankruptcy protection,
 - (b) a third party is seeking to file for involuntary bankruptcy on behalf of the **Insured Organization**, or
 - (c) bankruptcy proceedings (voluntary or involuntary) involving the **Insured Organization** are imminent;
- (4) public announcement or accusation that the **Insured Organization** has caused the bodily injury, sickness, disease or death of a group of persons, or damage to or destruction of a group of properties;

or

- (5) public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against the **Insured Organization**;

provided, that **D&O Crisis** will not include any event relating to: (i) **Pollutants**; (ii) any matter which has been reported under any insurance which inceptioned before this Policy; or (iii) any prior or pending litigation, proceeding or written demand as of inception of this Policy.

- (D) **Derivative Demand** means a written demand by one or more shareholders of the **Insured Organization** upon its board of **Directors** (or equivalent governing body) to bring a civil proceeding in a court of law against an **Executive** for a **Wrongful Act**.
- (E) **Derivative Demand Investigation Costs** means reasonable fees, costs and expenses consented to by Insurer (which consent will not be unreasonably withheld) and incurred by the **Insured Organization**, including its board of **Directors** (or equivalent governing body) or any committee thereof, to investigate and evaluate a **Derivative Demand**, including legal and expert fees; provided, that **Derivative Demand Investigation Costs** will not include any overhead expenses, or any compensation or benefits of an **Insured Person**.
- (F) **Designated Penalties** means any civil fines or penalties assessed against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act.
- (G) **Dodd-Frank Section 954 Costs** means reasonable fees, costs and expenses consented to by the Insurer (which consent will not be unreasonably withheld) and incurred by an **Insured Person**

solely to facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including premiums or origination fees for a loan or bond.

- (H) **Employed Lawyer** means any salaried employee of the **Insured Organization** who is admitted to practice law and employed by the **Insured Organization** as a lawyer.
- (I) **Enforcement Body** means:
 - (1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any Attorney General), or
 - (2) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.
- (J) **Personal Reputation Costs** means reasonable fees, costs and expenses charged by a **Crisis Firm** and incurred by an **Executive** to mitigate the adverse effects specifically to his or her reputation from a **Personal Reputation Crisis**.
- (K) **Personal Reputation Crisis** means a negative statement about a specific **Executive** by an **Enforcement Body** during the **Policy Period**, if such statement is made by an individual authorized to speak on behalf of such **Enforcement Body** and included in any press release or published by any print or electronic media outlet.
- (L) **Pollutants** means any type of pollution, contamination or seepage, including but not limited to any solid, liquid, gaseous or thermal irritant or contaminant, asbestos or nuclear material, smoke, vapor, soot, fumes, mold, acids, alkalis, chemicals or waste, or materials to be recycled, reconditioned or reclaimed.
- (M) **SOX Section 304 Costs** means reasonable fees, costs and expenses consented to by the Insurer (which consent will not unreasonably withheld) and incurred by the chief executive officer or chief financial officer of the **Named Organization** solely to facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, including premiums or origination fees for a loan or bond.
- (N) **Specific Assistance** means assistance consisting of actions which are protected under Section 806 of the Sarbanes-Oxley Act of 2002 or any similar “whistleblower” protection provision of any applicable federal, state, local or foreign securities law.

D&O EXTENSIONS

- (A) For purposes of this Directors, Officers and Private Company Coverage Section:
 - (1) GENERAL DEFINITION (F) **Crisis Firm** is amended to include any public relations firm, crisis management firm or law firm retained by an **Executive** solely to provide advice and related services in response to a **Personal Reputation Crisis** (provided such firm is not also retained by the **Insured Organization**).
 - (2) GENERAL DEFINITION (T) **Insured Person** is amended to include any past, present or future natural-person **Employed Lawyer**.
 - (3) GENERAL DEFINITION (U) **Loss** is amended to include:
 - (a) **Asset Protection Costs** arising from a **Claim**, up to \$50,000 in the aggregate for any one **Executive** (The foregoing per-**Executive** sublimit is part of and not in

addition to the **Asset Protection Costs** Sublimit set forth in Item 3(b)(i) of the Declarations);

- (b) **Personal Reputation Costs** arising from a **Claim**, up to \$100,000 in the aggregate for any one **Executive** (The foregoing per-**Executive** sublimit is part of and not in addition to the **Personal Reputation Costs** Sublimit set forth in Item 3(b)(ii) of the Declarations); and
- (c) **SOX Section 304 Costs** and **Dodd-Frank Section 954 Costs** arising from a **Claim**.

- (B) For purposes of D&O INSURING AGREEMENT (D), GENERAL DEFINITION (B) **Claim** is amended to include **Derivative Demands** and GENERAL DEFINITION (U) **Loss** is amended to include **Derivative Demand Investigation Costs**.
- (C) For purposes of D&O INSURING AGREEMENT (E), GENERAL DEFINITION (U) **Loss** is amended to include **Crisis Costs**.

D&O EXCLUSIONS

The Insurer will not be liable under this Directors, Officers and Private Company Coverage Section to make any payment of **Loss** in connection with any **Claim**:

- (A) arising out of, based upon or attributable to any **Insured** committing any deliberately criminal or deliberately fraudulent act; provided, that:
 - (1) no conduct of any **Insured** will be imputed to any other **Insured** to determine the application of this D&O EXCLUSION (A);
 - (2) this D&O EXCLUSION (A) will apply only if there has been a final non-appealable adjudication in the underlying proceeding adverse to an **Insured** establishing that such **Insured** committed a deliberately criminal or deliberately fraudulent act; and
 - (3) the imposition of a criminal fine or sanction in a **Foreign Jurisdiction** as a result of a **D&O Act** which does not constitute a violation of criminal law in the United States will not, by itself, be conclusive proof that a deliberately criminal or deliberately fraudulent act was committed for purposes of this D&O EXCLUSION (A);
- (B) for any actual or alleged:
 - (1) bodily injury, sickness, disease or death of any person; provided, that this D&O EXCLUSION (B)(1) will not apply to **Defense Costs** incurred by an **Insured Person** in a **Claim** alleging that the **Insured Organization** violated the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar law in other jurisdictions;
 - (2) mental anguish, emotional distress, libel, slander, defamation, disparagement or violation of a person's right of privacy;or
 - (3) damage to or destruction of any tangible property, including loss of use thereof;
- (C) for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, that this D&O EXCLUSION (C):

- (1) will not apply a **Claim** brought directly or derivatively by one or more security holders of the **Insured Organization** in their capacity as such; and
 - (2) will apply only to **Claims** against the **Insured Organization**;
- (In no event, however, will **Loss** include any costs to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**);
- (D) for any actual or alleged violation of any provision of **ERISA** or any similar federal, state, local or foreign law (statutory or common), or any amendment to or rule or regulation promulgated under any of the foregoing, or any other actual or alleged **Wrongful Act** in the administration of employee benefits;
- (E) brought by or on behalf of, or in the name or right of, any **Insured**; provided, that this D&O EXCLUSION (E) will not apply to a **Claim** brought and maintained:
- (1) as a shareholder derivative action on behalf of the **Insured Organization**, if such action is brought and maintained independently of, and without the solicitation, assistance or active participation of, any **Insured** (However, an **Insured Person's** providing **Specific Assistance** in such action will not alone be deemed "solicitation, assistance or active participation" for purposes of the foregoing);
 - (2) by an **Insured Person** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this Policy;
 - (3) by a former **Executive** who has not served as an **Executive** for at least two years prior to the date such **Claim** is first made;
 - (4) solely and entirely in a **Foreign Jurisdiction** and subject to the substantive and procedural laws of the **Foreign Jurisdiction**;
 - (5) by the **Insured Organization** in its capacity as a debtor-in-possession pursuant to a bankruptcy proceeding; or
 - (6) by a trustee in bankruptcy, receiver, conservator, rehabilitator, liquidator, creditors' committee or other similar official duly appointed with respect to the **Insured Organization**;
- (F) brought by or on behalf of, or in the name or right of, any **Outside Entity** against an **Insured Person** for a **D&O Act** in his or her **Outside Capacity** with respect to such **Outside Entity**; provided, that this D&O EXCLUSION (F) will not apply to a **Claim** brought and maintained:
- (1) as a shareholder derivative action on behalf of the **Outside Entity**;
 - (2) solely and entirely in a **Foreign Jurisdiction** and subject to the substantive and procedural laws of the **Foreign Jurisdiction**;
 - (3) by the **Outside Entity** in its capacity as a debtor-in-possession pursuant to a bankruptcy proceeding; or
 - (4) by a trustee in bankruptcy, receiver, conservator, rehabilitator, liquidator, creditors' committee or other similar official duly appointed with respect to the **Outside Entity**;
- (G) arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** alleged or contained in any matter which has been reported under any directors and officers liability or similar policy which incepted before this Policy, if coverage is accepted or afforded for such **Claim** under such other policy (or would have been accepted or afforded but for exhaustion of such policy's limit of liability);

- (H) arising out of, based upon or attributable to any prior or pending litigation, proceeding or written demand as of the Prior or Pending Date set forth in Item 5(a) of the Declarations, or alleging or derived from the same or essentially the same facts, circumstances, situations, transactions, events or **Wrongful Acts** as alleged in such litigation, proceeding or demand;
- (I) arising out of, based upon or attributable to any **Wage & Hour Violation**;
- (J) for any actual or alleged violation of any provision of the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, **COBRA** or the Occupational Safety and Health Act, or any workers' compensation, unemployment insurance, social security or disability benefits law, or any similar federal, state, local or foreign law (statutory or common), or any amendment to or rule or regulation promulgated under any of the foregoing;
- (K) for any actual or alleged violation of any provision of federal, state, local or foreign law (statutory or common) imposing liability in connection with the registration, offer, sale or purchase of securities, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934 or any "blue sky" law, or any amendment to or rule or regulation promulgated under any of the foregoing; provided, that this D&O EXCLUSION (K) will not apply to the extent that such **Claim** alleges **D&O Acts** in connection with:
- (1) any private placement of the **Insured Organization's** securities,
 - (2) any placement of the **Insured Organization's** securities exempted from registration under the Securities Act of 1933, or
 - (3) the **Insured Organization's** preparation for a public offering of its securities, including any "road show", if such public offering does not occur;
- (Moreover, if at least 30 days prior to any initial public offering of the **Insured Organization's** securities, the **Insureds** give the Insurer written notice of such event along with any information with respect thereto as the Insurer may request, the Insurer will offer a proposal to provide coverage with respect to such event, subject to such additional terms and conditions, including additional premium, as the Insurer may require);
- (L) arising out of, based upon or attributable to any actual or alleged violation, infringement or misappropriation of, or unauthorized use, taking or disclosure of, any intellectual property (including but not limited to patents, copyrights, trademarks and trade secrets) or any confidential or proprietary business information; provided, that this D&O EXCLUSION (L) will apply only to **Claims** against the **Insured Organization**;
- (M) arising out of, based upon or attributable to any actual or alleged breach of any contract or agreement by an **Insured** or any contractual liability assumed or allegedly assumed by an **Insured**; provided, that this D&O EXCLUSION (M):
- (1) will not apply to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement; and
 - (2) will apply only to **Claims** against the **Insured Organization**;
- (N) for any actual or alleged violation of any provision of federal, state, local or foreign law (statutory or common) concerning antitrust, unfair competition, unfair trade practices, or tortious interference with another's business or contractual relationships, including but not limited to the Sherman Act, the Clayton Act or the Federal Trade Commission Act, or any amendment to or rule or regulation promulgated under any of the foregoing; provided, that this D&O EXCLUSION (N) will apply only to **Claims** against the **Insured Organization**;

or

- (O) arising out of, based upon or attributable to the rendering of (or failure to render) services for others, including but not limited to services performed for or on behalf of customers or clients of the **Insured Organization**; provided, that this D&O EXCLUSION (O):
- (1) will not apply to a **Claim** brought directly or derivatively by one or more security holders of the **Insured Organization** in their capacity as such; and
 - (2) will apply only to **Claims** against the **Insured Organization**.

The D&O EXCLUSIONS do not apply to D&O INSURING AGREEMENT (E).

D&O CONDITIONS

- (A) Except as expressly provided in GENERAL CONDITION (A)(4) with respect to the Additional **Defense Costs** Limit and in D&O CONDITION (D) below with respect to the Additional A-Side **Executive** Limit, either the Separate D&O Limit or the Shared Limit stated for the Directors, Officers and Private Company Coverage Section in the Schedule under Item 3(a) of the Declarations will be the Insurer's maximum aggregate liability under this Coverage Section for all **Loss** on account of all **Claims** first made and **D&O Crises** first commencing during the **Policy Period**.
- (B) If the Schedule under Item 3(a) of the Declarations indicates that this Directors, Officers and Private Company Coverage Section is subject to a Shared Limit, then such Shared Limit also applies to the Employment Practices Coverage Section and/or the Fiduciary Responsibility Coverage Section (as indicated) and such Shared Limit is subject to reduction and potential exhaustion due to prior payments of **Loss** under such other Coverage Section(s).
- (C) The Insurer's maximum aggregate liability under this Directors, Officers and Private Company Coverage Section for:
- (1) all **Asset Protection Costs** on account of all **Claims** will not exceed the **Asset Protection Costs** Sublimit set forth in Item 3(b)(i) of the Declarations;
 - (2) all **Personal Reputation Costs** on account of all **Claims** will not exceed the **Personal Reputation Costs** Sublimit set forth in Item 3(b)(ii) of the Declarations;
 - (3) all **Derivative Demand Investigation Costs** on account of all **Derivative Demands** will not exceed the **Derivative Demand Investigation Costs** Sublimit set forth in Item 3(b)(iii) of the Declarations; and
 - (4) all **Crisis Costs** on account of all **D&O Crises** will not exceed the **D&O Crisis Costs** Sublimit set forth in Item 3(b)(iv) of the Declarations.

The **Asset Protection Costs** Sublimit, **Personal Reputation Costs** Sublimit, **Derivative Demand Investigation Costs** Sublimit and **D&O Crisis Costs** Sublimit are all part of, and not in addition to, the Separate D&O Limit or the Shared Limit stated for the Directors, Officers and Private Company Coverage Section in the Schedule under Item 3(a) of the Declarations. If the entry for Item 3(b)(i), 3(b)(ii), 3(b)(iii) or 3(b)(iv) of the Declarations is blank or states "0," "Not Available" or "N/A" (or a similar notation), then no coverage is afforded under this Coverage Section for **Asset Protection Costs**, **Personal Reputation Costs**, **Derivative Demand Investigation Costs** or **Crisis Costs**, respectively.

- (D) Subject to its terms and conditions, this Directors, Officers and Private Company Coverage Section will provide an additional aggregate Limit of Liability for **Non-Indemnifiable Loss** incurred by

Executives in Claims under D&O INSURING AGREEMENT (A), up to the Additional A-Side **Executive** Limit set forth in Item 3(c)(ii) of the Declarations. The Additional A-Side **Executive** Limit will be separate from, and in addition to, the Separate D&O Limit or the Shared Limit stated for the Directors, Officers and Private Company Coverage Section in the Schedule under Item 3(a) of the Declarations; provided, that the Additional A-Side **Executive** Limit will apply excess of: (i) such Separate D&O Limit or Shared Limit, and (ii) all insurance written specifically excess over this Policy. Moreover, the Additional A-Side **Executive** Limit will not be available with respect to: (i) any **Claim** which previously reduced or exhausted any Separate Limit or Shared Limit stated in the Schedule under Item 3(a) of the Declarations, or (ii) any **Claim** related thereto (as described in GENERAL CONDITION (C)). In no event will more than one Additional A-Side **Executive** Limit be provided by this Policy. If the entry for Item 3(c)(ii) of the Declarations is blank or states “0,” “Not Available” or “N/A” (or a similar notation), then no Additional A-Side **Executive** Limit is provided.

- (E) The **Insureds** may not incur any **Asset Protection Costs, SOX Section 304 Costs, Dodd-Frank Section 954 Costs** or **Derivative Demand Investigation Costs** without the Insurer’s prior written consent; only those **Asset Protection Costs, SOX Section 304 Costs, Dodd-Frank Section 954 Costs** and **Derivative Demand Investigation Costs** to which the Insurer has consented will be recoverable as **Loss** under this Policy. The Insurer’s consent may not be unreasonably withheld; provided, that the Insurer will be entitled to effectively associate in the defense and settlement of any **Claim** and must be given notice of and the opportunity to participate in any settlement negotiations. If the Insurer has consented to an **Executive’s** choice of **Crisis Firm** in connection with a **Personal Reputation Crisis** (which consent will not be unreasonably withheld), then he or she is not required to obtain the Insurer’s consent before incurring **Personal Reputation Costs** in response to such **Personal Reputation Crisis**.
- (F) Any coverage provided under this Directors, Officers and Private Company Coverage Section for **Claims** against an **Employed Lawyer** for **D&O Acts** described in Subsection (1)(b) of D&O DEFINITION (B) will apply specifically excess over and will not contribute with any professional liability, errors and omissions or similar insurance available to the **Employed Lawyer**.

EMPLOYMENT PRACTICES COVERAGE SECTION

EPL INSURING AGREEMENTS

- (A) The Insurer will pay, to or on behalf of the **Insureds**, **Loss** arising from **Claims** first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) for **Employment Practices Wrongful Acts**.
- (B) The Insurer will pay, to or on behalf of the **Insureds**, **Loss** arising from **Claims** first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) for **Third Party Acts**.
- (C) The Insurer will pay, to or on behalf of the **Insured Organization**, **Crisis Costs** arising from **EPL Crises** first commencing during the **Policy Period**, up to the **EPL Crisis Costs** Sublimit set forth in Item 3(b)(v) of the Declarations.

EPL DEFINITIONS

For purposes of this Employment Practices Coverage Section:

- (A) **Discrimination** means:
 - (1) any failure or refusal to hire, failure or refusal to promote, demotion or discharge of, or wrongful failure to grant tenure to, any natural person, or
 - (2) any limitation, segregation or classification of any **Employee** or applicant for employment in a way that would deprive or tend to deprive him or her of employment opportunities or otherwise adversely affect his or her status as an **Employee**,
based on such person's race, color, age, sex, disability, pregnancy, sexual orientation or preference, national origin, religion or other status that is protected pursuant to any applicable federal, state, local or foreign law. (For purposes of this EPL DEFINITION (A) and the coverage afforded under this Coverage Section for **Claims** against an **Insured Person** for **Employment Practices Wrongful Acts** in his or her **Outside Capacity** with respect to an **Outside Entity**, **Employee** will be deemed to mean any employee of such **Outside Entity**.)
- (B) **Employment Practices Wrongful Act** means any **Discrimination**, **Retaliation**, **Sexual Harassment**, **Workplace Harassment**, **Workplace Tort**, **Wrongful Termination**, violation of the Family and Medical Leave Act or **Internet/Social Media Violation**:
 - (1) committed or allegedly committed against any **Employee** or applicant for employment with the **Insured Organization** by (i) an **Insured Person** in his or her capacity as such, or (ii) the **Insured Organization**;
 - or
 - (2) committed or allegedly committed against any employee of or applicant for employment with an **Outside Entity** by an **Insured Person** in his or her **Outside Capacity** with respect to such **Outside Entity**.
- (C) **EPL Act** means any actual or alleged **Employment Practices Wrongful Act** or **Third Party Act**.

(D) **EPL Crisis** means:

- (1) any of the following events which has resulted in, or is reasonably likely to result in, a **Media Report**:
 - (a) public announcement of the layoff or termination of 20% or greater of the **Insured Organization's** workforce;
 - (b) public announcement of the acquisition of another entity by the **Insured Organization** which necessitates a reorganization of 20% or greater of the **Insured Organization's** workforce;
 - (c) internal notification to the **Insured Organization's** Human Resources Department (or equivalent department) of **Discrimination, Sexual Harassment or Workplace Harassment** allegations implicating an **Executive**;
 - (d) receipt by an **Insured** of notice that a civil rights organization, public interest group or similar organization is investigating the **Insured Organization** for employment law violations or is distributing literature which accuses the **Insured Organization** of such violations; or
 - (e) Congressional inquiry regarding employment law violations by the **Insured Organization**;

and

(2) **Workplace Violence**;

provided, that **EPL Crisis** will not include any event relating to: (i) any matter which has been reported under any insurance which incepted before this Policy; or (ii) any prior or pending litigation, proceeding or written demand as of inception of this Policy.

(E) **Internet/Social Media Violation** means any **Discrimination, Retaliation, Sexual Harassment, Workplace Harassment, Workplace Tort, Wrongful Termination** or violation of the Family and Medical Leave Act carried out electronically over the Internet (*e.g.*, by e-mail or instant messaging, on blogs, or using social networking services), regardless of the physical location of the computer or device used to access the Internet and regardless of who owns such computer or device.

(F) **Retaliation** means retaliatory treatment against an **Employee** on account of his or her:

- (1) exercise or attempted exercise of his or her rights under law,
- (2) filing of a claim under the False Claims Act or any other federal, state, local or foreign "whistleblower" law, or
- (3) disclosure or threatened disclosure to any governmental authority of an act, error, omission or other wrongdoing by an **Insured** that is alleged to be in violation of law.

(For purposes of this EPL DEFINITION (F) and the coverage afforded under this Coverage Section for **Claims** against an **Insured Person** for **Employment Practices Wrongful Acts** in his or her **Outside Capacity** with respect to an **Outside Entity, Employee** will be deemed to mean any employee of such **Outside Entity**.)

(G) **Sexual Harassment** means unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, creates a work environment that interferes with performance, or creates an intimidating, hostile or offensive working environment.

- (H) **Third Party** means any natural person with whom an **Insured** interacts, including but not limited to any customer, client, vendor or supplier; provided, that **Third Party** will not include any: (i) **Insured Person** or applicant for employment with the **Insured Organization**, or (ii) employee of or applicant for employment with an **Outside Entity**.
- (I) **Third Party Act** means any:
- (1) discrimination based on race, color, age, sex, disability, pregnancy, sexual orientation or preference, national origin, religion or other status that is protected pursuant to any applicable federal, state, local or foreign law, or
 - (2) sexual or other harassment,
- committed or allegedly committed against any **Third Party** by (i) an **Insured Person** in his or her capacity as such, or (ii) the **Insured Organization**.
- (J) **Workplace Harassment** means conduct which creates a work environment that interferes with performance or creates an intimidating, hostile or offensive working environment, including but not limited to workplace bullying.
- (K) **Workplace Tort** means any employment-related: (i) invasion of privacy or false imprisonment, (ii) defamation (including libel or slander), misrepresentation or negligent evaluation, (iii) negligent hiring, retention, training or supervision, (iv) failure to provide or enforce adequate or consistent policies or procedures, (v) wrongful discipline, or (vi) wrongful deprivation of a career opportunity.
- (L) **Workplace Violence** means any intentional and unlawful:
- (1) act of deadly force involving the use of a lethal weapon, or
 - (2) threat of deadly force involving the display of a lethal weapon,
- which occurs on or in the **Insured Organization's** premises and results in bodily injury or death to an **Insured Person**; provided, that **Workplace Violence** will not include any act or threat of force in connection with any (i) demand for money, property or other items of value, or (ii) war, revolution, riot, civil unrest, military action or governmental intervention.
- (M) **Workplace Violence Costs** means reasonable fees, costs and expenses incurred by the **Insured Organization** in response to an instance of **Workplace Violence** for:
- (1) an independent security analyst for 30 days following the **Workplace Violence**,
 - (2) independent security guard services for 15 days following the **Workplace Violence**, and
 - (3) an independent consultant to provide an onsite counseling seminar for **Insured Persons** affected by the **Workplace Violence**.
- (N) **Wrongful Termination** means actual or constructive termination of the employment of, or demotion of, or failure or refusal to promote, any **Employee**, which is in violation of law, against public policy or in breach of an implied agreement to continue employment. (For purposes of this EPL DEFINITION (N) and the coverage afforded under this Coverage Section for **Claims** against an **Insured Person** for **Employment Practices Wrongful Acts** in his or her **Outside Capacity** with respect to an **Outside Entity**, **Employee** will be deemed to mean any employee of such **Outside Entity**.)

EPL EXTENSIONS

- (A) For purposes of this Employment Practices Coverage Section:
- (1) GENERAL DEFINITION (D) **Crisis Costs** is amended to include **Workplace Violence Costs**.
 - (2) GENERAL DEFINITION (T) **Insured Person** is amended to include any past, present or future natural-person:
 - (a) leased employee whose labor or service is engaged and directed by the **Insured Organization**, or
 - (b) independent contractor whose service is engaged by the **Insured Organization**, but only if the **Insured Organization** provides indemnification and advancement to such leased employee or independent contractor in the same manner it provides indemnification and advancement to **Employees**.
 - (3) GENERAL DEFINITION (U) **Loss** is amended to include:
 - (a) back pay awards and front pay awards, and
 - (b) liquidated damages awarded under the Age Discrimination in Employment Act or Equal Pay Act,an **Insured** becomes legally obligated to pay as a result of a **Claim** for **Employment Practices Wrongful Acts**.
- (B) For purposes of EPL INSURING AGREEMENT (C), GENERAL DEFINITION (U) **Loss** is amended to include **Crisis Costs**.

EPL EXCLUSIONS

The Insurer will not be liable under this Employment Practices Coverage Section to make any payment of **Loss** in connection with any **Claim**:

- (A) arising out of, based upon or attributable to any **Insured** committing any deliberately criminal or deliberately fraudulent act; provided, that:
- (1) no conduct of any **Insured** will be imputed to any other **Insured** to determine the application of this EPL EXCLUSION (A);
 - (2) this EPL EXCLUSION (A) will apply only if there has been a final non-appealable adjudication in the underlying proceeding adverse to an **Insured** establishing that such **Insured** committed a deliberately criminal or deliberately fraudulent act; and
 - (3) the imposition of a criminal fine or sanction in a **Foreign Jurisdiction** as a result of an **EPL Act** which does not constitute a violation of criminal law in the United States will not, by itself, be conclusive proof that a deliberately criminal or deliberately fraudulent act was committed for purposes of this EPL EXCLUSION (A);
- (B) for any actual or alleged:
- (1) bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person;
- or
- (2) damage to or destruction of any tangible property, including loss of use thereof;

- (C) for any actual or alleged violation of any provision of **ERISA** or any similar federal, state, local or foreign law (statutory or common), or any amendment to or rule or regulation promulgated under any of the foregoing, or any other actual or alleged **Wrongful Act** in the administration of employee benefits; provided, that this EPL EXCLUSION (C) will not apply to the extent that such **Claim** alleges **Retaliation** (including violation of Section 510 of **ERISA**);
 - (D) brought by or on behalf of, or in the name or right of, any **Outside Entity** against an **Insured Person** for an **Employment Practices Wrongful Act** in his or her **Outside Capacity** with respect to such **Outside Entity**; provided, that this EPL EXCLUSION (D) will not apply to a **Claim** brought and maintained:
 - (1) solely and entirely in a **Foreign Jurisdiction** and subject to the substantive and procedural laws of the **Foreign Jurisdiction**;
 - (2) by the **Outside Entity** in its capacity as a debtor-in-possession pursuant to a bankruptcy proceeding; or
 - (3) by a trustee in bankruptcy, receiver, conservator, rehabilitator, liquidator, creditors' committee or other similar official duly appointed with respect to the **Outside Entity**;
 - (E) arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** alleged or contained in any matter which has been reported under any employment practices liability or similar policy which incepted before this Policy, if coverage is accepted or afforded for such **Claim** under such other policy (or would have been accepted or afforded but for exhaustion of such policy's limit of liability);
 - (F) arising out of, based upon or attributable to any prior or pending litigation, proceeding or written demand as of the Prior or Pending Date set forth in Item 5(b) of the Declarations, or alleging or derived from the same or essentially the same facts, circumstances, situations, transactions, events or **Wrongful Acts** as alleged in such litigation, proceeding or demand;
 - (G) for any **Wage & Hour Violation**; provided, that this EPL EXCLUSION (G) will not apply to the extent that such **Claim** alleges **Retaliation** and/or violation of the Equal Pay Act;
 - (H) for any actual or alleged violation of any provision of the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, **COBRA** or the Occupational Safety and Health Act, or any workers' compensation, unemployment insurance, social security or disability benefits law, or any similar federal, state, local or foreign law (statutory or common), or any amendment to or rule or regulation promulgated under any of the foregoing; provided, that this EPL EXCLUSION (H) will not apply to the extent that such **Claim** alleges **Retaliation**;
- or
- (I) for any actual or alleged breach of any contract or agreement by an **Insured** or any contractual liability assumed or allegedly assumed by an **Insured**; provided, that this EPL EXCLUSION (I) will not apply to the extent that such **Claim** alleges an **Employment Practices Wrongful Act**.

The EPL EXCLUSIONS do not apply to EPL INSURING AGREEMENT (C).

EPL CONDITIONS

- (A) Except as expressly provided in GENERAL CONDITION (A)(4) with respect to the Additional **Defense Costs** Limit, either the Separate EPL Limit or the Shared Limit stated for the Employment Practices Coverage Section in the Schedule under Item 3(a) of the Declarations will be the

Insurer's maximum aggregate liability under this Coverage Section for all **Loss** on account of all **Claims** first made and **EPL Crises** first commencing during the **Policy Period**.

- (B) If the Schedule under Item 3(a) of the Declarations indicates that this Employment Practices Coverage Section is subject to a Shared Limit, then such Shared Limit also applies to the Directors, Officers and Private Company Coverage Section and/or the Fiduciary Responsibility Coverage Section (as indicated) and such Shared Limit is subject to reduction and potential exhaustion due to prior payments of **Loss** under such other Coverage Section(s).
- (C) The Insurer's maximum aggregate liability under this Employment Practices Coverage Section for all **Crisis Costs** on account of all **EPL Crises** will not exceed the EPL **Crisis Costs** Sublimit set forth in Item 3(b)(v) of the Declarations. The EPL **Crisis Costs** Sublimit is part of, and not in addition to, the Separate EPL Limit or the Shared Limit stated for the Employment Practices Coverage Section in the Schedule under Item 3(a) of the Declarations. If the entry for Item 3(b)(v) of the Declarations is blank or states "0," "Not Available" or "N/A" (or a similar notation), then no coverage is afforded under this Coverage Section for **Crisis Costs**.
- (D) If the Insurer has consented to the **Insured Organization's** choice of independent security analyst, security guard service or consultant in connection with an instance of **Workplace Violence** (which consent will not be unreasonably withheld), then the **Insured Organization** is not required to obtain the Insurer's consent before incurring **Workplace Violence Costs** in response to such **Workplace Violence**.
- (E) Any coverage provided under this Employment Practices Coverage Section for **Claims** against an **Insured Person** who is a leased employee or an independent contractor will apply specifically excess over and will not contribute with: (i) any other insurance available to the **Insured Person**, and (ii) any indemnification available to the **Insured Person** from any leasing company or any other source (other than the **Insured Organization**).

FIDUCIARY RESPONSIBILITY COVERAGE SECTION

FIDUCIARY INSURING AGREEMENTS

- (A) The Insurer will pay, to or on behalf of the **Insureds**, **Loss** arising from **Claims** first made against the **Insureds** during the **Policy Period** or the Discovery Period (if applicable) for **Fiduciary Acts**.
- (B) The Insurer will pay, to or on behalf of the **Insureds**, **Compliance Program Costs** arising from **Voluntary Compliance Programs** first entered into by the **Insureds** during the **Policy Period** or the Discovery Period (if applicable), up to the **Compliance Program Costs** Sublimit set forth in Item 3(b)(x) of the Declarations.
- (C) The Insurer will pay, to or on behalf of the **Insured Organization**, **Crisis Costs** arising from **Fiduciary Crises** first commencing during the **Policy Period**, up to the **Fiduciary Crisis Costs** Sublimit set forth in Item 3(b)(xi) of the Declarations.

FIDUCIARY DEFINITIONS

For purposes of this Fiduciary Responsibility Coverage Section:

- (A) **Administration** means, with respect to an **Employee Benefit Plan**: (i) giving counsel or advice to participants or beneficiaries, (ii) interpreting and explaining plan documents and forms, (iii) determining eligibility for participation or benefits and calculating benefits, (iv) processing benefit requests, applications and appeals, (v) keeping and handling records, (vi) effecting enrollment, cancellation or termination, and (vii) preparing and filing required reports or returns.
- (B) **Compliance Program Costs** means any of the following amounts consented to by the Insurer (which consent will not be unreasonably withheld):
 - (1) reasonable fees, costs and expenses charged by attorneys, accountants or other outside professionals and incurred by an **Insured** to assess or correct inadvertent defects in an **Employee Benefit Plan** pursuant to a **Voluntary Compliance Program**, and
 - (2) fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees an **Insured** becomes obligated to pay to resolve inadvertent defects in an **Employee Benefit Plan** pursuant to a **Voluntary Compliance Program**;

provided, that **Compliance Program Costs** will not include any amounts incurred or imposed in connection with any (i) application to participate in any **Voluntary Compliance Program** filed on or before inception of this Policy, or (ii) defect in any **Employee Benefit Plan** of which any **Insured Person** was aware as of inception of this Policy.

- (C) **Designated Penalties** means:
 - (1) civil penalties of up to 5% or 20% imposed upon an **Insured** pursuant to Section 502(i) or 502(l) of **ERISA**, respectively;
 - (2) **HIPAA Penalties**, **PPA Penalties**, **ERISA Section 502(c) Penalties** and **IRC Section 4975(a) Taxes**;
 - (3) civil penalties imposed upon an **Insured** by the United Kingdom Pensions Regulator, the U.K. Occupational Regulatory Authority or the Pensions Ombudsman appointed by the U.K. Secretary of State for Social Services pursuant to the English Pension Scheme Act of 1993, the English Pensions Act of 1995 or the English Pensions Act of 2004 (but only if

the funds of the **Employee Benefit Plan** at issue were not used to purchase this Fiduciary Responsibility Coverage Section); and

- (4) fines, penalties, sanctions, voluntary correction fees, compliance fees and user fees described in Subsection (2) of FIDUCIARY DEFINITION (B).
- (D) **Employee Benefit Law** means **ERISA, COBRA, HIPAA**, the Pension Protection Act of 2006 or any similar state, local or foreign law governing an **Employee Benefit Plan** (including but not limited to the English Pension Scheme Act of 1993, English Pensions Act of 1995 and English Pensions Act of 2004 and the Pension Benefits Act (Ontario) and Pension Benefits Standard Act of 1985 of Canada), and any amendment to or rule or regulation promulgated under any of the foregoing.
- (E) **Employee Benefit Plan** means:
- (1) any “employee pension benefit plan” or “employee welfare benefit plan” under Section 3 of **ERISA** that is sponsored solely by the **Insured Organization** (or jointly by the **Insured Organization** and a labor organization) exclusively for the benefit of such **Insured Organization’s Employees or Executives**;
 - (2) any other employee benefit plan or program (not subject to **ERISA**) that is sponsored solely by the **Insured Organization** exclusively for the benefit of such **Insured Organization’s Employees or Executives**, including but not limited to a cafeteria plan, dependent care assistance program, fringe benefit plan, deferred compensation plan, employee stock ownership plan, supplemental executive retirement plan, top-hat plan, excess benefit plan or voluntary employees’ beneficiary association; and
 - (3) any employee benefit plan or program described in Subsection (1) or (2) above while being actively developed, formed or proposed by the **Insured Organization** prior to its formal creation; provided, that no coverage will be available under this Policy for any **Insured** in a settlor or similar uninsured capacity with respect to any plan or program.

Coverage under this Fiduciary Responsibility Coverage Section as to any employee benefit plan or program will only be available with respect to **Claims for Fiduciary Acts** committed or allegedly committed, and **Fiduciary Crises** first commencing, after the effective time such plan or program qualified as **Employee Benefit Plan** under this FIDUCIARY DEFINITION (E) and prior to the time such plan or program ceases to qualify as an **Employee Benefit Plan** under this FIDUCIARY DEFINITION (E).

- (F) **ERISA Section 502(c) Penalties** means civil penalties imposed upon an **Insured** pursuant to Section 502(c) of **ERISA**.
- (G) **Fiduciary Act** means any:
- (1) actual or alleged breach by an **Insured** of the duties, obligations or responsibilities imposed upon fiduciaries of an **Employee Benefit Plan** by any **Employee Benefit Law**,
 - (2) negligent act, error or omission committed or allegedly committed by an **Insured** in the **Administration** of an **Employee Benefit Plan**, and
 - (3) other matter claimed against an **Insured** solely by reason of his, her or its service as fiduciary of an **Employee Benefit Plan**.

(H) **Fiduciary Crisis** means any of the following events which has resulted in, or is reasonably likely to result in, a **Media Report**:

- (1) investment loss of 25% or greater in the total assets held by an **Employee Benefit Plan** within a 30 day-period, if such investment loss is alleged to have had a material effect on the **Employee Benefit Plan**;
- (2) investment loss of 75% or greater in a specific investment held by an **Employee Benefit Plan** within a 30-day period, if such investment loss is alleged to have had a material effect on the **Employee Benefit Plan**;
- (3) public announcement that the **Insured Organization's** earnings or sales are substantially less than:
 - (a) the **Insured Organization's** prior year earnings or sales for the same period,
 - (b) the **Insured Organization's** prior public projections of earnings or sales for the same period, or
 - (c) an outside securities analyst's published estimate of the **Insured Organization's** earnings or sales for the same period,if such announcement is alleged to have caused a decrease in the value of securities issued by the **Insured Organization** and held by an **Employee Benefit Plan**;
- (4) public announcement or accusation of fraud on the part of a third-party service provider to an **Employee Benefit Plan** or the arrest, indictment or bankruptcy of a third-party service provider to an **Employee Benefit Plan**;

or

- (5) public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against a third-party service provider to an **Employee Benefit Plan**;

provided, that **Fiduciary Crisis** will not include any event relating to: (i) any matter which has been reported under any insurance which inceptioned before this Policy; or (ii) any prior or pending litigation, proceeding or written demand as of inception of this Policy.

(I) **HIPAA** means the Health Insurance Portability and Accountability Act of 1996 (as amended).

(J) **HIPAA Penalties** means civil penalties imposed upon an **Insured** pursuant to **HIPAA**.

(K) **IRC Section 4975(a) Taxes** means taxes of up to 15% imposed upon an **Insured** pursuant to Section 4975(a) of the Internal Revenue Code of 1986 (as amended).

(L) **PPA Penalties** means civil penalties imposed upon an **Insured** pursuant to Title V of the Pension Protection Act of 2006 (as amended).

(M) **Voluntary Compliance Program** means:

- (1) any voluntary compliance or voluntary settlement resolution program entered into by an **Insured** and administered by the U.S. Department of Labor or Internal Revenue Service (including but not limited to the Voluntary Compliance Resolution Program, Audit Closing Agreement Program and Tax-Sheltered Annuity Voluntary Correction Program); and
- (2) any similar voluntary compliance or voluntary settlement resolution program entered into by an **Insured** and administered by a governmental authority in a **Foreign Jurisdiction**.

FIDUCIARY EXTENSIONS

- (A) For purposes of this Fiduciary Responsibility Coverage Section:
- (1) GENERAL DEFINITION (B) **Claim** is amended to include written notice of commencement of a fact-finding investigation by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar governmental authority located in a **Foreign Jurisdiction** (including but not limited to the United Kingdom Pensions Regulator, the U.K. Occupational Regulatory Authority or the Pensions Ombudsman appointed by the U.K. Secretary of State for Social Services).
 - (2) GENERAL DEFINITION (K) **Employee** is amended to include any natural person compensated by an **Employee Benefit Plan** whose labor or service is engaged and directed by the **Employee Benefit Plan**, including part-time and seasonal employees.
 - (3) GENERAL DEFINITION (M) **Executive** is amended to include any duly elected or appointed:
 - (a) **Director** or natural-person officer or trustee of an **Employee Benefit Plan**, or
 - (b) natural person serving in a position with an **Employee Benefit Plan** that is functionally equivalent to **Director**, officer or trustee (including a functionally equivalent position with an **Employee Benefit Plan** sponsored by an **Insured Organization** located in a **Foreign Jurisdiction**).
 - (4) GENERAL DEFINITION (R) **Insured** is amended to include any **Employee Benefit Plan**:
 - (a) in existence on or before inception of this Policy, or
 - (b) subject to GENERAL CONDITION (F)(3) and FIDUCIARY CONDITION (F), created or acquired during the **Policy Period**.
 - (5) GENERAL DEFINITION (Y) **Non-Indemnifiable Loss** is amended to include **Loss** incurred by an **Insured Person** with respect to which indemnification or advancement by the **Insured Organization** or the **Employee Benefit Plan** at issue is not legally permissible or is not possible by reason of the **Insured Organization's** or **Employee Benefit Plan's Financial Insolvency**. The certificate of incorporation, charter, articles of association or other organizational documents (including bylaws and resolutions) of each **Insured Organization** and **Employee Benefit Plan** will be deemed to have been adopted or amended to provide indemnification and advancement to the **Insured Persons** to the fullest extent permitted by law.
- (B) For purposes of FIDUCIARY INSURING AGREEMENT (B), GENERAL DEFINITION (B) **Claim** is amended to include **Voluntary Compliance Programs** and GENERAL DEFINITION (U) **Loss** is amended to include **Compliance Program Costs**.
- (C) For purposes of FIDUCIARY INSURING AGREEMENT (C), GENERAL DEFINITION (U) **Loss** is amended to include **Crisis Costs**.

FIDUCIARY EXCLUSIONS

The Insurer will not be liable under this Fiduciary Responsibility Coverage Section to make any payment of **Loss** in connection with any **Claim**:

- (A) arising out of, based upon or attributable to any **Insured** committing any deliberately criminal or deliberately fraudulent act; provided, that:

- (1) no conduct of any **Insured** will be imputed to any other **Insured** to determine the application of this FIDUCIARY EXCLUSION (A);
 - (2) this FIDUCIARY EXCLUSION (A) will apply only if there has been a final non-appealable adjudication in the underlying proceeding adverse to an **Insured** establishing that such **Insured** committed a deliberately criminal or deliberately fraudulent act; and
 - (3) the imposition of a criminal fine or sanction in a **Foreign Jurisdiction** as a result of a **Fiduciary Act** which does not constitute a violation of criminal law in the United States will not, by itself, be conclusive proof that a deliberately criminal or deliberately fraudulent act was committed for purposes of this FIDUCIARY EXCLUSION (A);
- (B) for any actual or alleged:
- (1) bodily injury, sickness, disease or death of any person, or mental anguish or emotional distress; provided, that this FIDUCIARY EXCLUSION (B)(1) will not apply to **Defense Costs** incurred in a **Claim** alleging that an **Insured** breached the duties, obligations or responsibilities imposed upon fiduciaries of an **Employee Benefit Plan** by any **Employee Benefit Law**;
- or
- (2) damage to or destruction of any tangible property, including loss of use thereof;
- (C) arising out of, based upon or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** alleged or contained in any matter which has been reported under any fiduciary liability or similar policy which incepted before this Policy, if coverage is accepted or afforded for such **Claim** under such other policy (or would have been accepted or afforded but for exhaustion of such policy's limit of liability);
- (D) arising out of, based upon or attributable to any prior or pending litigation, proceeding or written demand as of the Prior or Pending Date set forth in Item 5(c) of the Declarations, or alleging or derived from the same or essentially the same facts, circumstances, situations, transactions, events or **Wrongful Acts** as alleged in such litigation, proceeding or demand;
- (E) for any **Wage & Hour Violation**;
- (F) for any actual or alleged violation of any provision of federal, state, local or foreign law (statutory or common) concerning workers' compensation, unemployment insurance, social security or disability benefits, or any amendment to or rule or regulation promulgated under any of the foregoing; provided, that this FIDUCIARY EXCLUSION (F) will not apply to the extent that such **Claim** alleges failure by an **Insured** to comply with **COBRA** or **HIPAA**;
- (G) arising out of, based upon or attributable to any liability of others assumed or allegedly assumed by an **Insured** under any contract or agreement; provided, that this FIDUCIARY EXCLUSION (G) will not apply:
- (1) to the extent that liability would have attached to the **Insured** in the absence of such contract or agreement; or
 - (2) to the extent that liability was assumed by the **Insured** under any Agreement and Declaration of Trust or similar agreement creating or establishing an **Employee Benefit Plan**;

or

- (H) for any benefits due or allegedly due under any **Employee Benefit Plan** (or benefits which would be due if the **Employee Benefit Plan** complied with applicable law); provided, that this FIDUCIARY EXCLUSION (H) will not apply:
- (1) to **Defense Costs** incurred in such **Claim**;
 - (2) to the extent that such amounts are payable under an **Employee Benefit Plan** solely as a personal obligation of an **Insured Person** because of his or her **Fiduciary Acts**; or
 - (3) to damages in the form of a monetary award in (or fund for settling) a **Claim**, to the extent that such **Claim** alleges loss to an **Employee Benefit Plan** due to a decrease in the value of investments held by the **Employee Benefit Plan** (regardless of whether the amounts sought in such **Claim** have been characterized by claimants or held by a court to be “benefits”).

The FIDUCIARY EXCLUSIONS do not apply to FIDUCIARY INSURING AGREEMENT (C).

FIDUCIARY CONDITIONS

- (A) Except as expressly provided in GENERAL CONDITION (A)(4) with respect to the Additional **Defense Costs** Limit, either the Separate Fiduciary Limit or the Shared Limit stated for the Fiduciary Responsibility Coverage Section in the Schedule under Item 3(a) of the Declarations will be the Insurer’s maximum aggregate liability under this Coverage Section for all **Loss** on account of all **Claims** first made and **Fiduciary Crises** first commencing during the **Policy Period**.
- (B) If the Schedule under Item 3(a) of the Declarations indicates that this Fiduciary Responsibility Coverage Section is subject to a Shared Limit, then such Shared Limit also applies to the Directors, Officers and Private Company Coverage Section and/or the Employment Practices Coverage Section (as indicated) and such Shared Limit is subject to reduction and potential exhaustion due to prior payments of **Loss** under such other Coverage Section(s).
- (C) The Insurer’s maximum aggregate liability under this Fiduciary Responsibility Coverage Section for:
- (1) all **HIPAA Penalties** on account of all **Claims** will not exceed the **HIPAA Penalties** Sublimit set forth in Item 3(b)(vi) of the Declarations;
 - (2) all **PPA Penalties** on account of all **Claims** will not exceed the **PPA Penalties** Sublimit set forth in Item 3(b)(vii) of the Declarations;
 - (3) all **ERISA Section 502(c) Penalties** on account of all **Claims** will not exceed the **ERISA Section 502(c) Penalties** Sublimit set forth in Item 3(b)(viii) of the Declarations;
 - (4) all **IRC Section 4975(a) Taxes** on account of all **Claims** will not exceed the **IRC Section 4975(a) Taxes** Sublimit set forth in Item 3(b)(ix) of the Declarations;
 - (5) all **Compliance Program Costs** on account of all **Voluntary Compliance Programs** will not exceed the **Compliance Program Costs** Sublimit set forth in Item 3(b)(x) of the Declarations; and
 - (6) all **Crisis Costs** on account of all **Fiduciary Crises** will not exceed the **Fiduciary Crisis Costs** Sublimit set forth in Item 3(b)(xi) of the Declarations.

The **HIPAA Penalties** Sublimit, **PPA Penalties** Sublimit, **ERISA Section 502(c) Penalties** Sublimit, **IRC Section 4975(a) Taxes** Sublimit, **Compliance Program Costs** Sublimit and **Fiduciary Crisis Costs** Sublimit are all part of, and not in addition to, the Separate Fiduciary Limit or the Shared Limit stated for the Fiduciary Responsibility Coverage Section in the Schedule under

Item 3(a) of the Declarations. If the entry for Item 3(b)(vi), 3(b)(vii), 3(b)(viii), 3(b)(ix), 3(b)(x) or 3(b)(xi) of the Declarations is blank or states “0,” “Not Available” or “N/A” (or a similar notation), then no coverage is afforded under this Coverage Section for **HIPAA Penalties, PPA Penalties, ERISA Section 502(c) Penalties, IRC Section 4975(a) Taxes, Compliance Program Costs or Crisis Costs**, respectively.

- (D) The **Insureds** may not incur any **Compliance Program Costs** without the Insurer’s prior written consent; only those **Compliance Program Costs** to which the Insurer has consented will be recoverable as **Loss** under this Policy. The Insurer’s consent may not be unreasonably withheld; provided, that the Insurer will be entitled to effectively associate in the settlement and disposition of any **Voluntary Compliance Program** and must be given notice of and the opportunity to participate in any such settlement and disposition.
- (E) If, during the **Policy Period**, the **Insured Organization** terminates an **Employee Benefit Plan**, then coverage under this Fiduciary Responsibility Coverage Section as to such **Employee Benefit Plan** will continue until the end of the **Policy Period**, but only with respect to **Claims** for **Fiduciary Acts** committed or allegedly committed, and **Fiduciary Crises** first commencing, before the effective time of such event. Coverage as to such **Employee Benefit Plan** will cease with respect to **Claims** for **Fiduciary Acts** committed or allegedly committed, and **Fiduciary Crises** first commencing, after the effective time of such event.
- (F) If, during the **Policy Period**, the **Insured Organization** creates or acquires an employee benefit plan or program other than as a result of a transaction described in GENERAL CONDITION (F)(3), and such plan or program otherwise qualifies as an **Employee Benefit Plan** under FIDUCIARY DEFINITION (E), then such plan or program will be deemed an **Employee Benefit Plan** under this Fiduciary Responsibility Coverage Section for a period of 90 days following the effective time of such creation or acquisition, but only with respect to **Claims** for **Fiduciary Acts** committed or allegedly committed, and **Fiduciary Crises** first commencing, after the effective time of such event. Such plan or program will not be deemed an **Employee Benefit Plan** and coverage as to it will cease upon expiration of this 90-day period unless the Insurer has received written notice containing full details of such event and has agreed to continue such coverage, subject to such additional terms and conditions, including additional premium, as the Insurer may require.
- (G) Unless this Fiduciary Responsibility Coverage Section was purchased by an **Employee Benefit Plan**, the Insurer will have no right of recourse against any **Insured** in the event of a **Claim** for **Fiduciary Acts**.