Filing at a Glance

Company: Westchester Fire Insurance Company

Product Name: WFIC-AR-DO-07-PR-343-F	SERFF Tr Num: PERR-125321209	State: Arkansas
TOI: 17.1 Other Liability - Claims Made Only	SERFF Status: Closed	State Tr Num: #101489 $50
Sub-TOI: 17.1006 Directors & Officers Liability	Co Tr Num: WFIC-AR-DO-07-PR-343-F	State Status: Fees verified and received
Filing Type: Form	Co Status:	Reviewer(s): Betty Montesi, Edith Roberts, Brittany Yielding
	Authors: Neresa Torres, Olga E. Burciaga	Disposition Date: 01/09/2008
	Date Submitted: 12/04/2007	Disposition Status: Approved
Effective Date Requested (New): 01/06/2008		Effective Date (New):
Effective Date Requested (Renewal): 01/06/2008		Effective Date (Renewal):

State Filing Description:

General Information

Project Name: WFIC-AR-DO-07-PR-343-F	Status of Filing in Domicile: Not Filed
Project Number: WFIC-AR-DO-07-PR-343-F	Domicile Status Comments:
Reference Organization:	Reference Number:
Reference Title:	Advisory Org. Circular:
Filing Status Changed: 01/09/2008	
State Status Changed: 12/10/2007	Deemer Date:
Corresponding Filing Tracking Number: WFIC-AR-DO-07-PR-343-R	

Filing Description:

On behalf of Westchester Fire Insurance Company (the “Company”), we are submitting this filing to revise its Directors and Officers Liability Program. The revisions relate solely to the coverage for private companies and not-for-profit companies. In this filing, we are revising the Private Company Management Liability and Not-For-Profit Company Management Liability policies, declaration pages, applications and endorsements. The proposed form changes serve to update the program to include coverage enhancements currently available in the D&O marketplace for private and not-for-profit companies. Please see the enclosed memorandum for further details.

The Company respectfully requests that the proposed forms be implemented for all policies effective January 6, 2008.

Enclosed is authorization for Perr&Knight to submit this filing on behalf of the Company. All correspondence related to this filing should be directed to Perr&Knight. The Company has prepared the forms contained in this filing. If there are any requests for additional information related to items prepared by the Company, we will forward the request immediately to the Company. We will submit the Company's response to your attention as soon as we receive it. Please do not hesitate to contact us with any questions or comments.

Company and Contact

Filing Contact Information

(This filing was made by a third party - perrandknightactuaryconsultants)

Neresa Torres, State Filings Project Coordinator	doi@perrknight.com
881 Alma Real Drive	(888) 201-5123 [Phone]
Pacific Palisades, CA 90272	(310) 230-8529[FAX]

Filing Company Information

Westchester Fire Insurance Company	CoCode: 21121	State of Domicile: New York
1133 Avenue of Americas	Group Code: 52	Company Type:
New York, NY 10036	Group Name: ACE INA	State ID Number:
(215) 640-1000 ext. [Phone]	FEIN Number: 13-5481330	

Filing Fees

Fee Required?	Yes
Fee Amount:	$50.00
Retaliatory?	No
Fee Explanation:	AR charges $50.00 per form filing.
Per Company:	No

COMPANY	AMOUNT	DATE PROCESSED	TRANSACTION #
Westchester Fire Insurance Company	$0.00	12/04/2007	

SERFF Tracking Number:	*PERR-125321209*	*State:*	*Arkansas*
Filing Company:	*Westchester Fire Insurance Company*	*State Tracking Number:*	*#101489 $50*
Company Tracking Number:	*WFIC-AR-DO-07-PR-343-F*		
TOI:	*17.1 Other Liability - Claims Made Only*	*Sub-TOI:*	*17.1006 Directors & Officers Liability*
Product Name:	*WFIC-AR-DO-07-PR-343-F*		
Project Name/Number:	*WFIC-AR-DO-07-PR-343-F/WFIC-AR-DO-07-PR-343-F*		

CHECK NUMBER	CHECK AMOUNT	CHECK DATE
101489	$50.00	11/30/2007

Correspondence Summary

Dispositions

Status	Created By	Created On	Date Submitted
Approved	Edith Roberts	01/09/2008	01/09/2008

Objection Letters and Response Letters

Objection Letters				Response Letters		
Status	**Created By**	**Created On**	**Date Submitted**	**Responded By**	**Created On**	**Date Submitted**
Pending Industry Response	Edith Roberts	12/26/2007	12/26/2007	Neresa Torres	12/27/2007	12/27/2007
Pending Industry Response	Edith Roberts	12/10/2007	12/10/2007	Neresa Torres	12/12/2007	12/12/2007

Amendments

Item	Schedule	Created By	Created On	Date Submitted
Independent Contractors Coverage & Amended Third Party Coverage	Form	Neresa Torres	12/10/2007	12/10/2007
Private Company Management Liability Policy	Form	Neresa Torres	12/10/2007	12/10/2007
Not-For-Profit Company	Form	Neresa Torres	12/10/2007	12/10/2007

Management Liability Policy				
Independent Contractors Coverage & Amended Third Party Coverage	Form	Neresa Torres	12/10/2007	12/10/2007
Red Line forms	Supporting Document	Neresa Torres	12/10/2007	12/10/2007

SERFF Tracking Number:	*PERR-125321209*	*State:*	*Arkansas*
Filing Company:	*Westchester Fire Insurance Company*	*State Tracking Number:*	*#101489 $50*
Company Tracking Number:	*WFIC-AR-DO-07-PR-343-F*		
TOI:	*17.1 Other Liability - Claims Made Only*	*Sub-TOI:*	*17.1006 Directors & Officers Liability*
Product Name:	*WFIC-AR-DO-07-PR-343-F*		
Project Name/Number:	*WFIC-AR-DO-07-PR-343-F/WFIC-AR-DO-07-PR-343-F*		

Disposition

Disposition Date: 01/09/2008

Effective Date (New):

Effective Date (Renewal):

Status: Approved

Comment:

Rate data does NOT apply to filing.

SERFF Tracking Number:	*PERR-125321209*	*State:*	*Arkansas*
Filing Company:	*Westchester Fire Insurance Company*	*State Tracking Number:*	*#101489 $50*
Company Tracking Number:	*WFIC-AR-DO-07-PR-343-F*		
TOI:	*17.1 Other Liability - Claims Made Only*	*Sub-TOI:*	*17.1006 Directors & Officers Liability*
Product Name:	*WFIC-AR-DO-07-PR-343-F*		
Project Name/Number:	*WFIC-AR-DO-07-PR-343-F/WFIC-AR-DO-07-PR-343-F*		

Item Type	Item Name	Item Status	Public Access
Supporting Document	Uniform Transmittal Document-Property & Casualty	Approved	Yes
Supporting Document	Filing Memo/Forms List/Red Line Forms/Letter of Authorization	Approved	Yes
Supporting Document	Red Line forms	Approved	Yes
Form	Private Company Management Liability Policy Declarations	Approved	Yes
Form *(revised)*	Private Company Management Liability Policy	Approved	Yes
Form	Private Company Management Liability Policy	Approved	Yes
Form	Not-For-Profit Company Management Liability Policy Declarations	Approved	Yes
Form *(revised)*	Not-For-Profit Company Management Liability Policy	Approved	Yes
Form	Not-For-Profit Company Management Liability Policy	Approved	Yes
Form	Private Company Management Liability Insurance Application (Warrants)	Approved	Yes
Form	Private Company Management Liability Insurance Renewal Application (Warrants)	Approved	Yes
Form	Not-For-Profit Company Management Liability Insurance Application (Warrants)	Approved	Yes
Form	Not-For-Profit Company Management Liability Insurance Renewal Application (Warrants)	Approved	Yes
Form *(revised)*	Pending and Prior Date - Limits	Approved	Yes
Form	Pending and Prior Date - Limits	Approved	Yes
Form *(revised)*	Bankruptcy Exclusion	Approved	Yes
Form	Bankruptcy Exclusion	Approved	Yes
Form *(revised)*	Prior Acts - Effective Date	Approved	Yes
Form	Prior Acts - Effective Date	Approved	Yes
Form *(revised)*	Prior Acts - Specified Date	Approved	Yes
Form	Prior Acts - Specified Date	Approved	Yes

Form	Retention - Third Party Employment Practices Liability	Approved	Yes
Form	Waiver of Application Endorsement	Approved	Yes
Form	Waiver of Application (No Underlying Application)	Approved	Yes
Form *(revised)*	Independent Contractors Coverage & Amended Third Party Coverage	Approved	Yes
Form	Independent Contractors Coverage & Amended Third Party Coverage	Approved	Yes
Form	Independent Contractors Coverage & Amended Third Party Coverage	Approved	Yes
Form	Optional Duty To Defend Endorsement	Approved	Yes
Form	Antitrust Sublimit and Retention (For Use With Single Aggregate Limit of Liability)	Approved	Yes
Form	Antitrust Sublimit and Retention (For Use With Separate Limits of Liability)	Approved	Yes
Form	Professional Services Exclusion – Property Management and Development	Approved	Yes
Form	Professional Services Exclusion– Advertising/Public Relations with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – Advertising/Public Relations	Approved	Yes
Form	Professional Services Exclusion– Architects with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – Architects	Approved	Yes
Form	Professional Services Exclusion – Broadcasting with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion– Broadcasting	Approved	Yes
Form	Professional Services Exclusion– Data Processing, Programming with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion– Data Processing, Programming	Approved	Yes
Form	Professional Services Exclusion –	Approved	Yes

	Educators with Shareholder Carveout		
Form	Professional Services Exclusion – Educators	Approved	Yes
Form	Professional Services Exclusion– Engineer with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – Engineer	Approved	Yes
Form	Professional Services Exclusion– General Professional Services with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – General Professional Services	Approved	Yes
Form	Professional Services Exclusion – Insurance Agent or Broker with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – Insurance Agent or Broker	Approved	Yes
Form	Professional Services Exclusion – Insurer or Reinsurer	Approved	Yes
Form	Professional Services Exclusion – Insurer/Reinsurer with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion – Medical Services with Shareholder Carveout	Approved	Yes
Form	Professional Services Exclusion– Medical Services	Approved	Yes
Form	Professional Services Exclusion – Printers or Publishers	Approved	Yes
Form	Professional Services Exclusion– Real Estate Agents	Approved	Yes
Form	Notice Clause Amended – General Counsel, Risk Manager	Approved	Yes
Form	Parent Exclusion	Approved	Yes
Form	Major Shareholder Exclusion	Approved	Yes
Form	Specific Matter Exclusion	Approved	Yes
Form	60-Day Extended Post Policy Reporting	Approved	Yes

	Endorsement		
Form	Amended Wrongful Employment Practice Delete Discrimination	Approved	Yes
Form	Specific Matter Exclusion – Restatements	Approved	Yes
Form	Financial Services Exclusion	Approved	Yes
Form	EPL Sublimit	Approved	Yes
Form	Known Wrongful Acts, Facts or Circumstances Exclusion	Approved	Yes
Form	Fiduciary Liability Insuring Agreement	Approved	Yes
Form	Fiduciary Liability Insuring Agreement	Approved	Yes
Form	Amended Definition of Loss - Excess Benefit Penalty Coverage	Approved	Yes
Form	Antitrust Exclusion	Approved	Yes
Form	Claim Definition - Regulatory Exclusion	Approved	Yes
Form	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	Approved	Yes
Form	Education Company Coverage Extension	Approved	Yes
Form	Government Funds Exclusion and Defense Cost Sublimit Endorsement	Approved	Yes
Form	Government Funds Exclusion and Defense Cost Sublimit Endorsement	Approved	Yes
Form	HIPPA $25,000 Sub-Limit, Loss Amended	Approved	Yes
Form	HIPPA $50,000 Sub-Limit, Loss Amended	Approved	Yes
Form	Internal Standards or Rules Exclusion	Approved	Yes
Form	Payments, Commissions, Gratuities, Benefits, Favors Exclusion and Political Contributions Exclusion	Approved	Yes
Form	Health Care Amendatory Endorsement	Approved	Yes
Form	Regulatory Authority and Government Agency Exclusion	Approved	Yes
Form	Contract or Agreement (Absolute Exclusion)	Approved	Yes
Form	Retention Amended - Class Actions	Approved	Yes
Form	Runoff Endorsement	Approved	Yes
Form	Sexual Misconduct, Child Abuse, Neglect	Approved	Yes

	Exclusion		
Form	Antitrust Sub-Limit of Liability	Approved	Yes
Form	Specified Party Exclusion	Approved	Yes
Form	Specified Party's Claim Exclusion	Approved	Yes
Form	Third Party Employment Claims Coverage Deleted	Approved	Yes
Form	Antitrust Sublimit	Approved	Yes
Form	Contract or Agreement (Absolute Exclusion)	Approved	Yes
Form	Health Care Amendatory Endorsement	Approved	Yes
Form	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	Approved	Yes
Form	Designated Person / Entity Exclusion	Approved	Yes
Form	Investment Company Act Exclusion	Approved	Yes
Form	Delete Retention Waiver/Reimbursement Clause	Approved	Yes
Form	Insured v. Insured Exclusion Amended (Former Insured Persons - Two Years)	Approved	Yes
Form	Insured v. Insured Exclusion Amended (Former Insured Persons - Three Years)	Approved	Yes
Form	Settlement Clause Amended	Approved	Yes
Form	Insured v. Insured Exclusion Amended - Federal False Claims Act	Approved	Yes
Form	financial services exclusion with shareholder carveout	Approved	Yes
Form	Unpaid Salary Exclusion Amended Non-Duty to Defend for Class Action FLSA Claims	Approved	Yes
Form	Amendatory Endorsement Arkansas	Approved	Yes

Objection Letter

Objection Letter Status	Pending Industry Response
Objection Letter Date	12/26/2007
Submitted Date	12/26/2007
Respond By Date	

Dear Neresa Torres,

This will acknowledge receipt of the captioned filing.

Please either remove the forms that have not changed or resubmit with only the forms that have changed. It is not the purpose of the AR Insurance Department to review forms that have already been approved with no changes. This would be time prohibiting and would impede speed to market deadlines.

Please feel free to contact me if you have questions.
Sincerely,
Edith Roberts

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	12/27/2007
Submitted Date	12/27/2007

Dear Edith Roberts,

Comments:

Response 1

Comments: Thank you for your continued review of this filing. Westchester Fire Insurance Company offers the following response to your concerns.

Please know that the Company withdraws the endorsements with no changes. They are:

PF-14895 (11/03); PF-14904 (11/03); PF-14975 (11/03) and PF-14976 (11/03).

We trust that this additional information will allow you to continue your review of this filing.

Changed Items:

No Supporting Documents changed.

Form Schedule Item Changes

Form Name	Form Number	Edition Date	Form Type	Action	Action Specific Data	Readability Score	Attach Document
Pending and Prior Date - Limits	PF-14895	11/03	Endorsement/Amendment/Conditions	Withdrawn		0	
Previous Version							
Pending and Prior Date - Limits	*PF-14895*	*11/03*	*Endorsement/Amendment/Conditions*	*Replaced*		*0*	PF-14895_11-03__2_.pdf
Bankruptcy Exclusion	PF-14904	11/03	Endorsement/Amendment/Conditions	Withdrawn		0	
Previous Version							
Bankruptcy Exclusion	*PF-14904*	*11/03*	*Endorsement/Amendment/Conditions*	*Replaced*		*0*	PF-14904_11-03__2_.pdf
Prior Acts - Effective Date	PF-14975	11/03	Endorsement/Amendment/Conditions	Withdrawn		0	
Previous Version							
Prior Acts - Effective Date	*PF-14975*	*11/03*	*Endorsement/Amendment/Conditions*	*Replaced*		*0*	PF-14975_11-03__2_.pdf
Prior Acts - Specified Date	PF-14976	11/03	Endorsement/Amendment/Conditions	Withdrawn		0	
Previous Version							
Prior Acts - Specified Date	*PF-14976*	*11/03*	*Endorsement/Amendment/Conditions*	*Replaced*		*0*	PF-14976_11-03__2_.pdf

No Rate/Rule Schedule items changed.

Sincerely,
Neresa Torres, Olga E. Burciaga

Objection Letter

Objection Letter Status	Pending Industry Response
Objection Letter Date	12/10/2007
Submitted Date	12/10/2007
Respond By Date	

Dear Neresa Torres,

This will acknowledge receipt of the captioned filing.

I do not see that you have included an Arkansas Amendatory endorsement for compliance with AR Code Anno. 23-79-306 (1-6). Before I continue review, please submit.

Also, are all of these forms changing or have you included the entire program, whether changed or not other than edition date.

Thanks

Please feel free to contact me if you have questions.
Sincerely,
Edith Roberts

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	12/12/2007
Submitted Date	12/12/2007

Dear Edith Roberts,

Comments:

Response 1

Comments: Thank you for your continued review of this filing. Westchester Fire Insurance Company offers the following response to your concerns.

1. Please find the attached Arkansas Amendatory Endorsement for compliance with AR Code Anno. 23-79-306 (1-6).

2. All of the program forms have been included in the filing whether changed or not

We trust that this additional information will allow you to continue your review of this filing.

Changed Items:

No Supporting Documents changed.

Form Schedule Item Changes

Form Name	Form Number	Edition Date	Form Type	Action	Action Specific Data	Readability Score	Attach Document
Amendatory Endorsement Arkansas	PF-19714	(10/06)	Endorsement/Amendment/Conditions	Replaced		0	PF19714 10-06.pdf

No Rate/Rule Schedule items changed.

Sincerely,
Neresa Torres, Olga E. Burciaga

Amendment Letter

Amendment Date:

Submitted Date: 12/10/2007

Comments:

After submitting the revised form PF-21931 we notived that the forms was not PDF correctly. Please find the attached revised form.

Changed Items:

Form Schedule Item Changes:

Form Name	Form Number	Edition Date	Form Type	Action	Replaced Form #	Previous Filing #	Readability Score	Attachments
Independent Contractors Coverage & Amended Third Party Coverage	PF-21931	09/07	Endorsement/Amendment/Conditions	New			0	Indep Contractors Coverage PF-21931 (final).pdf

Amendment Letter

Amendment Date:

Submitted Date: 12/10/2007

Comments:

The purpose of the revisions is to clarify the Company's intent to provide EPL coverage for claims brought by applicants for employment, as well as for claims made against Outside Entity Insured Persons (i.e., directors who serve on the boards of another company), subject, of course, to all other terms and conditions.

The revisions were made in the following sections:

(1) Section I, Insuring Agreements, subsection B.
(2) Section II, Definitions, definition of Wrongful Employment Practices;
(3) Section XII, Other Insurance.

The Company also had to revise one endorsement which was filed for both policy forms, as the language therein quoted Insuring Agreement B and thus had to be revised to reflect the new language. We enclosed the redlined and final versions of such endorsement (PF-21931).

Changed Items:

Form Schedule Item Changes:

Form Name	Form Number	Edition Date	Form Type	Action	Replaced Form #	Previous Filing #	Readability Score	Attachments
Private Company Management Liability Policy	PF-22021	05-07	Policy/Coverage Form	Replaced	PF 14387 09/03		0	Private Co Management Liability Policy PF-22021 (final).pdf
Form Name	**Form Number**	**Edition Date**	**Form Type**	**Action**	**Replaced Form #**	**Previous Filing #**	**Readability Score**	**Attachments**
Not-For-Profit Company Management Liability Policy	PF-22530	08/07	Policy/Coverage Form	Replaced	PF 14385 09/03		0	NFP Management Liability Policy PF-22530 (final).pdf

SERFF Tracking Number:	*PERR-125321209*	*State:*	*Arkansas*
Filing Company:	*Westchester Fire Insurance Company*	*State Tracking Number:*	*#101489 $50*
Company Tracking Number:	*WFIC-AR-DO-07-PR-343-F*		
TOI:	*17.1 Other Liability - Claims Made Only*	*Sub-TOI:*	*17.1006 Directors & Officers Liability*
Product Name:	*WFIC-AR-DO-07-PR-343-F*		
Project Name/Number:	*WFIC-AR-DO-07-PR-343-F/WFIC-AR-DO-07-PR-343-F*		

Form Name	Form Number	Edition Date	Form Type	Action	Replaced Form #	Previous Filing #	Readability Score	Attachments
Independent Contractors Coverage & Amended Third Party Coverage	PF-21931	09/07	Endorsement/Amendment/Conditions	New			0	Indep Contractors Coverage PF-21931 (final).pdf

Supporting Document Schedule Item Changes:

User Added -Name: Red Line forms

Comment:

Indep Contractors Coverage PF-21931 (redline).pdf

NFP Management Liability Policy PF-22530 (redline).pdf

Private Co Management Liability Policy PF-22021 (red Line).pdf

Form Schedule

Review Status	Form Name	Form #	Edition Date	Form Type	Action	Action Specific Data	Readability	Attachment
Approved	Private Company Management Liability Policy Declarations	PF-22020	05-07	Declarations/Schedule	Replaced	Replaced Form #: PF 14386 09/03 Previous Filing #:	0.00	PF-22020_05-07_.pdf
Approved	Private Company Management Liability Policy	PF-22021	05-07	Policy/Coverage Form	Replaced	Replaced Form #: PF 14387 09/03 Previous Filing #:	0.00	Private Co Management Liability Policy PF-22021 (final).pdf
Approved	Not-For-Profit Company Management Liability Policy Declarations	PF-22529	08/07	Declarations/Schedule	Replaced	Replaced Form #: PF 14384 09/03 Previous Filing #:	0.00	PF-22529_08-07_.pdf
Approved	Not-For-Profit Company Management Liability Policy	PF-22530	08/07	Policy/Coverage Form	Replaced	Replaced Form #: PF 14385 09/03 Previous Filing #:	0.00	NFP Management Liability Policy PF-22530 (final).pdf
Approved	Private Company Management Liability Insurance Application (Warrants)	PF-22888	09/07	Application/Binder/Enrollment	Replaced	Replaced Form #: PF 14499 07/03 Previous Filing #:	0.00	PF-22888_09-07_.pdf
Approved	Private Company Management Liability Insurance Renewal Application	PF-22890	09/07	Application/Binder/Enrollment	Replaced	Replaced Form #: PF 14800 11/03 Previous Filing #:	0.00	PF-22890_09-07_.pdf

	(Warrants)						
Approved	Not-For-Profit Company Management Liability Insurance Application (Warrants)	PF-22904	09/07	Application/ Binder/Enrollment	Replaced Replaced Form #: PF 14801 11-03 Previous Filing #:	0.00	PF-22904 _09-07_.pdf
Approved	Not-For-Profit Company Management Liability Insurance Renewal Application (Warrants)	PF-22901	09/07	Application/ Binder/Enrollment	Replaced Replaced Form #: PF14802 11/03 Previous Filing #:	0.00	PF-22901 _09-07_.pdf
Approved	Pending and Prior Date - Limits	PF-14895	11/03	Endorsement/Amendment/Conditions	Withdrawn Replaced Form #: PF-14895 11/03 Previous Filing #:	0.00	
Approved	Bankruptcy Exclusion	PF-14904	11/03	Endorsement/Amendment/Conditions	Withdrawn Replaced Form #: PF-14904 11/03 Previous Filing #:	0.00	
Approved	Prior Acts - Effective Date	PF-14975	11/03	Endorsement/Amendment/Conditions	Withdrawn Replaced Form #: PF-14975 11/03 Previous Filing #:	0.00	
Approved	Prior Acts - Specified Date	PF-14976	11/03	Endorsement/Amendment/Conditions	Withdrawn Replaced Form #: PF-14976 11/03 Previous Filing #:	0.00	
Approved	Retention - Third Party Employment Practices Liability	PF-15836	05/04	Endorsement/Amendment/Conditions	New	0.00	PF-15836 _05-04_ _2_.pdf
Approved	Waiver of Application	PF-16280	06/04	Endorsement/Amendm	New	0.00	PF-16280 _06-04_

	Endorsement			ent/Conditi ons			_2_.pdf
Approved	Waiver of Application (No Underlying Application)	PF-21619	04/06	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-21619 _04-06_.pdf
Approved	Independent Contractors Coverage & Amended Third Party Coverage	PF-21931	09/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	Indep Contractors Coverage PF-21931 (final).pdf
Approved	Optional Duty To Defend Endorsement	PF-21932	09/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-21932 _09-07_.pdf
Approved	Antitrust Sublimit and Retention (For Use With Single Aggregate Limit of Liability)	PF-21954	03/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-21954 _03-07_.pdf
Approved	Antitrust Sublimit and Retention (For Use With Separate Limits of Liability)	PF-21955	03/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-21955 _03-07_.pdf
Approved	Professional Services Exclusion – Property Management and Development	PF-22022	05/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22022 _05-07_.pdf
Approved	Professional Services Exclusion– Advertising/Public Relations with Shareholder Carveout	PF-22023	05/07	Endorseme nt/Amendm ent/Conditi ons	Replaced Replaced Form #: PF 14978 11/03 Previous Filing #:	0.00	PF-22023 _05-07_.pdf

Approved	Professional Services Exclusion – Advertising/Public Relations	PF-22024	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14985 11/03 Previous Filing #:	0.00	PF-22024_05-07_.pdf
Approved	Professional Services Exclusion– Architects with Shareholder Carveout	PF-22025	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14979 11/03 Previous Filing #:	0.00	PF-22025_05-07_.pdf
Approved	Professional Services Exclusion – Architects	PF-22026	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14986 11/03 Previous Filing #:	0.00	PF-22026_05-07_.pdf
Approved	Professional Services Exclusion – Broadcasting with Shareholder Carveout	PF-22027	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14980 11/03 Previous Filing #:	0.00	PF-22027_05-07_.pdf
Approved	Professional Services Exclusion– Broadcasting	PF-22028	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14987 11/03 Previous Filing #:	0.00	PF-22028_05-07_.pdf
Approved	Professional Services Exclusion– Data Processing, Programming with Shareholder Carveout	PF-22029	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14981 11/03 Previous Filing #:	0.00	PF-22029_05-07_.pdf
Approved	Professional Services Exclusion– Data Processing, Programming	PF-22030	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14988 11/03 Previous Filing #:	0.00	PF-22030_05-07_.pdf
Approved	Professional	PF-22031	05/07	Endorsement	Replaced	Replaced Form #:	0.00	PF-22031

	Services Exclusion – Educators with Shareholder Carveout			nt/Amendment/Conditions	PF 14989 11/03 Previous Filing #:	_05-07_.pdf
Approved	Professional Services Exclusion – Educators	PF-22032	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14990 11/03 Previous Filing #: 0.00	PF-22032 _05-07_.pdf
Approved	Professional Services Exclusion– Engineer with Shareholder Carveout	PF-22033	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14991 11/03 Previous Filing #: 0.00	PF-22033 _05-07_.pdf
Approved	Professional Services Exclusion – Engineer	PF-22034	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14992 11/03 Previous Filing #: 0.00	PF-22034 _05-07_.pdf
Approved	Professional Services Exclusion– General Professional Services with Shareholder Carveout	PF-22035	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14993 11/03 Previous Filing #: 0.00	PF-22035 _05-07_.pdf
Approved	Professional Services Exclusion – General Professional Services	PF-22036	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14994 11/03 Previous Filing #: 0.00	PF-22036 _05-07_.pdf
Approved	Professional Services Exclusion – Insurance Agent or Broker with	PF-22037	05/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14982 11/03 Previous Filing #: 0.00	PF-22037 _05-07_.pdf

	Shareholder Carveout						
Approved	Professional Services Exclusion – Insurance Agent or Broker	PF-22038	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14995 11/03 Previous Filing #:	0.00	PF-22038_05-07_.pdf
Approved	Professional Services Exclusion – Insurer or Reinsurer	PF-22039	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14996 11/03 Previous Filing #:	0.00	PF-22039_05-07_.pdf
Approved	Professional Services Exclusion – Insurer/Reinsurer with Shareholder Carveout	PF-22040	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14983 11/03 Previous Filing #:	0.00	PF-22040_05-07_.pdf
Approved	Professional Services Exclusion – Medical Services with Shareholder Carveout	PF-22041	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14984 11/03 Previous Filing #:	0.00	PF-22041_05-07_.pdf
Approved	Professional Services Exclusion– Medical Services	PF-22042	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14997 11/03 Previous Filing #:	0.00	PF-22042_05-07_.pdf
Approved	Professional Services Exclusion – Printers or Publishers	PF-22043	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14998 11/03 Previous Filing #:	0.00	PF-22043_05-07_.pdf
Approved	Professional Services Exclusion– Real Estate Agents	PF-22044	05/07	Endorsement/Amendment/Conditions	Replaced	Replaced Form #: PF 14999 11/03 Previous Filing #:	0.00	PF-22044_05-07_.pdf
Approved	Notice Clause	PF-22045	05/07	Endorsement	Replaced	Replaced Form #:	0.00	PF-22045

	Amended – General Counsel, Risk Manager			nt/Amendment/Conditions	PF 14959 11/03 Previous Filing #:		_05-07_.pdf
Approved	Parent Exclusion	PF-22046	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 14968 11/03 Previous Filing #:	0.00	PF-22046 _05-07_.pdf
Approved	Major Shareholder Exclusion	PF-22047	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 15016 11/03 Previous Filing #:	0.00	PF-22047 _05-07_.pdf
Approved	Specific Matter Exclusion	PF-22048	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 15019 11/03 Previous Filing #:	0.00	PF-22048 _05-07_.pdf
Approved	60-Day Extended Post Policy Reporting Endorsement	PF-22049	05/07	Endorsement/Amendment/Conditions	New	0.00	PF-22049 _05-07_.pdf
Approved	Amended Wrongful Employment Practice Delete Discrimination	PF-22050	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 21647 3/06 Previous Filing #:	0.00	PF-22050 _05-07_.pdf
Approved	Specific Matter Exclusion – Restatements	PF-22051	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 17143 08/04 Previous Filing #:	0.00	PF-22051 _05-07_.pdf
Approved	Financial Services Exclusion	PF-22052	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22052 _09-07_.pdf
Approved	EPL Sublimit	PF-22053	05/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 14920 11/03 Previous Filing #:	0.00	PF-22053 _05-07_.pdf
Approved	Known Wrongful Acts, Facts or	PF-22438	06/07	Endorsement/Amendm	New	0.00	PF-22438 _06-07_.pdf

	Circumstances Exclusion			ent/Conditi ons			
Approved	Fiduciary Liability Insuring Agreement	PF-22516	08/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22516 _08-07_.pdf
Approved	Fiduciary Liability Insuring Agreement	PF-22821	08/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22821 _08-07_.pdf
Approved	Amended Definition of Loss - Excess Benefit Penalty Coverage	PF-22839	09/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22839 _09-07_.pdf
Approved	Antitrust Exclusion	PF-22840	09/07	Endorseme nt/Amendm ent/Conditi ons	Replaced Replaced Form #: PF 14897 11/03 Previous Filing #:	0.00	PF-22840 _09-07_.pdf
Approved	Claim Definition - Regulatory Exclusion	PF-22841	09/07	Endorseme nt/Amendm ent/Conditi ons	Replaced Replaced Form #: PF 14910 11/03 Previous Filing #:	0.00	PF-22841 _09-07_.pdf
Approved	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	PF-22842	09/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22842 _09-07_.pdf
Approved	Education Company Coverage Extension	PF-22844	09/07	Endorseme nt/Amendm ent/Conditi ons	New	0.00	PF-22844 _09-07_.pdf
Approved	Government Funds Exclusion and Defense Cost Sublimit Endorsement	PF-22845	09/07	Endorseme nt/Amendm ent/Conditi ons	Replaced Replaced Form #: PF 17141 06/04 Previous Filing #:	0.00	PF-22845 _09-07_.pdf
Approved	Government Funds Exclusion	PF-22846	09/07	Endorseme nt/Amendm	Replaced Replaced Form #: PF 17141 06/04	0.00	PF-22846 _09-07_.pdf

	and Defense Cost Sublimit Endorsement			ent/Conditions	Previous Filing #:		
Approved	HIPPA $25,000 Sub-Limit, Loss Amended	PF-22847	09/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 18366 05/05 Previous Filing #:	0.00	PF-22847_09-07__2_.pdf
Approved	HIPPA $50,000 Sub-Limit, Loss Amended	PF-22848	09/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 18365 05/05 Previous Filing #:	0.00	PF-22848_09-07_.pdf
Approved	Internal Standards or Rules Exclusion	PF-22849	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22849_09-07_.pdf
Approved	Payments, Commissions, Gratuities, Benefits, Favors Exclusion and Political Contributions Exclusion	PF-22850	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22850_09-07_.pdf
Approved	Health Care Amendatory Endorsement	PF-22851	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22851_09-07_.pdf
Approved	Regulatory Authority and Government Agency Exclusion	PF-22853	09/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 15006 11/03 Previous Filing #:	0.00	PF-22853_09-07_.pdf
Approved	Contract or Agreement (Absolute Exclusion)	PF-22854	09/07	Endorsement/Amendment/Conditions	Replaced Form #: PF 18571 01/05 Previous Filing #:	0.00	PF-22854_09-07_.pdf
Approved	Retention Amended - Class Actions	PF-22855	09/07	Endorsement/Amendment/Conditi	Replaced Form #: PF 17136 10/04 Previous Filing #:	0.00	PF-22855_09-07_.pdf

				ons			
Approved	Runoff Endorsement	PF-22856	09/07	Endorsement/Amendment/Conditions New		0.00	PF-22856_09-07_.pdf
Approved	Sexual Misconduct, Child Abuse, Neglect Exclusion	PF-22857	09/07	Endorsement/Amendment/Conditions New		0.00	PF-22857_09-07_.pdf
Approved	Antitrust Sub-Limit of Liability	PF-22860	09/07	Endorsement/Amendment/Conditions New		0.00	PF-22860_09-07_.pdf
Approved	Specified Party Exclusion	PF-22861	09/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 15021 11/03 Previous Filing #:	0.00	PF-22861_09-07_.pdf
Approved	Specified Party's Claim Exclusion	PF-22862	09/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 15018 11/03 Previous Filing #:	0.00	PF-22862_09-07_.pdf
Approved	Third Party Employment Claims Coverage Deleted	PF-22863	09/07	Endorsement/Amendment/Conditions New		0.00	PF-22863_09-07_.pdf
Approved	Antitrust Sublimit	PF-22864	09/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 14899 11/03 Previous Filing #:	0.00	PF-22864_09-07_.pdf
Approved	Contract or Agreement (Absolute Exclusion)	PF-22865	09/07	Endorsement/Amendment/Conditions Replaced	Replaced Form #: PF 18571 01/05 Previous Filing #:	0.00	PF-22865_09-07_.pdf
Approved	Health Care Amendatory Endorsement	PF-22866	09/07	Endorsement/Amendment/Conditions New		0.00	PF-22866_09-07_.pdf
Approved	Health Care	PF-22868	09/07	Endorsement New		0.00	PF-22868

	Amendatory Endorsement (Antitrust Sub-Limit)			nt/Amendment/Conditions			_09-07_.pdf
Approved	Designated Person / Entity Exclusion	PF-22878	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22878_09-07_.pdf
Approved	Investment Company Act Exclusion	PF-22892	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22892_09-07_.pdf
Approved	Delete Retention Waiver/Reimbursement Clause	PF-22893	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22893_09-07_.pdf
Approved	Insured v. Insured Exclusion Amended (Former Insured Persons - Two Years)	PF-22897	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22897_09-07_.pdf
Approved	Insured v. Insured Exclusion Amended (Former Insured Persons - Three Years)	PF-22898	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22898_09-07_.pdf
Approved	Settlement Clause Amended	PF-22899	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22899_09-07_.pdf
Approved	Insured v. Insured Exclusion Amended - Federal False Claims Act	PF-22902	09/07	Endorsement/Amendment/Conditions	New	0.00	PF-22902_09-07_.pdf
Approved	financial services	PF-22896	09/07	Endorsement	New	0.00	PF-22896

	exclusion with shareholder carveout			nt/Amendment/Conditions			_09-07_.pdf
Approved	Unpaid Salary Exclusion Amended Non-Duty to Defend for Class Action FLSA Claims	PF-23217	10/07	Endorsement/Amendment/Conditions	New	0.00	PF-23217_10-07_.pdf
Approved	Amendatory Endorsement Arkansas	PF-19714	(10/06)	Endorsement/Amendment/Conditions	Replaced Form #: PF-16610 (10/04) Previous Filing #:	0.00	PF19714 10-06.pdf

Westchester Fire Insurance Company

ACE Westchester Advantage℠ Private Company Management Liability Policy Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED REPORTING PERIOD, AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY . PLEASE READ THIS POLICY CAREFULLY. THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No.

Item 1. **Named Insured:**
Principal Address:

State of Incorporation:

Item 2. **Policy Period**:
From 12:01 a.m. To 12:01 a.m.
(Local time at the address shown in Item 1)

Item 3. Limit(s) of Liability and Retention(s):

A. Single Aggregate Limit of Liability and Retention: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Employment Practices Liability		$ _____each **Claim**

B. Separate Limits of Liability and Retentions: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$_____each **Claim**
__ Employment Practices Liability	$ _____Aggregate Limit	$ _____each **Claim**

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Item 4.	Notice to **Insurer**: A. Notice of **Claim** or **Wrongful Act**: Director of Claims ACE Westchester Specialty Group Professional Risk Division 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076 - B. All other notices: Chief Underwriting Officer ACE Westchester Specialty Group Professional Risk Division 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076
Item 5.	Prior or Pending Proceeding Date: __ Management Liability _____ __ Employment Practices Liability _____
Item 6.	A. **Policy** Premium: $ _____ B. **Extended Reporting Period** Premium: [ ] % of Policy Premium

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

DATE: _____ _____

Authorized Representative

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Westchester Fire Insurance Company

ACE Westchester Advantage℠ Private Company Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or,

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if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**; or
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, and any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

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6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee) or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Securities** means:

1. common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or

2. notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States.

S. **Securities Law** means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company,** including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**.

T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

V. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:

   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;

   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or

   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.

2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person**

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in his or her capacity as such, or by the **Company**.

X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** of, or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any

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of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in

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Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to:

(1) any public offering of **Securities** undertaken or consummated by or on behalf of the **Company** ("Public Offering"), or the solicitation, sale, purchase, distribution, or issuance of any such **Securities**, whether any such activity occurs or allegedly occurs prior to, during, or after such Public Offering; or

(2) any **Wrongful Act,** including without limitation any actual or alleged violation of any **Securities Laws**, relating in any way to a Public Offering or to any **Securities** issued, sold or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or allegedly occurs prior to, during, or after such Public Offering

provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.

J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

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d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

3. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

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4. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of

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such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the

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extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including

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Defense Costs, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy**. Regarding **Loss** arising out of an **Outside Entity Insured Person's** service with an **Outside Entity**, this **Policy** shall cover such **Loss**, under the applicable Insuring Agreements and subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of any indemnification provided by such **Outside Entity**, and any insurance coverage afforded to such **Outside Entity** or its executives, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

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2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

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3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

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B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing

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commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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Westchester Fire Insurance Company

ACE Westchester Advantage℠
Not-For-Profit Company Management Liability Policy
Declarations

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED REPORTING PERIOD, AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY . PLEASE READ THIS POLICY CAREFULLY. THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No.

Item 1. **Named Insured:**
Principal Address:

State of Incorporation:

Item 2. **Policy Period**:
From 12:01 a.m. To 12:01 a.m.
(Local time at the address shown in Item 1)

Item 3. Limit(s) of Liability and Retention(s):

A. Single Aggregate Limit of Liability and Retention: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Employment Practices Liability		$ _____each **Claim**

B. Separate Limits of Liability and Retentions: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$_____each **Claim**
__ Employment Practices Liability	$ _____Aggregate Limit	$ _____each **Claim**

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Item 4.	Notice to **Insurer**: A. Notice of **Claim** or **Wrongful Act**: ACE Westchester Professional Risk Claims 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076 - B. All other notices: ACE Westchester Professional Risk Underwriting Division 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076
Item 5.	Prior or Pending Proceeding Date: __ Management Liability _____ __ Employment Practices Liability _____
Item 6.	A. **Policy** Premium: $ _____ B. **Extended Reporting Period** Premium: [ ] % of Policy Premium

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

DATE: _____ _____

Authorized Representative

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ACE Westchester Advantage℠
Not-For-Profit Company
Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of

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this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**; or
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee, member of a duly constituted committee, staff, faculty member (salaried or non-salaried), or volunteer. **Employee** also means any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other

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type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

S. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

T. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

U. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:
   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;
   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or
   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.
2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or by the **Company**.

V. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** of, or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;

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5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion

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shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any rules or regulations of the Securities Exchange Commission adopted thereunder, or any federal, state, or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto, or any other federal, state or provincial law or common law relating to securities. However, this exclusion shall not apply to the issuance by the **Company** of tax exempt bond debt or **Claims** brought by holders of tax exempt bonds.

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J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

   and provided further that this exclusion shall not apply to:

   a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

   b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

   c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

   d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

   e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past,

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present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

2. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

3. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

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4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

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B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;

2. a description of the anticipated **Wrongful Act** allegations;

3. the identity of the **Insureds** allegedly involved;

4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;

5. the consequences which have resulted or may result; and

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6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

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XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy**. Regarding **Loss** arising out of an **Outside Entity Insured Person's** service with an **Outside Entity**, this **Policy** shall cover such **Loss**, under the applicable Insuring Agreements and subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of any indemnification provided by such **Outside Entity**, and any insurance coverage afforded to such **Outside Entity** or its executives, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

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B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors or trustees of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Not-For-Profit Status

If, during the **Policy Period**, the **Company** ceases to qualify as a not-for-profit organization, then such organization and its **Insured Persons** shall be covered under this **Policy** only with respect to **Claims** for **Wrongful Acts** taking place prior to such cessation.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

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XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

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XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

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XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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ACE Westchester Advantage℠
Private Company Management Liability Insurance Application

Instructions for Completing This Application

Please read carefully and check below all Coverages you seek. Fully answer all questions and submit all requested information for each Coverage you seek. All applicants must complete the General Information and the final section of this Application. Terms appearing in bold face in this Application are defined in the Policy and have the same meaning in this Application as in the Policy. This Application, including all materials submitted herewith, shall be held in confidence.

GENERAL INFORMATION

1. a. The Company to be Named in Item 1. of the Declarations (the "Company" or "Applicant"):

_____

Street Address:

_____

City: _____ State: _____ Zip Code: _____

b. Officer designated to receive correspondence and notices from the Insurer:

_____

(Name of Officer) (Title)

c. Officer or person responsible for Human Resource matters of the Company: this information required for employment loss control service that will be offered with your indication.

_____

(Name of Person) E-mail address Phone Number

Information Required:

2. State of Incorporation: _____

3. Year of Incorporation: _____

4. Primary SIC Code: _____

5. Type of Organization: ☐ Corporation ☐Partnership ☐Sole Proprietorship ☐LLC/LLP ☐ Other:_____

6. Please provide the following information regarding current insurance coverage;

Insurance	Carrier	Limits (in MMs)	Premium	Expiration Date
D&O Liability				
Crime/Fidelity				
EPL				

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Fiduciary Liability				

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PRIVATE COMPANY MANAGEMENT LIABILITY APPLICATION

Please attach copies of the following with respect to the Company and Subsidiaries:

- Current Indemnification Provisions, the Charter, and By-Laws,
- Audited Financial Statements for the last three (3) years
- Offering Memorandum of any public or private debt or equity offerings within the past twelve (12) months
- A schedule of all **Subsidiaries** to be insured under this policy
- List of directors of **Company** and all **Subsidiaries**, including their principal business affiliations and the number of years they have been a director of the **Company** or **Subsidiary**.

Please answer the following questions:

1. Number of Company's Voting Shareholders _____

2. Number of Non-Voting Shareholders _____

3. Number of Common Shares Outstanding _____

4. Are there any other securities which are convertible to common stock? ☐ Yes ☐ No

5. Is there any shareholder or group of affiliated shareholders who own 5% or more of the **Company's**, or any of its **Subsidiaries**, outstanding common equity shares, directly or beneficially? ☐ Yes ☐ No
   If "YES", attach full details.

6. Has the **Company,** or any of its **Subsidiaries**, completed or agreed to complete in the past thirty-six (36) months, or does the **Company**, or any of its **Subsidiaries,** plan to complete in the next twelve (12), a public debt or equity offering or private placement of debt or equity? ☐ Yes ☐ No
   If "YES", attach full details.

7. Is the **Company**, or any of its **Subsidiaries**, an investment company governed by the Investment Company Act of 1940? ☐ Yes ☐ No

8. During the last three years, have any of the **Insureds** been involved in:
   a. any anti-trust, copyright or patent litigation? ☐ Yes ☐ No
   b. any civil, criminal or administrative proceeding charging a violation of any federal or state securities law or regulation? ☐ Yes ☐ No
   c. any other criminal proceeding? ☐ Yes ☐ No
   d. any representative actions, class actions or derivative suits? ☐ Yes ☐ No
   e. any other material litigation? ☐ Yes ☐ No
   f. any Claim or potential Claim noticed under any Directors' and Officers' Liability policy? ☐ Yes ☐ No

   If "YES", attach full details.

9. ***Missouri Residents are not required to answer this question.*** ☐ Yes ☐ No
   Has the current or any previous Directors' and Officers' Liability insurer canceled or indicated an intent not to renew any Directors' and Officers' Liability policy?
   If "YES", attach full details.

10. Is any person proposed for coverage aware of any fact or circumstance or any actual or alleged act, error or omission which he or she has reason to suppose might give rise to a future **Claim** that would fall within the scope of the proposed ☐ Yes ☐ No

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coverage? If “YES”, attach full details.

It is agreed that if such fact or circumstance or actual or alleged act, error or omission exists, whether or not disclosed, any **Claim** arising therefrom is excluded from the proposed coverage.

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EMPLOYMENT PRACTICES LIABILITY APPLICATION

Please attach copies of the following for the Company and all Subsidiaries:

- Current Employee Handbook
- Current Employee Application Form(s)
- Copy of the Employment Termination procedures
- Most recent EEOC-1 Report for consolidated **Company**, headquarters, and all facilities over 500 employees

.

1. During the last 3 years have any of the **Insureds** been involved in any employment or labor related litigation? ☐ Yes ☐ No

2. During the last 3 years have any of the **Insureds** been involved in any administrative proceedings before:
   a. the Equal Employment Opportunity Commission? ☐ Yes ☐ No
   b. the U.S. Department of Labor including the Office of Federal Contract Compliance Programs ("OFCCP")? ☐ Yes ☐ No
   c. any state or local government agency whose purpose is to address employment-related claims ☐ Yes ☐ No

3. Are any of the **Insureds** currently required to comply with any judicial or administrative agreement, order, decree or judgment relating to employment? ☐ Yes ☐ No

4. Please provide the following information:

Total # of Employees: Company and all **Subsidiaries**	**Current Yr**	**1st Prior Yr**	**2nd Prior Yr**
employed by the **Insured:**			
employed in CALIFORNIA:			
employed in TEXAS:			
employed in WASHINGTON DC:			
employed OUTSIDE THE USA:			
% of Employee Turnover	%	%	%

5. Does the **Company** and all **Subsidiaries** use an outside employment legal counsel for employment advice and/or defense? ☐ Yes ☐ No

6. Has the **Company**, or any of its **Subsidiaries**, had in the past 12 months or do they plan to have during the next 12 months, layoffs, staff reductions, facility closings or consolidations which resulted, or is expected to result, in termination of more than 5% of the work force at any one location? ☐ Yes ☐ No

7. Has the **Company** or any prospective **Insureds** have been involved in employment or labor related litigation, during the last 3 years? ☐ Yes ☐ No

8. Does the **Company** and all **Subsidiaries** have written guidelines or procedures for addressing human resources or personnel management? ☐ Yes ☐ No

9. Does the **Company** and all **Subsidiaries** distribute to employees a copy of these guidelines or procedures? ☐ Yes ☐ No

10. Does the **Company** and all **Subsidiaries** have a full-time human resources manager? ☐ Yes ☐ No

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11. Does the **Company** and all **Subsidiaries** provide their supervisors and managers updated information and training on human resources issues, including performance appraisals, discipline, and workplace harassment, at least annually? ☐ Yes ☐ No

12. Does the **Company**, or any of its **Subsidiaries**, have an agreement or policy requiring employees to arbitrate all employee-related claims? ☐ Yes ☐ No

13. Is the **Company**, or any of its **Subsidiaries**, a federal contractor subject to Executive Order 11246? ☐ Yes ☐ No

14. When an employee is discharged by the **Company** and all **Subsidiaries**:
    a. Is officer approval required and is human resources personnel directly involved? ☐ Yes ☐ No
    b. Is an attorney consulted prior to discharging an employee? ☐ Yes ☐ No
    c. Does the **Company** and all **Subsidiaries** provide in references for former employees any information other than the dates of employment, title(s) and compensation? ☐ Yes ☐ No

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FIDUCIARY LIABILITY APPLICATION

Please attach copies of the following:

- Copies of the latest CPA-audited financial statements, with investment portfolios. (If plan assets are held in a master trust, submit master trust investment portfolio.);
- Copies of the most recent 5500s for all Plans to be insured;
- For each plan (or plan feature) that is designed to invest primarily in securities of the **Company** or any of its **Subsidiaries**, the latest CPA-audited financial statement (with investment portfolio) and a completed ESOP Questionnaire;
- Written plan description(s) and latest financial statement(s), if applicable, for any non-qualified plan(s);
- Latest annual report(s) for the **Company** and its **Subsidiaries**
- Latest interim financial statements for the **Company** and its **Subsidiaries**.

1. Total assets of the **Company** and its **Subsidiaries** $ _____

2. Total assets of all plans $ _____

3. Types of plans to be Insured (check all that apply):

   ☐ Defined Benefit Plan ☐ Defined Contribution Plan

   ☐ Welfare Benefit Plan ☐ Employee Savings Plan

   ☐ ESOP ☐ Other

4. Is the plan(s) a MULTIEMPLOYER or MULTIEMPLOYEE Plan? ☐ Yes ☐ No

5. Does the plan(s) employ the investment, trustee, actuarial, legal administrative, or benefits consulting services of any outside providers? ☐ Yes ☐ No

6. Has any plan requested or contemplated filing a request for termination? ☐ Yes ☐ No

7. In the past two years, has there been any amendment(s) to any plan(s), or has any amendment been contemplated, that has resulted in or may result in any change or reduction of benefits, including but not limited to an increase in participants' share of costs? ☐ Yes ☐ No

8. Has any plan or portion of any plan been spun off (sold), transferred, or terminated? ☐ Yes ☐ No

9. In the last 12 months has there been, or is there now under consideration, any merger, acquisition, restructuring or consolidation of or by the **Company** or any or its **Subsidiaries** that has resulted in or may result in plan participants transferring to another plan, company or subsidiary? ☐ Yes ☐ No

10. Are all defined benefit plans adequately funded in accordance with ERISA or any applicable similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world, as attested to by an actuary? ☐ Yes ☐ No

11. Are there any overdue employer contributions for any plan, or has any plan requested or contemplated filing a request for a waiver of contributions? ☐ Yes ☐ No

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12. Has there been, or is there now pending, any **Claim(s)** against any proposed **Insured** arising out of any plan? ☐ Yes ☐ No

13. Does any proposed **Insured** have knowledge or information of any act, error or omission which might give rise to a **Claim** under the proposed policy? ☐ Yes ☐ No

14. Is there any known violation(s) of ERISA or any similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world to which a plan is subject? ☐ Yes ☐ No

15. Has there been or is there now pending any inquiry, investigation or communication which could give rise to a **Claim** under this policy? ☐ Yes ☐ No

It is agreed with respect to questions 12–15 above that if such **Claim**, knowledge, information, violation, inquiry, investigation, or communication exists, then such **Claim**, and any **Claim** arising from any such knowledge, information, violation, inquiry, investigation, or communication is excluded from this proposed coverage.

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COMMERICAL CRIME APPLICATION

Please attach copies of the following:

- Last audited financial statements with all notes and schedules
- Copy of CPA management letter or, if applicable, auditor's opinion letter, and any management letter responding to same.

1. Has there been a change of control or management in the last three (3) years? ☐ Yes ☐ No
   If "Yes," attach complete details.

2. Please enter the following information:

	U.S.A.	Canada	Foreign	Total
Annual Sales or Gross Revenues				
Number of Locations				
Number of Employees				

Audit Procedures

3. Is there an actual Independent CPA audit in accordance with GAAP? ☐ Yes ☐ No
4. Is the most recent audit "unqualified"? ☐ Yes ☐ No
5. Are all locations audited? ☐ Yes ☐ No
6. Is the audit report distributed to senior management and the board of directors? ☐ Yes ☐ No
7. Is there a CPA letter to management or auditor's opinion letter? ☐ Yes ☐ No
8. Has management replied to any recommendations made in the letter? ☐ Yes ☐ No
9. Does the Applicant have an internal audit department or staff? ☐ Yes ☐ No
10. Is there a formal audit program? ☐ Yes ☐ No

Internal Controls

11. Does the Applicant require at least two (2) signatures on checks? ☐ Yes ☐ No
12. Do employees who reconcile monthly bank statements also:
    a) sign checks? ☐ Yes ☐ No
    b) handle bank deposits? ☐ Yes ☐ No
    c) have access to check signing machines or signature plates? ☐ Yes ☐ No
13. Are records maintained so that duplicate checks can be obtained for replacement? ☐ Yes ☐ No
14. Are checks stamped "For Deposit Only" as they are received? ☐ Yes ☐ No

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15. Are invoices stamped “Paid” at the time checks are issued? ☐ Yes ☐ No

16. Is there an exposure of precious metals or stones (e.g., gold, silver, copper, platinum, diamonds or similar high-value materials)? ☐ Yes ☐ No

17. Is high-value product inventoried regularly? ☐ Yes ☐ No

18. Is the payroll prepared by persons other than those who distribute it to employees? ☐ Yes ☐ No

19. Are at least twenty percent (20%) of all the accounts receivable periodically verified by direct contact with the customer? ☐ Yes ☐ No

20. Are all persons engaged in purchase or sale activities prohibited from taking part in shipping and receiving activities? ☐ Yes ☐ No

21. Are all shipping and receiving activities reconciled to all applicable sale or purchase orders? ☐ Yes ☐ No

Computer Controls

22. Is there a mechanism to prevent repeated attempts of unauthorized access to a computer program? ☐ Yes ☐ No

23. Are exception reports generated for unauthorized attempts or repeated attempts to access a computer program and/or network? ☐ Yes ☐ No

24. Within the information system area, are the duties of the development staff (programmers) and operational staff (operators) segregated? ☐ Yes ☐ No

25. Are pre-authorization controls maintained for all programmers and operators ☐ Yes ☐ No

26. Are individuals responsible for authorizing checks also able to produce computerized checks? ☐ Yes ☐ No

27. Are computer operators rotated periodically? ☐ Yes ☐ No

28. Does the Applicant have an employee data-security standards manual? ☐ Yes ☐ No

29. Do audit practices include any tests to detect unauthorized programming changes? ☐ Yes ☐ No

Securities and Trading Activities

30. State the value of all negotiable securities owned or held by the Applicant $ _____

31. Are securities subject to joint control by two (2) or more employees? ☐ Yes ☐ No

32. Is any person(s) whose conduct would be insured by the proposed insurance responsible for trading or directing the trading of securities on the Applicant’s behalf? ☐ Yes ☐ No

33. Are controls in place so person(s) responsible for trading may not engage in unauthorized trading activities? ☐ Yes ☐ No

34. Are statements from securities brokers reconciled by a person different from the person responsible for trading securities? ☐ Yes ☐ No

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35. If safe deposit boxes are used, has the bank been instructed to require that two (2) or more individuals be present before any entry of the box is permitted? ☐ Yes ☐ No

Present Crime Program and Loss Experience

36. Does the Applicant screen employees for prior acts of dishonesty? ☐ Yes ☐ No

37. Please identify all losses incurred within the last three (3) years of the type which would potentially be covered under the proposed insurance:

Description of Loss	Date of Loss	Amount of Loss	Preventative Measures Taken

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TO BE COMPLETED BY ALL APPLICANTS

None of the **Insureds** is responsible for or has knowledge of any **Wrongful Act** or fact, circumstance or situation which (s)he has reason to suppose might result in a future **Claim**, except as follows:
If "NONE", Please check this box ☐

It is agreed by all concerned that if any of the **Insureds** is responsible for or has knowledge of any **Wrongful Act**, fact, circumstance, or situation which (s)he has reason to suppose might result in a future **Claim**, whether or not described above, any such **Claim** subsequently emanating therefrom shall be excluded from coverage under the proposed insurance.

This Application shall be maintained on file by the Insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

By signing this Application, the Applicant warrants to the Insurer that all statements made in this Application, including attachments, about the Applicant and its operations are true and complete, and that no material facts have been misstated in this Application, or such attachments, or concealed. The undersigned agrees that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application or attachments inaccurate or incomplete, then the Applicant shall notify the Insurer of such occurrence, event or circumstance and shall provide the Insurer with information that would complete, update or correct such information. Any outstanding quotations may be modified or withdrawn at the sole discretion of the Insurer.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the Insurer under any Policy of a **Claim** or potential **Claim**. All such notices must be submitted to the Insurer pursuant to the terms of the Policy, if and when issued.

Signing of this Application does not bind the Insurer to offer nor the Applicant to accept insurance, but it is agreed that this Application shall be a basis of the insurance and it will be attached and made a part of the Policy should a Policy be issued. The Applicant's acceptance of the Insurer's quotation is required before the Applicant may be bound and a Policy issued.

The undersigned acknowledges that he or she is aware that **Defense Costs** reduce and may exhaust the applicable Limits of Liability. The Insurer is not liable for any **Loss** (which includes **Defense Costs**) in excess of the applicable Limits of Liability.

NOTICE TO ARKANSAS APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO COLORADO APPLICANTS: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

NOTICE TO DISTRICT OF COLUMBIA APPLICANTS: WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

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NOTICE TO LOUISIANA APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO MINNESOTA APPLICANTS: A person who submits an application or files a **Claim** with intent to defraud or helps commit a fraud against an **Insurer** is guilty of a crime.

NOTICE TO NEW JERSEY APPLICANTS: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

NOTICE TO NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

NOTICE TO NEW YORK APPLICANTS: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

NOTICE TO OHIO APPLICANTS: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

NOTICE TO OKLAHOMA APPLICANTS: WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

NOTICE TO TENNESSEE APPLICANTS: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

NOTICE TO WASHINGTON APPLICANTS: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purposes of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

NOTICE TO ALL APPLICANTS:

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON, FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS INFORMATION FOR THE PURPOSE OF MISLEADING, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND MAY SUBJECT SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

This portion of the Application must be signed by the Chairman of the Board or by the President.

Signed: _____

Title:

Date: _____

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

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Please submit this Application, when completed, signed and dated to:

ACE Westchester Specialty Group
Professional Risk Division
500 Colonial Center Parkway, Suite 200
Roswell, GA 30076

FOR IOWA APPLICANTS ONLY:

Broker:

Address:

FOR MISSOURI RESIDENTS ONLY:

PLEASE ACKNOWLEDGE AND SIGN THE FOLLOWING DISCLOSURE TO YOUR APPLICATION FOR INSURANCE:

I UNDERSTAND AND ACKNOWLEDGE THAT THE ATTACHED POLICY CONTAINS A DEFENSE WITHIN LIMITS PROVISION WHICH MEANS THAT DEFENSE COSTS WILL REDUCE MY LIMITS OF INSURANCE AND MAY EXHAUST THEM COMPLETELY. SHOULD THAT OCCUR, I SHALL BE LIABLE FOR ANY FURTHER LEGAL DEFENSE COSTS AND DAMAGES.

Signed: _____

Must Be Signed By An Officer of Applicant

Title:

Date: _____

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ACE Westchester Advantage℠
Private Company Management Liability Insurance
Renewal Application

Instructions for Completing This Application

Please read carefully and check below all Coverages you seek. Fully answer all questions and submit all requested information only for each Coverage you seek. All applicants must complete the General Information and the final section of this Application. Terms appearing in bold face in this Application are defined in the Policy and have the same meaning in this Application as in the Policy.

GENERAL INFORMATION

1. a. Name of the "Company" or "Applicant":
   Street Address:
   City:
   State:
   Zip Code:

   b. Officer designated to receive correspondence and notices from the Insurer:

   _____
   (Name of Officer) (Title)

   c. Officer or person responsible for Human Resource matters of the Company: this information required for employment loss control service that will be offered with your indication.

   _____
   (Name of Person) E-mail address Phone Number

Information Required:

- ***Most recent year end audited financial statements including all notes and schedules;***
- ***Any registration statements filed with the SEC or any private placement memorandums within the last 12 months;***
- ***Copy of the Applicant's latest EEO1 report (required if Applicant has more than 100 employees);***
- ***Copy of the latest form 5500 and audited plan financials if Fiduciary Liability Coverage is sought.***

Private Company Management Liability Coverage (complete only if the Applicant desires to renew this coverage):

Please answer the following questions (If "Yes", please attach details).
If the Applicant completed questions 1, 2 and 3 in a prior application submitted to the Insurer, and if no changes have occurred from the date of that application, you may state "None."

General Information:

1. *Number of Company's Voting Shareholders:_____*

2. *Percentage of voting shares outstanding owned by Applicant's Directors and Officers:_____%*

3. *Are there any other securities (including debt) which are convertible to common stock?* ☐ Yes ☐ No

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4. Is there any shareholder or group of affiliated shareholders who own 10% or more of the Company's, or any of its **Subsidiaries**, outstanding common equity shares, directly or beneficially? If "Yes", attach full details. ☐ Yes ☐ No

5. Has the Company, or any of its **Subsidiaries**, completed or agreed to complete in the past eighteen (18) months, or does the Company, or any of its **Subsidiaries**, plan to complete in the next twelve (12) months, a public debt or equity offering or private placement of debt or equity? If "Yes", attach full details. ☐ Yes ☐ No

6. Have there been any changes in the Applicant's board of directors or senior management in the past year? ☐ Yes ☐ No

7. Has the Company, or any of its **Subsidiaries,** completed or agreed to complete in the past twelve (12) months a reorganization or Arrangement with creditors under federal or state law? ☐ Yes ☐ No

8. Is the Company, or any of its **Subsidiaries**, an investment company governed by the Investment Company Act of 1940? ☐ Yes ☐No

Employment Practices Liability Coverage (complete only if the Applicant desires to renew this coverage):

	Full Time	Part Time/Other	Independent Contractors	Leased Employees
1. Number of current employees: (Company and all **Subsidiaries**)	_____	_____	_____	_____
a. Turnover	_____%			

2. Has the Company, or any of its **Subsidiaries**, had in the past twelve (12) months or do they contemplate within the next twelve (12) months having any layoffs, staff reductions, facility closings or consolidations? If "Yes," attach details. ☐ Yes ☐ No

Fiduciary Liability Coverage (complete only if the Applicant desires to renew this coverage):

1. Does any Defined Benefit Pension Plan have a funding deficiency? (If "Yes", please attach details) ☐ Yes ☐ No

Plan Type _____ Current Balance _____

This Application shall be maintained on file by the Insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

By signing this Application, the Applicant warrants to the Insurer that all statements made in this Application, including attachments, about the Applicant and its operations are true and complete, and that no material facts have been misstated or concealed in this Application, or such attachments. The undersigned agrees that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application or attachments inaccurate or incomplete, then the Applicant shall notify the Insurer of such occurrence, event or circumstance and shall provide the Insurer with information that would complete, update or correct such information. Any outstanding quotations may be modified or withdrawn at the sole discretion of the Insurer.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the Insurer under any policy of a **Claim** or potential **Claim**. All such notices must be submitted to the Insurer pursuant to the terms of the Policy, if and when issued.

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Signing of this Application does not bind the Insurer to offer nor the Applicant to accept insurance, but it is agreed that this Application shall be a basis of the insurance and it will be attached and made a part of the Policy should a Policy be issued. The Applicant's acceptance of the Insurer's quotation is required before the Applicant may be bound and a Policy issued.

The undersigned acknowledges that he or she is aware that **Defense Costs** reduce and may exhaust the applicable Limits of Liability. The Insurer is not liable for any **Loss** (which includes **Defense Costs**) in excess of the applicable Limits of Liability.

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NOTICE TO ARKANSAS APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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NOTICE TO NEW YORK APPLICANTS: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

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This portion of the Application must be signed by the Chairman of the Board or by the President.

Signed: _____

Title:

Date: _____

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

Please submit this Application, when completed, signed and dated to:

ACE Westchester Specialty Group
Professional Risk Division
500 Colonial Center Parkway, Suite 200
Roswell, GA 30076

FOR IOWA APPLICANTS ONLY:

Broker:

Address:

FOR MISSOURI RESIDENTS ONLY:
PLEASE ACKNOWLEDGE AND SIGN THE FOLLOWING DISCLOSURE TO YOUR APPLICATION FOR INSURANCE:

I UNDERSTAND AND ACKNOWLEDGE THAT THE ATTACHED POLICY CONTAINS A DEFENSE WITHIN LIMITS PROVISION WHICH MEANS THAT DEFENSE COSTS WILL REDUCE MY LIMITS OF INSURANCE AND MAY EXHAUST THEM COMPLETELY. SHOULD THAT OCCUR, I SHALL BE LIABLE FOR ANY FURTHER LEGAL DEFENSE COSTS AND DAMAGES.

Signed: _____
Must Be Signed By An Officer of Applicant

Title:

Date: _____

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ACE Westchester Advantage℠
Not-For-Profit Company Management Liability Insurance Application

Instructions for Completing This Application

Please read carefully and check below all Coverages you seek. Fully answer all questions and submit all requested information for each Coverage you seek. All applicants must complete the General Information and the final section of this Application. Terms appearing in bold face in this Application are defined in the Policy and have the same meaning in this Application as in the Policy. This Application, including all materials submitted herewith, shall be held in confidence.

GENERAL INFORMATION

1. a. The Company to be Named in Item 1. of the Declarations (the "Company" or "Applicant"):

_____

Street Address:

_____

City: _____ State: _____ Zip Code: _____

b. Officer designated to receive correspondence and notices from the Insurer:

_____

(Name of Officer) (Title)

c. Officer or person responsible for Human Resource matters of the Company: this information required for employment loss control service that will be offered with your indication.

_____

(Name of Person) E-mail address Phone Number

Information Required:

2. State of Incorporation: _____

3. Year of Incorporation: _____

4. Primary SIC Code:_____ Dunn & Bradstreet No:_____

5. Tax Status: ☐ Section 501(c) ☐ Taxable Non-Profit
☐ Other (if other please describe)_____

6. Provide the following information for the current fiscal year:

Total Assets:	$	Revenues:	$
Fund Balance:	$	Net Income:	$

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7. Type of Organization: ☐ Corporation ☐Partnership ☐Sole Proprietorship
☐LLC/LLP ☐ Other:_____

8. Please provide the following information regarding current insurance coverage;

Insurance	Carrier	Limits (in MMs)	Premium	Expiration Date
D&O Liability				
Crime/Fidelity				
EPL				
Fiduciary Liability				

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NOT-FOR-PROFIT COMPANY MANAGEMENT LIABILITY APPLICATION

Please attach copies of the following with respect to the Company and Subsidiaries:

- Current Indemnification Provisions, and by-laws
- Audited Financial Statements for the last two (2) years
- A schedule of all **Subsidiaries** to be insured under this policy including each **Subsidiary's** tax status, affiliation and the percentage of ownership by the Applicant
- List of officers and directors of the **Company** and all **Subsidiaries**.

Please answer the following questions:

1. Does the **Company**, any of its **Subsidiaries**, or any person(s) proposed for this insurance perform any of the following:
   a. Provide a referral service, legal aid service, or computer service to its members or the public? ☐ Yes ☐ No
   b. Promote or sponsor any type of group travel, conventions, parades or other similar events, or assume any liability in connection therewith? ☐ Yes ☐ No
   c. Promote, sponsor or provide any form of insurance to its members or non-members? ☐ Yes ☐ No
   d. Engage in any form of research, development, experimentation or testing? ☐ Yes ☐ No
   e. Act as or participate in a peer review group or committee for assessing the qualifications and performance of others or the quality of products manufactured, sold, handled or distributed by others? ☐ Yes ☐ No
   f. Take any disciplinary action or recommend disciplinary action as a result of peer review group activities? ☐ Yes ☐ No
   g. Develop standards used to evaluate the quality of goods or products manufactured or services rendered? ☐ Yes ☐ No
   h. Engage in such activities as lobbying or labor negotiations? ☐ Yes ☐ No
   i. Promote any specific product to its members which will produce a profit for the **Company**, any of its **Subsidiaries,** or any person proposed for this insurance? ☐ Yes ☐ No
   j. Publish any magazines, periodicals, newsletters or technical manuals? ☐ Yes ☐ No

2. Has there been or is there now pending any dispute as to the **Company's**, or any of its **Subsidiaries**, tax-exempt status? ☐ Yes ☐ No

3. Has the **Company**, or any of its **Subsidiaries**, ever loaned monies to any director, officer, trustee or employee or entered into any contract with companies owned by any director, officer, trustee or employee? ☐ Yes ☐ No

4. Has the **Company** or any **Subsidiary:**
   a. contemplated or been involved in any bankruptcy proceedings? ☐ Yes ☐ No
   b. plan to declare bankruptcy within the next 12 months? ☐ Yes ☐ No

5. During the last three years, have any of the **Insureds** been involved in:
   a. any anti-trust, copyright or patent litigation? ☐ Yes ☐ No
   b. any other criminal proceeding? ☐ Yes ☐ No
   c. any representative actions, class actions or derivative suits? ☐ Yes ☐ No
   d. any other material litigation? ☐ Yes ☐ No
   e. any **Claim** or potential **Claim** noticed under any Directors' and Officers' Liability policy? ☐ Yes ☐ No

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EMPLOYMENT PRACTICES LIABILITY APPLICATION

Please attach copies of the following for the Company and all Subsidiaries:

- Current Employee Handbook
- Current Employee Application Form(s)
- Copy of the Employment Termination procedures
- Most recent EEOC-1 Report for consolidated **Company**, headquarters, and all facilities over 500 employees

.

1. During the last 3 years have any of the **Insureds** been involved in any employment or labor related litigation? ☐ Yes ☐ No

2. During the last 3 years have any of the **Insureds** been involved in any administrative proceedings before:
   a. the Equal Employment Opportunity Commission? ☐ Yes ☐ No
   b. the U.S. Department of Labor including the Office of Federal Contract Compliance Programs ("OFCCP")? ☐ Yes ☐ No
   c. any state or local government agency whose purpose is to address employment-related claims ☐ Yes ☐ No

3. Are any of the **Insureds** currently required to comply with any judicial or administrative agreement, order, decree or judgment relating to employment? ☐ Yes ☐ No

4. Please provide the following information:

Total # of Employees: Company and all **Subsidiaries**	**Current Yr**	**1st Prior Yr**	**2nd Prior Yr**
employed by the **Insured:**			
employed in CALIFORNIA:			
employed in TEXAS:			
employed in WASHINGTON DC:			
employed OUTSIDE THE USA:			
% of Employee Turnover	%	%	%

5. Does the **Company** and all **Subsidiaries** use an outside employment legal counsel for employment advice and/or defense? ☐ Yes ☐ No

6. Has the **Company**, or any of its **Subsidiaries**, had in the past 12 months or do they plan to have during the next 12 months, layoffs, staff reductions, facility closings or consolidations which resulted, or is expected to result, in termination of more than 5% of the work force at any one location? ☐ Yes ☐ No

7. Has the **Company** or any prospective **Insureds** have been involved in employment or labor related litigation, during the last 3 years? ☐ Yes ☐ No

8. Does the **Company** and all **Subsidiaries** have written guidelines or procedures for addressing human resources or personnel management? ☐ Yes ☐ No

9. Does the **Company** and all **Subsidiaries** distribute to employees a copy of these guidelines or procedures? ☐ Yes ☐ No

10. Does the **Company** and all **Subsidiaries** have a full-time human resources manager? ☐ Yes ☐ No

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11. Does the **Company** and all **Subsidiaries** provide their supervisors and managers updated information and training on human resources issues, including performance appraisals, discipline, and workplace harassment, at least annually? ☐ Yes ☐ No

12. Does the **Company**, or any of its **Subsidiaries**, have an agreement or policy requiring employees to arbitrate all employee-related claims? ☐ Yes ☐ No

13. Is the **Company**, or any of its **Subsidiaries**, a federal contractor subject to Executive Order 11246? ☐ Yes ☐ No

14. When an employee is discharged by the **Company** and all **Subsidiaries**:
    a. Is officer approval required and is human resources personnel directly involved? ☐ Yes ☐ No
    b. Is an attorney consulted prior to discharging an employee? ☐ Yes ☐ No
    c. Does the **Company** and all **Subsidiaries** provide in references for former employees any information other than the dates of employment, title(s) and compensation? ☐ Yes ☐ No

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FIDUCIARY LIABILITY APPLICATION

Please attach copies of the following:

- Copies of the latest CPA-audited financial statements, with investment portfolios. (If plan assets are held in a master trust, submit master trust investment portfolio.);
- Copies of the most recent 5500s for all Plans to be insured;
- For each plan (or plan feature) that is designed to invest primarily in securities of the **Company** or any of its **Subsidiaries**, the latest CPA-audited financial statement (with investment portfolio) and a completed ESOP Questionnaire;
- Written plan description(s) and latest financial statement(s), if applicable, for any non-qualified plan(s);
- Latest annual report(s) for the **Company** and its **Subsidiaries**
- Latest interim financial statements for the **Company** and its **Subsidiaries**.

1. Total assets of the **Company** and its **Subsidiaries** $ _____

2. Total assets of all plans $ _____

3. Types of plans to be Insured (check all that apply):

   ☐ Defined Benefit Plan ☐ Defined Contribution Plan

   ☐ Welfare Benefit Plan ☐ Employee Savings Plan

   ☐ ESOP ☐ Other

4. Is the plan(s) a MULTIEMPLOYER or MULTIEMPLOYEE Plan? ☐ Yes ☐ No

5. Does the plan(s) employ the investment, trustee, actuarial, legal administrative, or benefits consulting services of any outside providers? ☐ Yes ☐ No

6. Has any plan requested or contemplated filing a request for termination? ☐ Yes ☐ No

7. In the past two years, has there been any amendment(s) to any plan(s), or has any amendment been contemplated, that has resulted in or may result in any change or reduction of benefits, including but not limited to an increase in participants' share of costs? ☐ Yes ☐ No

8. Has any plan or portion of any plan been spun off (sold), transferred, or terminated? ☐ Yes ☐ No

9. In the last 12 months has there been, or is there now under consideration, any merger, acquisition, restructuring or consolidation of or by the **Company** or any or its **Subsidiaries** that has resulted in or may result in plan participants transferring to another plan, company or subsidiary? ☐ Yes ☐ No

10. Are all defined benefit plans adequately funded in accordance with ERISA or any applicable similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world, as attested to by an actuary? ☐ Yes ☐ No

11. Are there any overdue employer contributions for any plan, or has any plan requested or contemplated filing a request for a waiver of contributions? ☐ Yes ☐ No

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12. Has there been, or is there now pending, any **Claim(s)** against any proposed **Insured** arising out of any plan? ☐ Yes ☐ No

13. Does any proposed **Insured** have knowledge or information of any act, error or omission which might give rise to a **Claim** under the proposed policy? ☐ Yes ☐ No

14. Is there any known violation(s) of ERISA or any similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world to which a plan is subject? ☐ Yes ☐ No

15. Has there been or is there now pending any inquiry, investigation or communication which could give rise to a **Claim** under this policy? ☐ Yes ☐ No

It is agreed with respect to questions 12–15 above that if such **Claim**, knowledge, information, violation, inquiry, investigation, or communication exists, then such **Claim**, and any **Claim** arising from any such knowledge, information, violation, inquiry, investigation, or communication is excluded from this proposed coverage.

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COMMERICAL CRIME APPLICATION

Please attach copies of the following:

- Last audited financial statements with all notes and schedules
- Copy of CPA management letter or, if applicable, auditor's opinion letter, and any management letter responding to same.

1. Has there been a change of control or management in the last three (3) years? ☐ Yes ☐ No
   If "Yes," attach complete details.

2. Please enter the following information:

	U.S.A.	Canada	Foreign	Total
Annual Sales or Gross Revenues				
Number of Locations				
Number of Employees				

Audit Procedures

3. Is there an actual Independent CPA audit in accordance with GAAP? ☐ Yes ☐ No
4. Is the most recent audit "unqualified"? ☐ Yes ☐ No
5. Are all locations audited? ☐ Yes ☐ No
6. Is the audit report distributed to senior management and the board of directors? ☐ Yes ☐ No
7. Is there a CPA letter to management or auditor's opinion letter? ☐ Yes ☐ No
8. Has management replied to any recommendations made in the letter? ☐ Yes ☐ No
9. Does the Applicant have an internal audit department or staff? ☐ Yes ☐ No
10. Is there a formal audit program? ☐ Yes ☐ No

Internal Controls

11. Does the Applicant require at least two (2) signatures on checks? ☐ Yes ☐ No
12. Do employees who reconcile monthly bank statements also:
    a) sign checks? ☐ Yes ☐ No
    b) handle bank deposits? ☐ Yes ☐ No
    c) have access to check signing machines or signature plates? ☐ Yes ☐ No
13. Are records maintained so that duplicate checks can be obtained for replacement? ☐ Yes ☐ No
14. Are checks stamped "For Deposit Only" as they are received? ☐ Yes ☐ No

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15. Are invoices stamped “Paid” at the time checks are issued? ☐ Yes ☐ No

16. Is there an exposure of precious metals or stones (e.g., gold, silver, copper, platinum, diamonds or similar high-value materials)? ☐ Yes ☐ No

17. Is high-value product inventoried regularly? ☐ Yes ☐ No

18. Is the payroll prepared by persons other than those who distribute it to employees? ☐ Yes ☐ No

19. Are at least twenty percent (20%) of all the accounts receivable periodically verified by direct contact with the customer? ☐ Yes ☐ No

20. Are all persons engaged in purchase or sale activities prohibited from taking part in shipping and receiving activities? ☐ Yes ☐ No

21. Are all shipping and receiving activities reconciled to all applicable sale or purchase orders? ☐ Yes ☐ No

Computer Controls

22. Is there a mechanism to prevent repeated attempts of unauthorized access to a computer program? ☐ Yes ☐ No

23. Are exception reports generated for unauthorized attempts or repeated attempts to access a computer program and/or network? ☐ Yes ☐ No

24. Within the information system area, are the duties of the development staff (programmers) and operational staff (operators) segregated? ☐ Yes ☐ No

25. Are pre-authorization controls maintained for all programmers and operators ☐ Yes ☐ No

26. Are individuals responsible for authorizing checks also able to produce computerized checks? ☐ Yes ☐ No

27. Are computer operators rotated periodically? ☐ Yes ☐ No

28. Does the Applicant have an employee data-security standards manual? ☐ Yes ☐ No

29. Do audit practices include any tests to detect unauthorized programming changes? ☐ Yes ☐ No

Securities and Trading Activities

30. State the value of all negotiable securities owned or held by the Applicant $ _____

31. Are securities subject to joint control by two (2) or more employees? ☐ Yes ☐ No

32. Is any person(s) whose conduct would be insured by the proposed insurance responsible for trading or directing the trading of securities on the Applicant’s behalf? ☐ Yes ☐ No

33. Are controls in place so person(s) responsible for trading may not engage in unauthorized trading activities? ☐ Yes ☐ No

34. Are statements from securities brokers reconciled by a person different from the person responsible for trading securities? ☐ Yes ☐ No

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35. If safe deposit boxes are used, has the bank been instructed to require that two (2) or more individuals be present before any entry of the box is permitted? ☐ Yes ☐ No

Present Crime Program and Loss Experience

36. Does the Applicant screen employees for prior acts of dishonesty? ☐ Yes ☐ No

37. Please identify all losses incurred within the last three (3) years of the type which would potentially be covered under the proposed insurance:

Description of Loss	Date of Loss	Amount of Loss	Preventative Measures Taken

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TO BE COMPLETED BY ALL APPLICANTS

None of the **Insureds** is responsible for or has knowledge of any **Wrongful Act** or fact, circumstance or situation which (s)he has reason to suppose might result in a future **Claim**, except as follows:
If "NONE", Please check this box ☐

It is agreed by all concerned that if any of the **Insureds** is responsible for or has knowledge of any **Wrongful Act**, fact, circumstance, or situation which (s)he has reason to suppose might result in a future **Claim**, whether or not described above, any such **Claim** subsequently emanating therefrom shall be excluded from coverage under the proposed insurance.

This Application shall be maintained on file by the Insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

By signing this Application, the Applicant warrants to the Insurer that all statements made in this Application, including attachments, about the Applicant and its operations are true and complete, and that no material facts have been misstated in this Application, or such attachments, or concealed. The undersigned agrees that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application or attachments inaccurate or incomplete, then the Applicant shall notify the Insurer of such occurrence, event or circumstance and shall provide the Insurer with information that would complete, update or correct such information. Any outstanding quotations may be modified or withdrawn at the sole discretion of the Insurer.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the Insurer under any Policy of a **Claim** or potential **Claim**. All such notices must be submitted to the Insurer pursuant to the terms of the Policy, if and when issued.

Signing of this Application does not bind the Insurer to offer nor the Applicant to accept insurance, but it is agreed that this Application shall be a basis of the insurance and it will be attached and made a part of the Policy should a Policy be issued. The Applicant's acceptance of the Insurer's quotation is required before the Applicant may be bound and a Policy issued.

The undersigned acknowledges that he or she is aware that **Defense Costs** reduce and may exhaust the applicable Limits of Liability. The Insurer is not liable for any **Loss** (which includes **Defense Costs**) in excess of the applicable Limits of Liability.

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This portion of the Application must be signed by the Chairman of the Board or by the President.

Signed: _____

Title:

Date: _____

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

Please submit this Application, when completed, signed and dated to:

ACE Westchester Specialty Group
Professional Risk Division
500 Colonial Center Parkway, Suite 200
Roswell, GA 30076

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FOR IOWA APPLICANTS ONLY:

Broker:

Address:

FOR MISSOURI RESIDENTS ONLY:

PLEASE ACKNOWLEDGE AND SIGN THE FOLLOWING DISCLOSURE TO YOUR APPLICATION FOR INSURANCE:

I UNDERSTAND AND ACKNOWLEDGE THAT THE ATTACHED POLICY CONTAINS A DEFENSE WITHIN LIMITS PROVISION WHICH MEANS THAT DEFENSE COSTS WILL REDUCE MY LIMITS OF INSURANCE AND MAY EXHAUST THEM COMPLETELY. SHOULD THAT OCCUR, I SHALL BE LIABLE FOR ANY FURTHER LEGAL DEFENSE COSTS AND DAMAGES.

Signed: _____

Must Be Signed By An Officer of Applicant

Title:

Date: _____

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ACE Westchester Advantage℠
Not-For-Profit Company Management Liability Insurance
Renewal Application

Instructions for Completing This Application

Please read carefully and check below all Coverages you seek. Fully answer all questions and submit all requested information only for each Coverage you seek. All applicants must complete the General Information and the final section of this Application. Terms appearing in bold face in this Application are defined in the Policy and have the same meaning in this Application as in the Policy.

GENERAL INFORMATION

1. a. Name of the "Company" or "Applicant":
   Street Address:
   City:
   State:
   Zip Code:

   b. Officer designated to receive correspondence and notices from the Insurer:

   _____
   (Name of Officer) (Title)

   c. Officer or person responsible for Human Resource matters of the Company: this information required for employment loss control service that will be offered with your indication.

   _____
   (Name of Person) E-mail address Phone Number

2. Tax Status: ☐ Section 501(c) ☐ Taxable Non-Profit
   ☐ Other (if other please describe)_____

Information Required:

- ***Most recent year end audited financial statements including all notes and schedules***
- ***Copy of the Applicant's latest EEO1 report (required if Applicant has more than 100 employees);***
- ***Copy of the latest form 5500 and audited plan financials if Fiduciary Liability Coverage is sought.***

Not-For-Profit Company Management Liability Coverage (complete only if the Applicant desires to renew this coverage):

Please answer the following questions (If "Yes", please attach details).

1. What professional services does the Company and its **Subsidiaries** provide?

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2. Has the **Company** or any of its **Subsidiaries**:
   a. contemplated or been involved in any bankruptcy proceedings? ☐ Yes ☐ No
   b. plan to declare bankruptcy within the next 12 months? ☐ Yes ☐ No

Employment Practices Liability Coverage (complete only if the Applicant desires to renew this coverage):

	Full Time	Part Time/Other	Independent Contractors	Leased Employees
1. Number of current employees: (Company and all **Subsidiaries**)	_____	_____	_____	_____
a. Turnover	_____%			

2. Has the Company, or any of its **Subsidiaries**, had in the past twelve (12) months or do they contemplate within the next twelve (12) months having any layoffs, staff reductions, facility closings or consolidations? If "Yes," attach details. ☐ Yes ☐ No

Fiduciary Liability Coverage (complete only if the Applicant desires to renew this coverage):

1. Does any Defined Benefit Pension Plan have a funding deficiency? ☐ Yes ☐ No
   (If "Yes", please attach details)

   Plan Type _____ Current Balance _____

This Application shall be maintained on file by the Insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

By signing this Application, the Applicant represents to the Insurer that all statements made in this Application, including attachments, about the Applicant and its operations are true and complete, and that no material facts have been misstated or concealed in this Application, or such attachments. The undersigned agrees that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application or attachments inaccurate or incomplete, then the Applicant shall notify the Insurer of such occurrence, event or circumstance and shall provide the Insurer with information that would complete, update or correct such information. Any outstanding quotations may be modified or withdrawn at the sole discretion of the Insurer.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the Insurer under any policy of a **Claim** or potential **Claim**. All such notices must be submitted to the Insurer pursuant to the terms of the Policy, if and when issued.

Signing of this Application does not bind the Insurer to offer nor the Applicant to accept insurance, but it is agreed that this Application shall be a basis of the insurance and it will be attached and made a part of the Policy should a Policy be issued. The Applicant's acceptance of the Insurer's quotation is required before the Applicant may be bound and a Policy issued.

The undersigned acknowledges that he or she is aware that **Defense Costs** reduce and may exhaust the applicable Limits of Liability. The Insurer is not liable for any **Loss** (which includes **Defense Costs**) in excess of the applicable Limits of Liability.

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NOTICE TO ARKANSAS APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO COLORADO APPLICANTS: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

NOTICE TO DISTRICT OF COLUMBIA APPLICANTS: WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

NOTICE TO LOUISIANA APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO MINNESOTA APPLICANTS: A person who submits an application or files a **Claim** with intent to defraud or helps commit a fraud against an **Insurer** is guilty of a crime.

NOTICE TO NEW JERSEY APPLICANTS: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

NOTICE TO NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

NOTICE TO NEW YORK APPLICANTS: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

NOTICE TO OHIO APPLICANTS: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

NOTICE TO OKLAHOMA APPLICANTS: WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

NOTICE TO TENNESSEE APPLICANTS: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

NOTICE TO WASHINGTON APPLICANTS: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purposes of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

NOTICE TO ALL APPLICANTS:

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON, FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS INFORMATION FOR THE PURPOSE OF MISLEADING, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND MAY SUBJECT SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

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This portion of the Application must be signed by the Chairman of the Board or by the President.

Signed: _____

Title:

Date: _____

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

Please submit this Application, when completed, signed and dated to:

ACE Westchester Specialty Group
Professional Risk Division
500 Colonial Center Parkway, Suite 200
Roswell, GA 30076

FOR IOWA APPLICANTS ONLY:

Broker:

Address:

FOR MISSOURI RESIDENTS ONLY:
PLEASE ACKNOWLEDGE AND SIGN THE FOLLOWING DISCLOSURE TO YOUR APPLICATION FOR INSURANCE:

I UNDERSTAND AND ACKNOWLEDGE THAT THE ATTACHED POLICY CONTAINS A DEFENSE WITHIN LIMITS PROVISION WHICH MEANS THAT DEFENSE COSTS WILL REDUCE MY LIMITS OF INSURANCE AND MAY EXHAUST THEM COMPLETELY. SHOULD THAT OCCUR, I SHALL BE LIABLE FOR ANY FURTHER LEGAL DEFENSE COSTS AND DAMAGES.

Signed: _____
Must Be Signed By An Officer of Applicant

Title:

Date: _____

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Retention – Third Party Employment Practices Liability

It is agreed that Item 3 of the Declarations is amended by deleting the Retention(s) set forth for the Employment Practices Liability Insuring Agreement and inserting the following, but solely with respect to a **Claim** that is covered solely under Insuring Agreement B 2, and that is first made on or after the effective date of this endorsement:

Insuring Agreements Purchased:	Retention(s):
☐ Employment Practices Liability	$ _____ each **Claim**

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Waiver of Application Endorsement

In consideration of the premium paid, it is agreed that the **Policy** is amended by adding the following to Section XV, Representations, as follows:

> Any and all references to an **Application** in this **Policy** shall include the application or proposal described below. The **Insurer** has relied upon all statements, warranties and other information and documents contained in or submitted with such other application or proposal as if they were submitted directly to Insurer using its own **Application** form.

Type of Application/Proposal: _____

Carrier: _____

Date Signed: _____

All other terms and conditions remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

Waiver of Application (No Underlying Application)

It is agreed that the **Insurer** has relied upon the information and materials ("**Information and Materials**") submitted by or on behalf of the **Insureds**: (i) to the **Insurer** in connection with the underwriting of this **Policy**, or (ii) to the **Insurer**, or to any insurer of any policy, in connection with the underwriting of any policy of which this **Policy** is a direct or indirect renewal or replacement ("**Prior Insurers**"), as being accurate and complete. The application for this **Policy** and any **Prior Insurer** shall include any **Information and Materials** submitted to such insurer, as well as **Information and Materials** submitted to a **Prior Insurer** prior to the underwriting of such policy. It is further agreed that the **Insureds** warrant and represent to the **Insurer** that such **Information and Materials** were accurate on the date such statements were so given and that in connection therewith the **Insureds** hereby reaffirm each and every statement made in the **Information and Materials** submitted as if it was made to the **Insurer** on such date. All such statements shall be deemed to be material to the risk assumed by the **Insurer**, are the basis of this **Policy** and are to be considered incorporated into this **Policy**.

All other terms and conditions of this **Policy** remain unchanged.

_____
Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
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Issued By (Name of Insurance Company)			

INDEPENDENT CONTRACTORS COVERAGE AND AMENDED THIRD PARTY COVERAGE

It is agreed that Section I, Insuring Agreements, subsection B, Employment Practice Liability, is deleted in its entirety and replaced with the following:

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**;
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity**; or
3. any independent contractor of the **Company**.

It is further agreed that Section II, Definitions, subsection G, definition of **Insured Person**, is amended by adding the following at the end thereof:

4. Solely for purposes of coverage under Insuring Agreement B, Employment Practices Liability, a person not described in paragraph 1 of this definition who was, is or shall become an independent contractor of the **Company**, but only if the **Company** provides indemnification to such independent contractor in the same manner as that provided to the **Company's** employees.

All other terms and conditions of this **Policy** remain unchanged.

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OPTIONAL DUTY TO DEFEND ENDORSEMENT

It is agreed that Section X, Defense and Settlement, is deleted in its entirety and replaced with the following:

X. **DEFENSE AND SETTLEMENT**

A. The **Insurer** does not assume any duty to defend under this **Policy**. It shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim**. Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of the **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Insured** to the **Insurer** on behalf of all **Insureds** pursuant to the Notice provisions in Section IX of this **Policy**. This right shall terminate if not exercised within 30 days of the date the **Claim** is first made against the **Insured,** pursuant to the Notice provision in Section IX of this **Policy**.

Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim,** the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Insured**.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate

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amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. In the event the **Insurer** has assumed the defense of a **Claim** pursuant to this section, the **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.** When it has not assumed the defense of a **Claim** pursuant to this section, the **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

F. When the **Insurer** has not assumed the defense of a **Claim** pursuant to this section, and subject to Section XXV, Allocation, the **Insurer** shall, no later than quarterly, advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Defense Costs** shall be subject to the condition that such amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled to coverage for such **Defense Costs** under the terms and conditions of this **Policy**.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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ANTITRUST SUBLIMIT AND RETENTION

For Use With Single Aggregate Limit of Liability

It is agreed that:

1. Health Care Endorsement # _____is amended at item two by deleting the following exclusion in its entirety:

   - alleging, based upon, arising out of or attributable to antitrust violations, price fixing, price discriminations, unfair competition, deceptive trace practices and/or monopolies, including any actions, proceedings, **Claims** or investigations related thereto;

2. Item 3 of the Declarations, Limit(s) of Liability and Retention(s), is amended at subsection A by deleting the retention set forth for each **Claim** under the Management Liability Insuring Agreement and inserting the following:

   Retention for **Loss** under Insuring Agreement A, other than loss on account of **Antitrust Claims**: $_____each **Claim**

   Retention for **Loss** under Insuring Agreement A, for loss on account of **Antitrust Claims**: $_____each **Claim**

3. Section II, Definitions, is amended by adding the following:

   - **Antitrust Claim** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

4. Section VII, Limits of Liability, is amended by adding the following:

   The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

All other terms and conditions of this **Policy** remain unchanged.

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ANTITRUST SUBLIMIT AND RETENTION

For Use With Separate Limits of Liability

It is agreed that:

1. Health Care Endorsement # _____is amended at item two by deleting the following exclusion in its entirety:

   - alleging, based upon, arising out of or attributable to antitrust violations, price fixing, price discriminations, unfair competition, deceptive trace practices and/or monopolies, including any actions, proceedings, **Claims** or investigations related thereto;

2. Item 3 of the Declarations, Limit(s) of Liability and Retention(s), is amended at subsection B by deleting the retention set forth for each **Claim** under the Management Liability Insuring Agreement and inserting the following:

   Retention for **Loss** under Insuring Agreement A, other than loss on account of **Antitrust Claims**: $_____each **Claim**

   Retention for **Loss** under Insuring Agreement A, for loss on account of **Antitrust Claims**: $_____each **Claim**

3. Section II, Definitions, is amended by adding the following:

   - **Antitrust Claim** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

4. Section VII, Limits of Liability, is amended by adding the following:

   The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

All other terms and conditions of this **Policy** remain unchanged.

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PROFESSIONAL SERVICES EXCLUSION – PROPERTY MANAGEMENT AND DEVELOPMENT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services as a property manager, property developer, builder or construction manager.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – ADVERTISING/PUBLIC RELATIONS WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** advertising or other public relations related business. Such professional services shall include, without limitation, the creation, development, implementation, sale or termination of any advertising or public relations campaign or any advice proffered by the **Insured** in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – ADVERTISING/PUBLIC RELATIONS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** advertising or other public relations related business. Such professional services shall include, without limitation, the creation, development, implementation, sale or termination of any advertising or public relations campaign or any advice proffered by the **Insured** in connection with any of the foregoing.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – ARCHITECTS WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as architects. Such professional services shall include, without limitation, the formulation of designs and specifications; preparation of drawings, plans or blueprints; expression of an opinion on the feasibility or structural soundness of part or all of any project; accuracy of calculations, drawings or conclusions; supervision of construction, manufacture or assembly; or any advice proffered by the **Insured** in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – ARCHITECTS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as architects. Such professional services shall include, without limitation, the formulation of designs and specifications; preparation of drawings, plans or blueprints; expression of an opinion on the feasibility or structural soundness of part or all of any project; accuracy of calculations, drawings or conclusions; supervision of construction, manufacture or assembly; or any advice proffered by the **Insured** in connection with any of the foregoing.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – BROADCASTING WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as broadcasters. Such professional services shall include, without limitation, broadcasting, publishing, telecasting, advertising, re-broadcasting or re-televising activities, or services incidental to any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – BROADCASTING

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as broadcasters. Such professional services shall include, without limitation, broadcasting, publishing, telecasting, advertising, re-broadcasting or re-televising activities, or services incidental to any of the foregoing.

All other terms and conditions of this **Policy** remain unchanged

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – DATA PROCESSING, PROGRAMMING WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as data processors or programmers. Such professional services shall include, without limitation, the compilation, programming, handling or processing of any data, program or records of others or any advice by the **Insureds** related to such professional services. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – DATA PROCESSING, PROGRAMMING

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as data processors or programmers. Such professional services shall include, without limitation, the compilation, programming, handling or processing of any data, program or records of others or any advice by the **Insureds** related to such professional services.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – EDUCATORS WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as educators. Such services shall include, without limitation, educational instruction, career guidance, discipline, corporal punishment, student consumerism, class content, grading practices, admittance procedures, expulsion procedures, integration, desegregation, student enrollment, participation in any educational or extracurricular program, bussing, and other student transportation practices relating to a program or plan of integration or desegregation, or any advice in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged

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Authorized Representative

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PROFESSIONAL SERVICES EXCLUSION – EDUCATORS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as educators. Such services shall include, without limitation, educational instruction, career guidance, discipline, corporal punishment, student consumerism, class content, grading practices, admittance procedures, expulsion procedures, integration, desegregation, student enrollment, participation in any educational or extracurricular program, bussing, and other student transportation practices relating to a program or plan of integration or desegregation, or any advice in connection with any of the foregoing.

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PROFESSIONAL SERVICES EXCLUSION – ENGINEER WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as engineers. Such professional services shall include, without limitation, the formulation of designs and specifications; preparation of drawings, plans or blueprints; expression of an opinion on the feasibility or structural soundness of all or any part of any project; accuracy of calculations, drawings, or conclusions; supervision of construction, manufacture or assembly; or any advice by the **Insureds** in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

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PROFESSIONAL SERVICES EXCLUSION – ENGINEER

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as engineers. Such professional services shall include, without limitation, the formulation of designs and specifications; preparation of drawings, plans or blueprints; expression of an opinion on the feasibility or structural soundness of all or any part of any project; accuracy of calculations, drawings, or conclusions; supervision of construction, manufacture or assembly; or any advice by the **Insureds** in connection with any of the foregoing.

All other terms and conditions of this **Policy** remain unchanged.

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PROFESSIONAL SERVICES EXCLUSION – GENERAL PROFESSIONAL SERVICES WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

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PROFESSIONAL SERVICES EXCLUSION – GENERAL PROFESSIONAL SERVICES

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services.

All other terms and conditions of this **Policy** remain unchanged.

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PROFESSIONAL SERVICES EXCLUSION – INSURANCE AGENT OR BROKER WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as insurance agents or brokers. Such professional services shall include, without limitation, the negotiation of insurance contracts; collection or remittance of premiums; rendering of advice concerning limits of liability, deductible, terms, conditions, application of exclusions, scope of coverage, types of coverages or forms to be carried; the rendering of loss control services; or any advice by the **Insureds** in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

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PROFESSIONAL SERVICES EXCLUSION – INSURANCE AGENT OR BROKER

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as insurance agents or brokers. Such professional services shall include, without limitation, the negotiation of insurance contracts; collection or remittance of premiums; rendering of advice concerning limits of liability, deductible, terms, conditions, application of exclusions, scope of coverage, types of coverages or forms to be carried; the rendering of loss control services; or any advice by the **Insureds** in connection with any of the foregoing.

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PROFESSIONAL SERVICES EXCLUSION – INSURER OR REINSURER

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as an insurer or reinsurer. Such professional services shall include, without limitation, the refusal to renew or the cancellation of any policy of insurance, reinsurance, bond or indemnity including but not limited to annuities, pension contracts, risk management self-insurance program pools or similar programs (hereinafter "Insurance Contracts"); refusal to pay or delay in the payment of benefits or indemnity due or alleged to have been due under any Insurance Contract; handling any claim or obligation arising out of or under any Insurance Contract; conducting any engineering survey; conducting any loss control service; or any advice by the **Insureds** in connection with any of the foregoing.

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PROFESSIONAL SERVICES EXCLUSION – INSURER/REINSURER WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as an insurer or reinsurer. Such professional services shall include, without limitation, the refusal to renew or the cancellation of any policy of insurance, reinsurance, bond or indemnity including but not limited to annuities, pension contracts, risk management self-insurance program pools or similar programs (hereinafter "Insurance Contracts"); refusal to pay or delay in the payment of benefits or indemnity due or alleged to have been due under any Insurance Contract; handling any claim or obligation arising out of or under any Insurance Contract; conducting any engineering survey; conducting any loss control service; or any advice by the **Insureds** in connection with any of the foregoing. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

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PROFESSIONAL SERVICES EXCLUSION – MEDICAL SERVICES WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as a provider of medical services. Such professional services include, without limitation:

  1. providing medical, surgical, dental, psychiatric or nursing treatment, care, diagnosis or services, including the furnishing of food or beverage in connection therewith;

  2. providing routine and/or esoteric testing services used in the diagnosis, monitoring, and/or treatment of disease or any other medical condition;

  3. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances;

  4. handling or conducting postmortem examinations on humans;

  5. providing veterinary services;

  6. providing services as a member of or participant in a formal medical peer review committee, board or similar medical peer review group of the company, hospital, or professional society; or

  7. giving advice in connection with the foregoing.

  Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

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PROFESSIONAL SERVICES EXCLUSION – MEDICAL SERVICES

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as a provider of medical services. Such professional services include, without limitation:

  1. providing medical, surgical, dental, psychiatric or nursing treatment, care, diagnosis or services, including the furnishing of food or beverage in connection therewith;

  2. providing routine and/or esoteric testing services used in the diagnosis, monitoring, and/or treatment of disease or any other medical condition;

  3. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances;

  4. handling or conducting postmortem examinations on humans;

  5. providing veterinary services;

  6. providing services as a member of or participant in a formal medical peer review committee, board or similar medical peer review group of the company, hospital, or professional society; or

  7. giving advice in connection with the foregoing.

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PROFESSIONAL SERVICES EXCLUSION – PRINTERS OR PUBLISHERS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as printers or publishers. Such professional services shall include, without limitation, composing, revising, preparing for publication, editing, proof reading, designing, arranging style and appearance, typesetting, printing, engraving, advertising, issuing or circulating any printed matter; or any advice by the **Insureds** in connection with any of the foregoing.

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PROFESSIONAL SERVICES EXCLUSION – REAL ESTATE AGENTS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the rendering or failure to render professional services in connection with the **Insured's** business as real estate agents. Such professional services shall include, without limitation, the purchase, sale, rental, leasing or valuation of real property; the arrangement of financing on real property; or any advice by the **Insureds** in connection with any of the foregoing.

All other terms and conditions of this **Policy** remain unchanged.

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NOTICE CLAUSE AMENDED – GENERAL COUNSEL, RISK MANAGER

It is agreed that Section IX, Notice, is amended by deleting subsection A and inserting the following:

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable after the Risk Manager or General Counsel (or equivalent positions) of the **Company** is first made aware of such **Claim**, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

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PARENT EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

  brought or maintained by or on behalf of:

  1. _____ ("Shareholder"), or any entity other than the **Company** in which more than 50% of the outstanding voting securities representing the present right to vote for election of or to select directors, members of the board of managers (for limited liability companies), or equivalent executives is owned or controlled, directly or indirectly, in any combination, by such Shareholder; or
  2. any past, present or future director, trustee, general partner, manager, officer, employee, security holder of the Shareholder or other organization included in subparagraph 1 above; or
  3. any past, present or future security holder of the Shareholder or other organization included in subparagraph 1 above.

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MAJOR SHAREHOLDER EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

brought or maintained by, on behalf of, or in the right of any natural person or entity which, directly, indirectly, or beneficially is an owner of ___% or more of the outstanding shares of common stock of the **Company**.

All other terms and conditions of this **Policy** remain unchanged.

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SPECIFIC MATTER EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

alleging, based upon, arising out of, or attributable to the following, or any **Wrongful Act**, fact, circumstance, or situation underlying or alleged therein, or any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in the following, would constitute **Interrelated Wrongful Acts**:

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60-DAY EXTENDED POST POLICY REPORTING ENDORSEMENT

It is agreed that Section IX, Notice, is amended by deleting subsection A in its entirety and inserting the following:

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 60 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

All other terms and conditions of this **Policy** remain unchanged.

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AMENDED WRONGFUL EMPLOYMENT PRACTICE DELETE DISCRIMINATION

It is agreed that Section II, Definitions, definition of Wrongful **Employment Practice**, is amended by deleting the paragraph immediately following paragraph 12 in its entirety and replacing it with the following:

> Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged sexual harassment, or a violation of a natural person's civil rights relating to such sexual harassment, whether direct, indirect, intentional or unintentional.

All other terms and conditions of this **Policy** remain unchanged.

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SPECIFIC MATTER EXCLUSION – RESTATEMENTS

It is agreed that Section III, Exclusions, is amended by adding the following:

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

alleging, based upon, arising out of, or attributable to the following, or any **Wrongful Act**, fact, circumstance, or situation underlying or alleged therein, or any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in the following, would constitute **Interrelated Wrongful Acts**, including but not limited to any restatement, retraction, amendment or revision of, in whole or in part:

1. any document or statement filed or submitted or required to be filed or submitted with the Securities and Exchange Commission or any other similar federal, state or local agency (including but not limited to any 10K's, 10Q's or annual reports); or
2. any written or oral statement made regarding the assets, revenues, sales or financial condition of the **Company**;

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Issued By (Name of Insurance Company)			

FINANCIAL SERVICES EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising from, or attributable to the rendering of or failure to render professional services in connection with the **Insured's** business as an investment company, investment advisor, trust company, commercial bank, mortgage banker, mortgage broker, insurance company, insurance agent, insurance broker, reinsurer, securities broker, securities dealer, mutual fund manager, asset manager, clearing agent, financial planner, estate planner, credit union, title agent, financial consultant, or financial analyst.

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EPL SUBLIMIT

It is agreed that Section VII, Limits of Liability is amended at subsection B by adding the following:

> Notwithstanding any other provision of this section to the contrary, the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Claims** covered pursuant to Section I, Insuring Agreements, subsection B, Employment Practices Liability, shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the Single Aggregate Limit of Liability stated in Item 3A of the Declarations and will in no way serve to increase the **Insurer's** Single Aggregate Limit of Liability as therein provided.

All other terms and conditions of this **Policy** remain unchanged.

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KNOWN WRONGFUL ACTS, FACTS OR CIRCUMSTANCES EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation committed prior to the effective date of the **Policy** if, on or before the earlier of the effective date of the **Policy** or the effective date of any policy issued by the **Insurer** to which this **Policy** is a continuous renewal or replacement, any **Insured** had knowledge or information of such **Wrongful Act**, fact, circumstance or situation, where such knowledge or information would lead a reasonable person to believe that such **Wrongful Act**, fact, circumstance or situation might give rise to a **Claim**.

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FIDUCIARY LIABILITY INSURING AGREEMENT

It is agreed that the **Policy** is amended as follows:

1. Items 3 and 5 of the Declarations are deleted in their entirety and replaced with the following:

Item 3. Limit(s) of Liability and Retention(s):

A. Single Aggregate Limit of Liability and Retention: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability (including **Defense Costs**):	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Employment Practices Liability		$ _____each **Claim**
__ Fiduciary Liability		$ _____each **Claim**

B. Separate Limit(s) of Liability and Retentions: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability (including **Defense Costs**):	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$_____each **Claim**
__ Employment Practices Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Fiduciary Liability	$ _____Aggregate Limit	$_____each **Claim**

C. **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:
i. Sublimit of Liability: $_____
ii. Retention $0
iii. Not provided

Item 5. Prior or Pending Proceeding Date:
__ Management Liability _____
__ Employment Practices Liability _____
__ Fiduciary Liability _____

2. Section I, Insuring Agreements, is amended by adding the following at the end thereof:

C. Fiduciary Liability, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:

1. Fiduciary Liability

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during

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the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** by the **Insureds**, or by any **Employee** for whom such **Insured** is legally responsible.

2. **Voluntary Compliance Program** and **Delinquent Filer Penalties**

   If provided, the **Insurer** shall pay **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Compliance Loss** of the **Insureds** relating to a **Voluntary Compliance Notice** first given to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, or within 30 days after the end of the **Policy Period** or, if elected, the **Extended Reporting Period**, provided the **Voluntary Compliance Loss** is incurred after such **Voluntary Compliance Notice** is first given to the **Insurer.**

3. Section II, Definitions, is amended by adding the following definitions:

Administration means: (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**; (ii) providing interpretations with respect to any **Plan**; (iii) handling records in connection with any **Plan**; and, (iv) enrolling, terminating or canceling employees, participants and beneficiaries under any **Plan**.

Delinquent Filer Penalties means penalties assessed by the U.S. Department of Labor or the IRS under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal thereof.

Employee Benefit Law means the Employee Retirement Income Security Act of 1974 ("**ERISA**"), as amended (including but not limited to amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998, as amended), or any similar common or statutory law anywhere in the world (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Solely with respect to paragraph 3b of the definition of **Wrongful Act**, **Employee Benefit Law** also includes: (i) Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as the HIPAA Privacy Regulations; and, (ii) any workers' compensation, unemployment insurance, social security, government-mandated disability benefits or similar law.

ESOP means any employee stock ownership plan as defined in any **Employee Benefit Law**, or any other **Pension Plan** under which investments are made primarily in securities of the **Company**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Company**.

Fiduciary means, with respect to a **Plan**, a fiduciary as defined in an **Employee Benefit Law**, or a person or entity who exercises discretionary control with respect to the management of the **Plan** or the disposition of **Plan** assets.

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Pension Plan means any employee pension benefit plan as defined in any **Employee Benefit Law**, other than any **ESOP**, which was, is or shall be sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company**.

Plan means:

1. any **Pension Plan** or any **Welfare Plan** established anywhere in the world which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company.** However, any **Pension Plan** or **Welfare Plan** created or acquired by the **Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of section XIII of this **Policy**;

2. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, but solely for a **Wrongful Act** as defined in subsection 3b of the definition of **Wrongful Act**;

3. any deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan for a select group of management or highly compensated directors, officers, governors, management committee members, members of the board of managers, natural person general partners and/or **Employees** of the **Company**; and

4. any other plan, fund, trust or program specifically included in the definition of **Plan** pursuant to an endorsement to this **Policy**.

However, **Plan** does not include any multiemployer plan as defined in any **Employee Benefit Law**.

Voluntary Compliance Loss means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent noncompliance by a **Plan** with any statute, rule or regulation if participation by the **Insured** in such **Voluntary Compliance Program** results in the **Insured** obtaining a "No Action" letter from the governmental authority; provided that **Voluntary Compliance Loss** shall not include: (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties, sanctions or **Defense Costs** relating to a **Plan** which, as of the earlier of inception of this **Policy** or inception of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Voluntary Compliance Notice means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

Voluntary Compliance Program means a written agreement to correct an inadvertent **Plan** defect under a voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor or other similar governmental authority, including without limitation

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the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the U.S. Internal Revenue Service during the **Policy Period**, or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal.

Welfare Plan means any:

(i) employee welfare benefit plan as defined in an **Employee Benefit Law**, including without limitation any plan from which participants may choose among two of more benefits consisting of cash and qualified benefits; and

(ii) any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended,

where sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of current or former employees, directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Company.**

4. Section II, Definitions, is amended by amending the following definitions:

A. **Claim** is amended by deleting paragraph 4 in its entirety and replacing it with the following:

4. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority anywhere in the world, including without limitation the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority, commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as an individual or entity against whom a civil, administrative or regulatory proceeding may be commenced; or

5. a written request of the **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in paragraphs 1 through 4 above.

B. **Insured** is amended by adding the following at the end thereof:

3. solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, the **Company** and **Plans**.

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C. **Insured Person** is amended by adding the following at the end thereof:

4. solely for purposes of coverage under Insuring Agreement C, Fiduciary Liability **Voluntary Compliance Program** and **Delinquent Filer Penalties**, any one or more natural persons who were, now are, or shall become duly elected or appointed trustees, directors, officers or employees of any **Plan**.

D. **Loss** is amended by deleting the first paragraph in its entirety and replacing it with the following:

Loss means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies, and if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

Loss is further amended by deleting numbered paragraph 2 in its entirety and replacing it with the following:

2. taxes, fines or penalties, except, solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:

   (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under sections 502(i) or (l), respectively of **ERISA**;

   (b) civil fines or penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this **Policy**; or

   (c) solely with respect to Insuring Agreement C2, if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

Loss is further amended by adding the following immediately after numbered paragraph 6:

7. any obligation under a **Plan** to pay to a participant or beneficiary of the **Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**.

E. **Wrongful Act** is amended by adding the following at the end thereof:

3. With respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

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a. any violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** under any **Employee Benefit Law** with respect to any **Plan**, or any matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Plan** or the **Company**, but solely with respect to the **Plan**, or

b. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of a **Plan**; or

c. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Named Insured** and such multiemployer plan is added by specific written endorsement to this **Policy**, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this **Policy** extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person** as set forth in this paragraph 3c.

5. Section III, Exclusions, is amended as follows:

A. Exclusion B is amended by deleting the last sentence thereof in its entirety and replacing it with the following:

However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, and shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

B. By adding the following at the end thereof:

The following exclusions shall apply only to any **Claim** covered in whole or in part under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

1. for benefits due or to become due under any **Plan**, benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or that portion of any settlement or judgment which constitutes such benefits. However, this exclusion shall not apply to **Defense Costs** or to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**.

2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to: (i) **Defense Costs**; and, (ii) to the extent that liability would have attached to the **Company** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

3. alleging, based upon, arising out of, or attributable to the failure to collect from the **Company** contributions it owed to any **Plan**, or the failure to fund a **Plan** in accordance with **ERISA**, any similar state or local law, or the **Plan** instrument. However, this exclusion shall not apply to **Defense Costs**.

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4. for discrimination in violation of any law other than: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits or similar law; (ii) the Employee Retirement Income Security Act of 1974; (ii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Occupational Safety and Health Act; or (vi) any similar state or local laws, or any rules and regulations promulgated thereunder and amendments thereto.

6. Section VI, Extended Reporting Period, is amended by deleting Subsection C in its entirety and replacing it with the following:

   C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**, and the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability or the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

7. Section VII, Limits of Liability, is amended as follows:

   A. By deleting Subsection B in its entirety and replacing it with the following:

      B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the Limit of Liability set forth in Item 3A of the Declarations and in no way shall be deemed to increase the Limit of Liability as set forth therein.

   B. By deleting Subsection C.1 in its entirety and replacing it with the following:

      1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, the **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the respective Limit of Liability set forth in Item 3B of the Declarations and in no way shall be deemed to increase the respective Limit of Liability as set forth therein.

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C. By deleting Subsection D in its entirety and replacing it with the following:

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3 and **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

8. Section XIII, Material Changes in Conditions, is amended by:

A. Deleting Subsection A in its entirety and replacing it with the following:

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**; or

3. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, creates a **Plan**,

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons**, and **Plan** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization or **Plan**, as reflected in the then most recent consolidated financial statements of the organization, or most recent financial statements of the **Plan**, as applicable, exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, or 25% of the total assets of the **Plan** as reflected in its most recent financial statements, as applicable, coverage shall be provided for such acquired or created organization or **Plan** for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization or **Plan** shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

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B. By adding the following at the end thereof:

D. Termination of a **Plan**

If before or during the **Policy Period** a **Plan** is terminated, sold or run-off, coverage with respect to such **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Plan** was terminated, sold or run-off.

E. Other Organizational Changes

Coverage with respect to an **Insured**, or to a **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, is afforded only for **Wrongful Acts** committed or allegedly committed after the effective time such **Insured** or **Plan** became an **Insured** and prior to the effective time that such **Insured** or **Plan** ceases to be an **Insured** or **Plan**.

9. Section XIV, Payment Priority, is deleted in its entirety and replaced with the following:

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

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10. Section XXI, Bankruptcy, is amended by deleting the first paragraph thereof in its entirety and replacing it with the following:

    Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

All other terms and conditions of this **Policy** remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

FIDUCIARY LIABILITY INSURING AGREEMENT

It is agreed that the **Policy** is amended as follows:

1. Items 3 and 5 of the Declarations are deleted in their entirety and replaced with the following:

Item 3. Limit(s) of Liability and Retention(s):

A. Single Aggregate Limit of Liability and Retention: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability (including **Defense Costs**):	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Employment Practices Liability		$ _____each **Claim**
__ Fiduciary Liability		$ _____each **Claim**

B. Separate Limit(s) of Liability and Retentions: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability (including **Defense Costs**):	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$_____each **Claim**
__ Employment Practices Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Fiduciary Liability	$ _____Aggregate Limit	$_____each **Claim**

C. **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:
i. Sublimit of Liability: $_____
ii. Retention $0
iii. Not provided

Item 5. Prior or Pending Proceeding Date:
__ Management Liability _____
__ Employment Practices Liability _____
__ Fiduciary Liability _____

2. Section I, Insuring Agreements, is amended by adding the following at the end thereof:

C. Fiduciary Liability, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:

1. Fiduciary Liability

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during

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the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** by the **Insureds**, or by any **Employee** for whom such **Insured** is legally responsible.

2. **Voluntary Compliance Program** and **Delinquent Filer Penalties**

   If provided, the **Insurer** shall pay **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Compliance Loss** of the **Insureds** relating to a **Voluntary Compliance Notice** first given to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, or within 30 days after the end of the **Policy Period** or, if elected, the **Extended Reporting Period**, provided the **Voluntary Compliance Loss** is incurred after such **Voluntary Compliance Notice** is first given to the **Insurer.**

3. Section II, Definitions, is amended by adding the following definitions:

Administration means: (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**; (ii) providing interpretations with respect to any **Plan**; (iii) handling records in connection with any **Plan**; and, (iv) enrolling, terminating or canceling employees, participants and beneficiaries under any **Plan**.

Delinquent Filer Penalties means penalties assessed by the U.S. Department of Labor or the IRS under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal thereof.

Employee Benefit Law means the Employee Retirement Income Security Act of 1974 ("**ERISA**"), as amended (including but not limited to amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998, as amended), or any similar common or statutory law anywhere in the world (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Solely with respect to paragraph 3b of the definition of **Wrongful Act**, **Employee Benefit Law** also includes: (i) Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as the HIPAA Privacy Regulations; and, (ii) any workers' compensation, unemployment insurance, social security, government-mandated disability benefits or similar law.

ESOP means any employee stock ownership plan as defined in any **Employee Benefit Law**, or any other **Pension Plan** under which investments are made primarily in securities of the **Company**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Company**.

Fiduciary means, with respect to a **Plan**, a fiduciary as defined in an **Employee Benefit Law**, or a person or entity who exercises discretionary control with respect to the management of the **Plan** or the disposition of **Plan** assets.

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Pension Plan means any employee pension benefit plan as defined in any **Employee Benefit Law**, other than any **ESOP**, which was, is or shall be sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company**.

Plan means:

1. any **Pension Plan** or any **Welfare Plan** established anywhere in the world which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company.** However, any **Pension Plan** or **Welfare Plan** created or acquired by the **Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of section XIII of this **Policy**;

2. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, but solely for a **Wrongful Act** as defined in subsection 3b of the definition of **Wrongful Act**;

3. any deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan for a select group of management or highly compensated directors, officers, governors, management committee members, members of the board of managers, natural person general partners and/or **Employees** of the **Company**; and

4. any other plan, fund, trust or program specifically included in the definition of **Plan** pursuant to an endorsement to this **Policy**.

However, **Plan** does not include any multiemployer plan as defined in any **Employee Benefit Law**.

Voluntary Compliance Loss means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent noncompliance by a **Plan** with any statute, rule or regulation if participation by the **Insured** in such **Voluntary Compliance Program** results in the **Insured** obtaining a "No Action" letter from the governmental authority; provided that **Voluntary Compliance Loss** shall not include: (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties, sanctions or **Defense Costs** relating to a **Plan** which, as of the earlier of inception of this **Policy** or inception of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

Voluntary Compliance Notice means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

Voluntary Compliance Program means a written agreement to correct an inadvertent **Plan** defect under a voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor or other similar governmental authority, including without limitation

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the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the U.S. Internal Revenue Service during the **Policy Period**, or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal.

Welfare Plan means any:

(i) employee welfare benefit plan as defined in an **Employee Benefit Law**, including without limitation any plan from which participants may choose among two of more benefits consisting of cash and qualified benefits; and

(ii) any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended,

where sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of current or former employees, directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Company.**

4. Section II, Definitions, is amended by amending the following definitions:

A. **Claim** is amended by deleting paragraph 4 in its entirety and replacing it with the following:

4. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority anywhere in the world, including without limitation the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority, commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as an individual or entity against whom a civil, administrative or regulatory proceeding may be commenced; or

5. a written request of the **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in paragraphs 1 through 4 above.

B. **Insured** is amended by adding the following at the end thereof:

3. solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, the **Company** and **Plans**.

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C. **Insured Person** is amended by adding the following at the end thereof:

4. solely for purposes of coverage under Insuring Agreement C, Fiduciary Liability **Voluntary Compliance Program** and **Delinquent Filer Penalties**, any one or more natural persons who were, now are, or shall become duly elected or appointed trustees, directors, officers or employees of any **Plan**.

D. **Loss** is amended by deleting the first paragraph in its entirety and replacing it with the following:

Loss means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies, and if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

Loss is further amended by deleting numbered paragraph 2 in its entirety and replacing it with the following:

2. taxes, fines or penalties, except, solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:

   (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under sections 502(i) or (l), respectively of **ERISA**;

   (b) civil fines or penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this **Policy**; or

   (c) solely with respect to Insuring Agreement C2, if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

Loss is further amended by adding the following immediately after numbered paragraph 6:

7. any obligation under a **Plan** to pay to a participant or beneficiary of the **Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**.

E. **Wrongful Act** is amended by adding the following at the end thereof:

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3. With respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

   a. any violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** under any **Employee Benefit Law** with respect to any **Plan**, or any matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Plan** or the **Company**, but solely with respect to the **Plan**, or

   b. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of a **Plan**; or

   c. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Named Insured** and such multiemployer plan is added by specific written endorsement to this **Policy**, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this **Policy** extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person** as set forth in this paragraph 3c.

5. Section III, Exclusions, is amended as follows:

   A. Exclusion B is amended by deleting the last sentence thereof in its entirety and replacing it with the following:

      However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, and shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

   B. By adding the following at the end thereof:

      The following exclusions shall apply only to any **Claim** covered in whole or in part under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

      1. for benefits due or to become due under any **Plan**, benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or that portion of any settlement or judgment which constitutes such benefits. However, this exclusion shall not apply to **Defense Costs** or to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**.

      2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to: (i) **Defense Costs**; and, (ii) to the extent that liability would have attached to the **Company** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

      3. alleging, based upon, arising out of, or attributable to the failure to collect from the **Company** contributions it owed to any **Plan**, or the failure to fund a **Plan** in

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accordance with **ERISA**, any similar state or local law, or the **Plan** instrument**.** However, this exclusion shall not apply to **Defense Costs**.

4. for discrimination in violation of any law other than: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits or similar law; (ii) the Employee Retirement Income Security Act of 1974; (ii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Occupational Safety and Health Act; or (vi) any similar state or local laws, or any rules and regulations promulgated thereunder and amendments thereto.

6. Section VI, Extended Reporting Period, is amended by deleting Subsection C. in its entirety and replacing it with the following:

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**, and the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability or the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

7. Section VII, Limits of Liability, is amended as follows:

A. By deleting Subsection B in its entirety and replacing it with the following:

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the Limit of Liability set forth in Item 3A of the Declarations and in no way shall be deemed to increase the Limit of Liability as set forth therein.

B. By deleting Subsection C.1 in its entirety and replacing it with the following:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, the **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the respective Limit of Liability set forth in Item 3B of the Declarations and in no way shall be deemed to increase the respective Limit of Liability as set forth therein.

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C. By deleting Subsection D in its entirety and replacing it with the following:

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3 and **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

8. Section XIII, Material Changes in Conditions, is amended by:

A. Deleting Subsection A in its entirety and replacing it with the following:

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**; or

3. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, creates a **Plan**,

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons**, and **Plan** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization or **Plan**, as reflected in the then most recent consolidated financial statements of the organization, or most recent financial statements of the **Plan**, as applicable, exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, or 25% of the total assets of the **Plan** as reflected in its most recent financial statements, as applicable, coverage shall be provided for such acquired or created organization or **Plan** for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization or **Plan** shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

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B. Adding the following at the end thereof:

E. Termination of a **Plan**

If before or during the **Policy Period** a **Plan** is terminated, sold or run-off, coverage with respect to such **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Plan** was terminated, sold or run-off.

F. Other Organizational Changes

Coverage with respect to an **Insured**, or to a **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, is afforded only for **Wrongful Acts** committed or allegedly committed after the effective time such **Insured** or **Plan** became an **Insured** and prior to the effective time that such **Insured** or **Plan** ceases to be an **Insured** or **Plan**.

9. Section XIV, Payment Priority, is deleted in its entirety and replaced with the following:

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

10. Section XXI, Bankruptcy, is amended by deleting the first paragraph thereof in its entirety and replacing it with the following:

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this

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Policy. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

All other terms and conditions of this **Policy** remain unchanged.

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Issued By (Name of Insurance Company)			

AMENDED DEFINITION OF LOSS – EXCESS BENEFIT PENALTY COVERAGE

It is agreed that Section II, Definitions, subsection J, **Loss** is amended by adding the following:

Notwithstanding any other provisions contained in the definition of **Loss**, **Loss** shall also include any "Excess Benefits" penalty assessed in the amount of 10% by the Internal Revenue Service ("IRS") against any **Insured** for management's involvement in the award of an "Excess Benefit", and the **Defense Costs** attributable thereto.

Loss shall specifically exclude:

1) any 25% penalty assessed by the IRS against an **Insured** deemed to have received an Excess Benefit;
2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an Excess Benefit; and
3) any 200% penalty assessed by the IRS for failure to correct the award of an Excess Benefit.

Provided, however, notwithstanding the foregoing, the assessment by the IRS of a 200% penalty against any **Insured** shall void ab initio all coverage for any Excess Benefits penalty, Defense Costs, and any other Loss related thereto.

For purposes of this endorsement, "Excess Benefit" means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Issued By (Name of Insurance Company)			

ANTITRUST EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Interstate Commerce Act of 1887, Sherman Antitrust Act of 1890, Clayton Act of 1914, Robinson-Patman Act of 1936, Cellar-KeFauver Act of 1959, Federal Trade Commission Act of 1914, or any amendments thereto, or any rules or regulations promulgated thereunder, or any other federal, state, local, foreign or provincial common, statutory, or case law designed to prevent monopoly, preclude price fixing, or otherwise protect competition.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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CLAIM DEFINITION – REGULATORY EXCLUSION

It is agreed that Section II of the **Policy**, Definitions, the definition of **Claim**, is amended by deleting paragraphs 2, 3 and 4 and inserting the following:

2. a civil, criminal, or arbitration proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document;

3. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 and 2 above.

provided, however, that in no event shall the Definition of **Claim** include any matter stated in paragraphs 1, 2, or 3 above brought by or on behalf of any government agency or regulatory authority, including, but not limited to, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation, or similar government agency which is located outside the United States.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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HEALTH CARE AMENDATORY ENDORSEMENT
(ANTITRUST SUB-LIMIT)

It is agreed that the **Policy** is amended as follows:

1. Section II, Definitions, is amended as follows:

   a. The following is added to the definitions indicated:

      Claim shall also mean a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act ("**EMTALA**"), 42 U.S.C., 1396dd et seq., and any similar state or local statute ("**EMTALA Claim**").

      Insured Person also means any person who was, now is or shall become any member of any duly constituted committee of the **Company**; any individual person engaged by a duly constituted committee of the **Company** for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician; any individual in charge of any operational department of the **Company**; or, any medical director, staff physician or faculty member of the **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered an independent contractor for the **Company**.

      Loss

      Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986:

      a) <u>IRS Fines</u>

         Section 4911 (tax on excess expenditures to influence legislation);
         Section 4940(a);
         Section 4941 (taxes on self-dealing);
         Section 4942 (taxes on failure to distribute income);
         Section 4943 (taxes on excess business holding);
         Section 4944 (taxes on investments which jeopardize charitable purpose);
         Section 4945 (taxes on taxable expenditures);
         Section 6652 (c)(1)(A) and (B) (penalties for failure to file certain information returns or registration statements);
         Section 6655 (a)(1) (penalties for failure to pay estimated income tax);
         Section 6656(a) and (b) (penalties for failure to make deposit of taxes).

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b) **EMTALA** Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include civil fines and penalties assessed pursuant to an **EMTALA Claim**. However, a sublimit of liability in the amount of $250,000 shall apply to all **EMTALA Claims** made and reported during the **Policy Period** or **Extended Reporting Period** (if applicable) combined ("**EMTALA Sublimit of Liability**"). The **EMTALA Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations.

c) **Government Funding Defense Costs**

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds. Provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this **Policy** shall pay **Defense Costs** up to an amount not to exceed $1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). The **Government Funding Defense Costs Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs**, excess of a retention in the amount of $1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the Limit of Liability listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

d) **Excess Benefit** Penalty Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: 1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; 2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and 3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. For purposes of this paragraph, **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

Wrongful Act shall also include any alleged defect in peer review or credentialing.

b. The following definition is added:

- **Non-Employment-Related Discrimination** means any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise), unlawful discrimination (including but not limited to discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Insured Person**, or applicant for employment with the **Company** or an **Outside Entity**, including but not limited to, students, patients, members, customers and suppliers.

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2. Section III, Exclusions, is amended by adding the following exclusions:

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

   - alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of any **Insured** under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, to the extent that liability does not arise, in whole or in part, from such express contract or agreement; or
     2. **Claims** alleging **Wrongful Acts** of the **Insured(s)** with respect to hospital practice privileges, credentialing or peer review matters;

   - alleging, based upon, arising out of, or attributable to any failure or omission to effect or maintain adequate insurance;

   - alleging, based upon, arising out of, or attributable to the **Insured's** performance or rendering of, or failure to perform or render, medical or other professional services or treatments for others, provided however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, or any **Claim** for **Non-Employment-Related Discrimination**; or
     2. Any **Claim** relating to peer review or credentialing processes;

3. Section VII, Limits of Liability, is amended by adding the following:

   The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

   Solely for purposes of the endorsement, **Antitrust Claims** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Interstate Commerce Act of 1887, Sherman Antitrust Act of 1890, Clayton Act of 1914, Robinson-Patman Act of 1936, Cellar-KeFauver Act of 1959, Federal Trade Commission Act of 1914, amendments thereto, or any other federal, state, local or provincial common, statutory, or case law designed to prevent monopoly, preclude price fixing, or otherwise protect competition.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
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Issued By (Name of Insurance Company)			

EDUCATION COMPANY COVERAGE EXTENSION

It is agreed that the **Policy** is amended as follows:

1. Section II, Definitions, is amended by adding the following to the definitions indicated:

Insured Person also means any person who was, now is or shall become any member of the faculty, student teacher or teaching assistant; any representative of an educational association of which the **Company** is a member; any president, regent, chancellor, provost, treasurer, vice-president, dean, personnel director, governor, executive director, risk manager, university counsel, or other comparable senior administrator of the **Company**, regardless of whether they are considered an employee of the **Company** or as an independent contractor; and, any administrator, association member, member manager or alumni council member of the **Company**.

Loss

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986:

a) <u>IRS Fines</u>

Section 4911 (tax on excess expenditures to influence legislation);
Section 4940(a);
Section 4941 (taxes on self-dealing);
Section 4942 (taxes on failure to distribute income);
Section 4943 (taxes on excess business holding);
Section 4944 (taxes on investments which jeopardize charitable purpose);
Section 4945 (taxes on taxable expenditures);
Section 6652 (c)(1)(A) and (B) (penalties for failure to file certain information returns or registration statements);
Section 6655 (a)(1) (penalties for failure to pay estimated income tax);
Section 6656(a) and (b) (penalties for failure to make deposit of taxes).

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b) **Government Funding Defense Costs**

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds. Provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this **Policy** shall pay **Defense Costs** up to an amount not to exceed $1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). The **Government Funding Defense Costs Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs**, excess of a retention in the amount of $1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the Limit of Liability listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

c) **Excess Benefit** Penalty Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: 1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; 2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and 3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. For purposes of this paragraph, **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

Wrongful Act shall also include any defects in peer review, credentialing or the tenure process, including the denial or removal of tenure, educational malpractice or failure to educate, negligent instruction, failure to supervise, inadequate or negligent academic guidance or counseling, improper or inappropriate academic placement or discipline, failure to grant due process, invasion of privacy or humiliation, including violation of the Buckley Amendment or the "Uniform Student Freedom of Expression Act" if adopted by any applicable jurisdiction, or the publication of defamatory material in a book, newspaper or other publication of the **Company**.

2. Section III, Exclusions, is amended by adding the following exclusions:

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

- alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of any **Insured** under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that this exclusion shall not apply to:

  1. that part of any **Loss** otherwise covered under Insuring Agreement B, to the extent that liability does not arise, in whole or in part, from such contract or agreement; and
  2. **Claims** alleging **Wrongful Acts** of an **Insured(s)** occurring during the tenure or peer review process.

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- alleging, arising out of, based upon or attributable to or in any way relating to the rendering or failure to render any professional services for which registration or license is required by the federal, state or applicable local government. However, this exclusion shall not apply to the provision of or failure to provide educational services by the **Company** or an **Insured Person** or that part of any **Loss** otherwise covered under Insuring Agreement B;

All other terms and conditions of this **Policy** remain unchanged.

_____

Authorized Representative

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GOVERNMENT FUNDS EXCLUSION AND DEFENSE COST SUBLIMIT ENDORSEMENT

It is agreed that:

1. Item 3 of the Declarations is amended at subsection B by deleting the Limit(s) of Liability in its entirety and inserting the following, but solely for **Defense Costs** for **Claims** arising out of the return, or request to return funds from any federal, state or local governmental agency: $1,000,000 ("Government Funding **Defense Costs** Sublimit"). This Sublimit of Liability shall be part of and not in addition to the aggregate Limits of Liability otherwise stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs** in excess of a retention in the amount of $1,000,000, up to such Government Funding **Defense Costs** sublimit, and subject to the aggregate Limit of Liability otherwise listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

2. Section II, Definitions, subsection J, the definition of **Loss**, is amended by adding the following:

   Loss also does not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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GOVERNMENT FUNDS EXCLUSION AND DEFENSE COST SUBLIMIT ENDORSEMENT

It is agreed that:

1. Item 3 of the Declarations is amended at subsection A by deleting the Limit(s) of Liability in its entirety and inserting the following, but solely for **Defense Costs** for **Claims** arising out of the return, or request to return funds from any federal, state or local governmental agency: $1,000,000 ("Government Funding **Defense Costs** Sublimit"). This Sublimit of Liability shall be part of and not in addition to the aggregate Limits of Liability otherwise stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs** in excess of a retention in the amount of $1,000,000, up to such Government Funding **Defense Costs** sublimit, and subject to the aggregate Limit of Liability otherwise listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

2. Section II, Definitions, subsection J, the definition of **Loss**, is amended by adding the following:

   Loss also does not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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HIPAA $25,000 SUB-LIMIT, LOSS AMENDED

It is agreed that Section II, Definitions, subsection J, the definition of **Loss**, is amended by adding the following:

> Notwithstanding anything in this subsection to the contrary, **Loss** shall include any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the **Insurer's** maximum aggregate liability for all such civil money penalties on account of all **Claims** first made during the **Policy Period** (hereinafter known as the Sub-limit of Liability) shall be **$25,000**.
>
> This Sub-limit of Liability shall be part of and not in addition to the Aggregate Limit(s) of Liability otherwise stated in Item 3A or 3B of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided. If different parts of a single **Claim** are subject to different applicable Limits or Sub-limits of Liability, the applicable Limits or Sub-limits will be applied separately to each part of such **Loss**.
>
> **Loss** constituting civil monetary penalties imposed upon an **Insured** for violation of the privacy provisions of HIPAA shall not be subject to any otherwise applicable Retention set forth in Item 3 of the Declarations.

All other terms and conditions of this **Policy** remain unchanged.

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HIPAA $50,000 SUB-LIMIT, LOSS AMENDED

It is agreed that Section II, Definitions, subsection J, the definition of **Loss**, is amended by adding the following:

> Notwithstanding anything in this subsection to the contrary, **Loss** shall include any civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA"); provided the **Insurer's** maximum aggregate liability for all such civil money penalties on account of all **Claims** first made during the **Policy Period** (hereinafter known as the Sub-limit of Liability) shall be **$50,000**.
>
> This Sub-limit of Liability shall be part of and not in addition to the Aggregate Limit(s) of Liability otherwise stated in Item 3A or 3B of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided. If different parts of a single **Claim** are subject to different applicable Limits or Sub-limits of Liability, the applicable Limits or Sub-limits will be applied separately to each part of such **Loss**.
>
> **Loss** constituting civil monetary penalties imposed upon an **Insured** for violation of the privacy provisions of HIPAA shall not be subject to any otherwise applicable Retention set forth in Item 3 of the Declarations.

All other terms and conditions of this **Policy** remain unchanged.

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INTERNAL STANDARDS OR RULES EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

- alleging, based upon, arising out of, or attributable to the promulgation, interpretation or enforcement of the internal standards or rules of playing, scoring, or eligibility of any sport.

All other terms and conditions of this **Policy** remain unchanged.

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PAYMENTS, COMMISSIONS, GRATUITIES, BENEFITS, FAVORS EXCLUSION AND POLITICAL CONTRIBUTIONS EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following exclusions:

- alleging, based upon, arising out of, or attributable to payments, commissions, gratuities, benefits or favors to or for the benefit of

1. any full or part-time domestic or foreign government or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated; or
2. any full or part-time officials, directors, agents, partners, representatives, principal shareholders, owners, employees, "affiliates" (as that term is defined in The Securities Exchange Act of 1934, including any officers, directors, agents, owners, partners, representatives, principal shareholders or employees of such affiliates) or any customers of the **Company**, or any members of their family or any entity with which they are affiliated.

- alleging, based upon, arising out of, or attributable to domestic or foreign political contributions.

All other terms and conditions of this **Policy** remain unchanged.

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HEALTH CARE AMENDATORY ENDORSEMENT

It is agreed that the **Policy** is amended as follows:

1. Section II, Definitions, is amended as follows:

   a. The following is added to the definitions indicated:

   Claim shall also mean a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act ("**EMTALA**"), 42 U.S.C., 1396dd et seq., and any similar state or local statute ("**EMTALA Claim**").

   Insured Person also means any person who was, now is or shall become any member of any duly constituted committee of the **Company**; any individual person engaged by a duly constituted committee of the **Company** for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician; any individual in charge of any operational department of the **Company**; or, any medical director, staff physician or faculty member of the **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered an independent contractor for the **Company**.

   Loss

   Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986:

   a) <u>IRS Fines</u>

   Section 4911 (tax on excess expenditures to influence legislation);
   Section 4940(a);
   Section 4941 (taxes on self-dealing);
   Section 4942 (taxes on failure to distribute income);
   Section 4943 (taxes on excess business holding);
   Section 4944 (taxes on investments which jeopardize charitable purpose);
   Section 4945 (taxes on taxable expenditures);
   Section 6652 (c)(1)(A) and (B) (penalties for failure to file certain information returns or registration statements);
   Section 6655 (a)(1) (penalties for failure to pay estimated income tax);
   Section 6656(a) and (b) (penalties for failure to make deposit of taxes).

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b) **EMTALA** Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include civil fines and penalties assessed pursuant to an **EMTALA Claim**. However, a sublimit of liability in the amount of $250,000 shall apply to all **EMTALA Claims** made and reported during the **Policy Period** or **Extended Reporting Period** (if applicable) combined ("**EMTALA Sublimit of Liability**"). The **EMTALA Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations.

c) **Government Funding Defense Costs**

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds. Provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this **Policy** shall pay **Defense Costs** up to an amount not to exceed $1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). The **Government Funding Defense Costs Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs**, excess of a retention in the amount of $1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the Limit of Liability listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

d) **Excess Benefit** Penalty Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: 1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; 2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and 3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. For purposes of this paragraph, **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

Wrongful Act shall also include any alleged defect in peer review or credentialing.

b. The following definition is added:

- **Non-Employment-Related Discrimination** means any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise), unlawful discrimination (including but not limited to discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Insured Person**, or applicant for employment with the **Company** or an **Outside Entity**, including but not limited to, students, patients, members, customers and suppliers.

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2. Section III, Exclusions, is amended by adding the following exclusions:

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

   - alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of any **Insured** under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, to the extent that liability does not arise, in whole or in part, from such express contract or agreement; or
     2. **Claims** alleging **Wrongful Acts** of the **Insured(s)** with respect to hospital practice privileges, credentialing or peer review matters;

   - alleging, based upon, arising out of, or attributable to any failure or omission to effect or maintain adequate insurance;

   - alleging, based upon, arising out of, or attributable to the **Insured's** performance or rendering of, or failure to perform or render, medical or other professional services or treatments for others, provided however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, or any **Claim** for **Non-Employment-Related Discrimination**; or
     2. Any **Claim** relating to peer review or credentialing processes;

   - alleging, based upon, arising out of or attributable to antitrust violations, price fixing, price discriminations, unfair competition, deceptive trace practices and/or monopolies, including any actions, proceedings, **Claims** or investigations related thereto;

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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REGULATORY AUTHORITY AND GOVERNMENT AGENCY EXCLUSION

It is agreed that Section III of the **Policy**, Exclusions, is amended by adding the following:

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

brought or maintained by or on behalf of any government agency or regulatory authority, including, but not limited to, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation, or any similar government agency or regulatory authority anywhere in the world.

All other terms and conditions of this **Policy** remain unchanged.

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CONTRACT OR AGREEMENT (ABSOLUTE EXCLUSION)

It is agreed that Section III, Exclusions, subsection M, numbered paragraph 1, is amended to apply to all coverage sections under Insuring Agreement A.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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RETENTION AMENDED – CLASS ACTIONS

It is agreed that the Declarations is amended by deleting the Retentions(s) section set forth in Item 3 in its entirety and inserting the following, but solely for **Claims** filed, in whole or in part, as class action lawsuits pursuant to the Federal Rule of Civil Procedure 23 or similar state rules, and first made on or after the effective date of this endorsement:

A. Single Aggregate Limit of Liability and Retention Granted: __ Yes __ No

Insuring Agreements Purchased:	Retention(s):	
__ Management Liability	$ _____	each **Claim**
__ Employment Practices Liability	$ _____	each **Claim**

B. Separate Limits of Liability and Retentions Granted: __ Yes __ No

Insuring Agreements Purchased:	Retention(s):	
__ Management Liability	$ _____	each **Claim**
__ Employment Practices Liability	$ _____	each **Claim**

All other terms and conditions of this **Policy** remain unchanged.

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RUNOFF ENDORSEMENT

It is agreed that:

1. The phrase "or, if elected, the **Extended Reporting Period**," is deleted wherever it appears in the **Policy**.

2. Section III, Exclusions, is amended by adding the following:

   - alleging, based upon, arising out of, or attributable to:

     a. any **Wrongful Acts** committed, attempted, or allegedly committed or attempted, in whole or in part, subsequent to _____.

     b. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** referenced in paragraph a above would constitute **Interrelated Wrongful Acts**.

3. Section VI, **Extended Reporting Period**, is deleted in its entirety.

4. Section IX, Notice is amended by deleting the phrase "or, if elected, the **Extended Reporting Period**".

5. Section XVII, Termination of the **Policy**, is amended as follows:

   a. Subsection A is amended by deleting paragraphs 1 and 4 in their entirety.

   b. Subsection B is deleted in its entirety and the following is inserted:

      "The premium charged shall be fully earned and non-refundable upon inception of the **Policy**."

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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SEXUAL MISCONDUCT, CHILD ABUSE, NEGLECT EXCLUSION

It is agreed that:

1. Section III, Exclusions, is amended by adding the following:

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

   alleging, based upon, arising out of, or attributable to any **Sexual Misconduct**, child abuse, or neglect, including but not limited to employment, supervision, reporting to authorities, failure to so report or retention of any person.

2. Section II, Definitions, is amended by adding the following:

   Sexual Misconduct means any licentious, immoral or sexual behavior, sexual abuse, sexual assault, or molestation intended to lead to or culminating in any attempted or actual sexual act.

All other terms and conditions of this **Policy** remain unchanged.

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ANTITRUST SUB-LIMIT OF LIABILITY

It is agreed that Section VII, Limits of Liability, is amended by adding the following:

> The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limits of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

Solely for purposes of the endorsement, **Antitrust Claims** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Interstate Commerce Act of 1887, Sherman Antitrust Act of 1890, Clayton Act of 1914, Robinson-Patman Act of 1936, Cellar-KeFauver Act of 1959, Federal Trade Commission Act of 1914, amendments thereto, or any other federal, state, local or provincial common, statutory, or case law designed to prevent monopoly, preclude price fixing, or otherwise protect competition.

All other terms and conditions of this **Policy** remain unchanged.

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SPECIFIED PARTY EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

brought or maintained by, on behalf of, or in the right of _____.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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SPECIFIED PARTY'S CLAIM EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- Brought or maintained by, on behalf of, in the right of or against the following in any capacity, or any **Claim** based upon, arising out of, or attributable to any such **Claim**:

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All other terms and conditions of this **Policy** remain unchanged.

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THIRD PARTY EMPLOYMENT CLAIMS COVERAGE DELETED

It is agreed that Section I, Insuring Agreements, subsection B, Employment Practices Liability**,** shall be amended by deleting paragraph 2 in its entirety.

It is further agreed that in Section II, Definitions, the definition of **Wrongful Employment Practice**, is amended by deleting the last paragraph thereof in its entirety.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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ANTITRUST SUBLIMIT

It is agreed that:

1. Section III, Exclusions, is amended by deleting Exclusion M.1 in its entirety.

2. Section II, Definitions, is amended by adding the following:

   - **Antitrust Claim** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

3. Section VII, Limits of Liability, is amended by adding the following:

   The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

All other terms and conditions of this **Policy** remain unchanged.

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CONTRACT OR AGREEMENT (ABSOLUTE EXCLUSION)

It is agreed that Section III, Exclusions, subsection M, numbered paragraph 2, is amended to apply to all coverage sections under Insuring Agreement A.

All other terms and conditions of this **Policy** remain unchanged.

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HEALTH CARE AMENDATORY ENDORSEMENT

It is agreed that the **Policy** is amended as follows:

1. Section II, Definitions, is amended as follows:

   a. The following is added to the definitions indicated:

      B. **Claim** shall also mean a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act ("**EMTALA**"), 42 U.S.C., 1396dd et seq., and any similar state or local statute ("**EMTALA Claim**").

      G. **Insured Person** also means any person who was, now is or shall become any member of any duly constituted committee of the **Company**; any individual person engaged by a duly constituted committee of the **Company** for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician; any individual in charge of any operational department of the **Company**; or, any medical director, staff physician or faculty member of the **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered an independent contractor for the **Company**.

      J. **Loss**

         Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986:

         a) <u>IRS Fines</u>

            Section 4911 (tax on excess expenditures to influence legislation);
            Section 4940(a);
            Section 4941 (taxes on self-dealing);
            Section 4942 (taxes on failure to distribute income);
            Section 4943 (taxes on excess business holding);
            Section 4944 (taxes on investments which jeopardize charitable purpose);
            Section 4945 (taxes on taxable expenditures);
            Section 6652 (c)(1)(A) and (B) (penalties for failure to file certain information returns or registration statements);
            Section 6655 (a)(1) (penalties for failure to pay estimated income tax);
            Section 6656(a) and (b) (penalties for failure to make deposit of taxes).

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b) **EMTALA** Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include civil fines and penalties assessed pursuant to an **EMTALA Claim**. However, a sublimit of liability in the amount of $250,000 shall apply to all **EMTALA Claims** made and reported during the **Policy Period** or **Extended Reporting Period** (if applicable) combined ("**EMTALA Sublimit of Liability**"). The **EMTALA Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations.

c) **Government Funding Defense Costs**

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds. Provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this **Policy** shall pay **Defense Costs** up to an amount not to exceed $1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). The **Government Funding Defense Costs Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs**, excess of a retention in the amount of $1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the Limit of Liability listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

d) **Excess Benefit** Penalty Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: 1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; 2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and 3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. For purposes of this paragraph, **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

W. **Wrongful Act**

Wrongful Act shall also include any alleged defect in peer review or credentialing.

b. The following definition is added:

- **Non-Employment-Related Discrimination** means any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise), unlawful discrimination (including but not limited to discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Insured Person**, or applicant for employment with the **Company** or an **Outside Entity**, including but not limited to, students, patients, members, customers and suppliers.

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2. Section III, Exclusions, is amended as follows:

   a. The following exclusions are added:

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

   - alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of any **Insured** under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, to the extent that liability does not arise, in whole or in part, from such express contract or agreement; or
     2. **Claims** alleging **Wrongful Acts** of the **Insured(s)** with respect to hospital practice privileges, credentialing or peer review matters;

   - alleging, based upon, arising out of, or attributable to any failure or omission to effect or maintain adequate insurance;

   - alleging, based upon, arising out of, or attributable to the **Insured's** performance or rendering of, or failure to perform or render, medical or other professional services or treatments for others, provided however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, or any **Claim** for **Non-Employment-Related Discrimination**; or
     2. Any **Claim** relating to peer review or credentialing processes;

   b. Exclusion M.1 is amended to apply to all Insuring Agreements.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

HEALTH CARE AMENDATORY ENDORSEMENT
(ANTITRUST SUB-LIMIT)

It is agreed that the **Policy** is amended as follows:

1. Section II, Definitions, is amended as follows:

   a. The following is added to the definitions indicated:

      B. **Claim** shall also mean a civil lawsuit alleging a violation pursuant to the Emergency Medical Treatment and Active Labor Act ("**EMTALA**"), 42 U.S.C., 1396dd et seq., and any similar state or local statute ("**EMTALA Claim**").

      G. **Insured Person** also means any person who was, now is or shall become any member of any duly constituted committee of the **Company**; any individual person engaged by a duly constituted committee of the **Company** for purposes of providing an expert opinion with regard to a peer review or credentialing decision concerning an individual physician; any individual in charge of any operational department of the **Company**; or, any medical director, staff physician or faculty member of the **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered an independent contractor for the **Company**.

      J. **Loss**

         Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986:

         a) <u>IRS Fines</u>

            Section 4911 (tax on excess expenditures to influence legislation);
            Section 4940(a);
            Section 4941 (taxes on self-dealing);
            Section 4942 (taxes on failure to distribute income);
            Section 4943 (taxes on excess business holding);
            Section 4944 (taxes on investments which jeopardize charitable purpose);
            Section 4945 (taxes on taxable expenditures);
            Section 6652 (c)(1)(A) and (B) (penalties for failure to file certain information returns or registration statements);
            Section 6655 (a)(1) (penalties for failure to pay estimated income tax);
            Section 6656(a) and (b) (penalties for failure to make deposit of taxes).

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b) **EMTALA** Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include civil fines and penalties assessed pursuant to an **EMTALA Claim**. However, a sublimit of liability in the amount of $250,000 shall apply to all **EMTALA Claims** made and reported during the **Policy Period** or **Extended Reporting Period** (if applicable) combined ("**EMTALA Sublimit of Liability**"). The **EMTALA Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations.

c) **Government Funding Defense Costs**

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds. Provided, however, that with regard to **Claims** for **Wrongful Acts** arising out of the return, or request to return such funds, this **Policy** shall pay **Defense Costs** up to an amount not to exceed $1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). The **Government Funding Defense Costs Sublimit of Liability** shall be part of and not in addition to the aggregate Limit of Liability stated in Item 3 of the Declarations. However, with respect to **Defense Costs** coverage afforded pursuant to this paragraph, it is agreed that the **Insurer** shall pay 50% of such **Defense Costs**, excess of a retention in the amount of $1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the Limit of Liability listed on the Declarations. The remaining 50% of such **Defense Costs** shall be borne by the **Insureds** uninsured and at their own risk.

d) **Excess Benefit** Penalty Coverage

Notwithstanding any other provisions in this definition of **Loss** to the contrary, **Loss** shall also include any **Excess Benefits** penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: 1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; 2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and 3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph. For purposes of this paragraph, **Excess Benefit** means an excess benefit as defined in the Taxpayer Bill of Rights Act 2, 26 U.S.C. 4958.

W. **Wrongful Act**

Wrongful Act shall also include any alleged defect in peer review or credentialing.

b. The following definition is added:

- **Non-Employment-Related Discrimination** means any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise), unlawful discrimination (including but not limited to discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of a person relating to such sexual harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Insured Person**, or applicant for employment with the **Company** or an **Outside Entity**, including but not limited to, students, patients, members, customers and suppliers.

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2. Section III, Exclusions, is amended by adding the following exclusions:

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

   - alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of any **Insured** under any express (written or oral) contract or agreement (including, but not limited to, any liquidated damages, severance agreement or payment, golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**); provided, however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, to the extent that liability does not arise, in whole or in part, from such express contract or agreement; or
     2. **Claims** alleging **Wrongful Acts** of the **Insured(s)** with respect to hospital practice privileges, credentialing or peer review matters;

   - alleging, based upon, arising out of, or attributable to any failure or omission to effect or maintain adequate insurance;

   - alleging, based upon, arising out of, or attributable to the **Insured's** performance or rendering of, or failure to perform or render, medical or other professional services or treatments for others, provided however, that this exclusion shall not apply to:

     1. that part of any **Loss** otherwise covered under Insuring Agreement B, or any **Claim** for **Non-Employment-Related Discrimination**; or
     2. Any **Claim** relating to peer review or credentialing processes;

3. Section III, Exclusions, is amended by deleting Exclusion M.1 in its entirety.

4. Section VII, Limits of Liability, is amended by adding the following:

   The maximum limit of the **Insurer's** liability for all **Loss** in the aggregate arising from all **Antitrust Claims** shall be $_____ (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the aggregate **Limit of Liability** otherwise stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's** Limit of Liability as therein provided.

Solely for purposes of the endorsement, **Antitrust Claims** means any **Claim** alleging, based upon, arising out of, or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

DESIGNATED PERSON/ENTITY EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

  brought or maintained by or on behalf of:

  1. _____ ("Designee"), or any entity other than the **Company** in which more than 50% of the outstanding voting securities representing the present right to vote for election of or to select directors, members of the board of managers (for limited liability companies), or equivalent executives is owned or controlled, directly or indirectly, in any combination, by such Designee; or
  2. any past, present or future director, trustee, general partner, manager, officer, employee, security holder of the Designee or other organization included in subparagraph 1 above; or
  3. any past, present or future security holder of the Designee or other organization included in subparagraph 1 above.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INVESTMENT COMPANY ACT EXCLUSION

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to, in whole or in part, directly or indirectly, any violation of the Investment Company Act of 1940 (the "Act"), any rule or regulation promulgated thereunder, or any amendment thereto; or any provision of any federal, state, local or foreign law (whether statutory law, common law, or otherwise), rule or regulation similar to the Act. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

DELETE RETENTION WAIVER/REIMBURSEMENT CLAUSE

It is agreed that Section X, Defense And Settlement, is amended by deleting subsection F in its entirety.

All other terms and conditions of this **Policy** remain unchanged.

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Policy Symbol	Policy Number	Policy Period to	Effective
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INSURED V. INSURED EXCLUSION AMENDED
(FORMER INSURED PERSONS – TWO YEARS)

It is agreed that Section III, Exclusions, Exclusion L.1 is amended by deleting paragraph c. thereof in its entirety and inserting the following:

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least two years prior to such **Claim** being first made against any **Insured**;

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INSURED V. INSURED EXCLUSION AMENDED
(FORMER INSURED PERSONS – THREE YEARS)

It is agreed that Section III, Exclusions, Exclusion L.1 is amended by deleting paragraph c. thereof in its entirety and inserting the following:

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least three years prior to such **Claim** being first made against any **Insured**;

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

SETTLEMENT CLAUSE AMENDED

It is agreed that Section X, Settlement And Defense, is amended by adding the following at the end thereof:

> If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is acceptable to the claimant, but the **Insureds** do not consent to such settlement within 30 days of the date the **Insureds** are first made aware of the potential settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (i) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date the potential settlement was proposed in writing by the **Insurer** to the **Insureds**; and, (ii) 75% of all subsequent covered **Loss** in excess of such amount, the remaining 25% of which shall be borne by the **Insureds** uninsured and at their own risk. However, this subsection does not apply to any potential settlement that is within the Retention.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INSURED V. INSURED EXCLUSION AMENDED
(FEDERAL FALSE CLAIMS ACT)

It is agreed that Section III, Exclusions, Exclusion L.1 is amended by adding the following additional exception at the end thereof:

e. is brought by any **Insured Person** for any actual or alleged violation of the provisions of 31 U.S.C. 3729 of the Federal False Claims Act, or any similar provision of any federal, state, local or foreign statutory law;

All other terms and conditions of this **Policy** remain unchanged.

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Named **Insured**			Endorsement Number
Policy Symbol	**Policy** Number	**Policy** Period to	Effective
Issued By (Name of Insurance Company)			

FINANCIAL SERVICES EXCLUSION WITH SHAREHOLDER CARVEOUT

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising from, or attributable to the rendering of or failure to render professional services in connection with the **Insured's** business as an investment company, investment advisor, trust company, commercial bank, mortgage banker, mortgage broker, insurance company, insurance agent, insurance broker, securities broker, securities dealer, mutual fund manager, asset manager, clearing agent, financial planner, estate planner, credit union, title agent, financial consultant, or financial analyst. Provided, however, this exclusion shall not apply to any **Claim(s)** brought by a shareholder of the **Company** in the form of a shareholder class, direct or derivative action alleging failure to supervise those who performed or failed to perform such professional services, provided that such shareholder action is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** and/or any **Insureds.**

All other terms and conditions of this **Policy** remain unchanged.

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Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

UNPAID SALARY EXCLUSION AMENDED
NON-DUTY TO DEFEND FOR CLASS ACTION FLSA CLAIMS

It is agreed that Section III, Exclusions, Exclusion N.2 is deleted in its entirety and replaced with the following:

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any back pay or front pay allegedly due as the result of discrimination.

It is further agreed that Section X, Defense And Settlement, is amended by adding the following at the end thereof:

AA. Notwithstanding anything stated in subsection A above, solely in the event and to the extent that any portion of any **Class Action FLSA Claim** is covered under the **Policy**, it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend such **Class Action FLSA Claim**. The **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insureds** regarding the defense and negotiation of any settlement of any **Class Action FLSA Claim.**

BB. Solely with respect to any **Class Action FLSA Claim**, and subject to Section XXIV, Allocation, the **Insurer** shall, no later than quarterly, advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** have incurred in connection with such **Class Action FLSA Claim** made against them, prior to disposition of such **Class Action FLSA Claim**. Any advancement of **Defense Costs** shall be subject to the condition that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled to coverage for such **Defense Costs** under the terms and conditions of this **Policy**.

In the event any endorsement to this **Policy**, whether preceding or following this endorsement (including without limitation Optional Duty To Defend Endorsement, PF-21932), provides that the **Insured** has the duty to defend a **Claim** but may tender such defense to the **Insurer**, then the provisions in such endorsement allowing for tender of the defense shall not apply to any **Class Action FLSA Claim**. Notwithstanding any such endorsement, the **Insureds** shall have no right under the **Policy** to tender the defense of any **Class Action FLSA Claim**.

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Solely for purposes of this endorsement, **Class Action FLSA Claim** means any **Claim** brought as a class action, or seeking certification as a class action, and alleging, based upon, arising out of, or attributable to, in whole or in part, any actual or alleged violation of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), or any rule or regulation promulgated thereunder or any amendment thereto, or any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing; provided, however, that **Class Action FLSA Claim** shall not include any **Claim** falling within the aforesaid definition that is solely for **Retaliation**.

Nothing stated above shall be deemed to waive, or in any way affect, the application of any exclusion contained in the **Policy**, or in any endorsement thereto (whether preceding or following this endorsement), to an **Class Action FLSA Claim**, or to any portion of such **Class Action FLSA Claim**, including without limitation Exclusions B, K and N.2.

All other terms and conditions of this **Policy** remain unchanged.

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Named Insured			Endorsement Number
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Amendatory Endorsement - Arkansas

IF THERE IS ANY CONFLICT BETWEEN THE **POLICY**, OTHER ENDORSEMENTS TO THE **POLICY** AND THIS ENDORSEMENT, THE TERMS PROVIDING THE BROADEST COVERAGE INSURABLE UNDER APPLICABLE LAW SHALL PREVAIL.

It is agreed that:

1. Section VI of the **Policy**, EXTENDED REPORTING PERIOD, is deleted in its entirety and the following is inserted:

   VI. EXTENDED REPORTING PERIODS

   If the **Insurer** or the **Named Insured** terminates or does not renew this **Policy**, the **Named Insured** shall have the right to a continuation of the coverage granted by this **Policy** for the Optional Extended Reporting Period, if elected, and the Automatic Extended Reporting Period as follows:

   A. Automatic Extended Reporting Period

   The **Named Insured** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only with respect to **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

   B. Optional Extended Reporting Period

   The **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 7B of the Declarations, to an Optional Extended Reporting Period, for the period of one year following the effective date of such termination or nonrenewal, but only with respect to **Claims** first made during such Optional Extended Reporting Period and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the premium to the **Insurer** within 60 days following the effective date of termination or nonrenewal.

   The first 60 days of the Optional Extended Reporting Period, if it becomes effective, shall run concurrently with the Automatic Extended Reporting Period.

   The Optional Extended Reporting Period is not cancelable and the entire premium for the Optional Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

   C. The Limit of Liability applicable to the Automatic Extended Reporting Period shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The Automatic Extended Reporting Period shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and the Automatic Extended Reporting Period, combined.

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The Limit of Liability applicable to the Optional Extended Reporting Period, if elected, shall be the greater of the unexhausted Limit of Liability of the immediately preceding **Policy Period** or 50% of the full amount of the Limit of Liability shown in Item 3 of the Declarations at the inception of the immediately preceding **Policy Period** (hereinafter referred to as "**Optional Extended Reporting Period Limit of Liability**"). The **Optional Extended Reporting Period Limit of Liability** shall only be available to pay **Loss** for **Claims** first made and reported during the Optional Extended Reporting Period and arising from **Wrongful Acts** taking place prior to the effective date of termination or nonrenewal (hereinafter referred to as "**Optional Extended Reporting Period Loss**"). The maximum liability for all **Optional Extended Reporting Period Loss** is the **Optional Extended Reporting Period Limit of Liability**.

If any **Claim** is covered, in whole or in part, under both the Automatic Extended Reporting Period and the Optional Extended Reporting Period, if elected, only the **Optional Extended Reporting Period Limit of Liability** shall apply.

D. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional Extended Reporting Period.

2. Section XVII of the **Policy**, TERMINATION OF THE **POLICY**, is amended by adding the following:

- Notice of termination from the **Insurer** will state the effective date of termination and the reason(s) for termination, and will be mailed by certified mail to the **Named Insured**, and by first-class mail to the agent or broker of record, at the last mailing addresses known to the **Insurer**. Proof of mailing will be sufficient proof of notice.

3. Section XXIV of the **Policy**, ALTERNATIVE DISPUTE RESOLUTION, is amended by deleting the first paragraph in its entirety and inserting the following:

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

4. The following section is added to the **Policy**:

- NONRENEWAL

If the **Insurer** elects not to renew this **Policy**, it will mail written notice of nonrenewal by certified mail to the **Named Insured**, and by first-class mail to the agent or broker of record, at the last mailing addresses known to the **Insurer**. Notice of nonrenewal will be mailed at least 60 days before the end of the **Policy Period**. Proof of mailing will be sufficient proof of notice.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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Rate Information

Rate data does NOT apply to filing.

Supporting Document Schedules

Satisfied -Name: Uniform Transmittal Document-Property & Casualty

Review Status: Approved 01/09/2008

Comments:

Attachments:

NAIC PCTD- Form.pdf
2007 NAIC FFS.pdf

Satisfied -Name: Filing Memo/Forms List/Red Line Forms/Letter of Authorization

Review Status: Approved 01/09/2008

Comments:

Attachments:

AR- Memo.pdf
DO - Automated Final Forms List (FINAL) (2).pdf
NFP revised policy _redlined_.pdf
Private Company Management Liability Policy compar.pdf
ACE Westchester Authorization Letter.pdf

Satisfied -Name: Red Line forms

Review Status: Approved 01/09/2008

Comments:

Attachments:

Indep Contractors Coverage PF-21931 (redline).pdf
NFP Management Liability Policy PF-22530 (redline).pdf
Private Co Management Liability Policy PF-22021 (red Line).pdf

Property & Casualty Transmittal Document

1 . Reserved for Insurance Dept. Use Only	2. Insurance Department Use only	
	a. Date the filing is received:	
	b. Analyst:	
	c. Disposition:	
	d. Date of disposition of the filing:	
	e. Effective date of filing:	
	New Business	
	Renewal Business	
	f. State Filing #:	
	g. SERFF Filing #:	
	h. Subject Codes	

3.	Group Name	Group NAIC #
	ACE INA Companies	0626

4.	Company Name(s)	Domicile	NAIC #	FEIN #	State #
	Westchester Fire Insurance Company	NY	21121	13-5481330	

5.	Company Tracking Number	WFIC-AR-DO-07-PR-343-F

Contact Info of Filer(s) or Corporate Officer(s) [include toll-free number]

6.	Name and address	Title	Telephone #s	FAX #	e-mail
	Neresa Torres 881 Alma Real Dr. Suite 205 Pacific Palisades, CA 90272	Filing Analyst	888.201.5123 x111	310.230.8529	doi@perrknight.com

7.	Signature of authorized filer	Neresa Torres
8.	Please print name of authorized filer	Neresa Torres

Filing information (see General Instructions for descriptions of these fields)

9.	**Type of Insurance (TOI)**	17.1 Other Liability- Claims Made Only
10.	**Sub-Type of Insurance (Sub-TOI)**	17.1006 Directors & Officers Liability
11.	**State Specific Product code(s) (if applicable)[See State Specific Requirements]**	N/A
12.	**Company Program Title** (Marketing title)	Directors and Officers
13.	**Filing Type**	☐ Rate/Loss Cost ☐ Rules ☐ Rates/Rules ☒ Forms ☐ Combination Rules/Forms ☐ Withdrawal ☐ Other (give description)
14.	**Effective Date(s) Requested**	New: January 6, 2008 Renewal: January 6, 2008
15.	**Reference Filing?**	☐ Yes ☒ No
16.	**Reference Organization** (if applicable)	N/A
17.	**Reference Organization # & Title**	N/A
18.	**Company's Date of Filing**	December 4, 2007
19.	**Status of filing in domicile**	☒ Not Filed ☐ Pending ☐ Authorized ☐ Disapproved

F 777 (Ed. 3-07) Wolters Kluwer Financial Services | Uniform Forms™

Property & Casualty Transmittal Document—

20.	This filing transmittal is part of Company Tracking #	WFIC-AR-DO-07-PR-343-F

21.	**Filing Description** [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]

On behalf of Westchester Fire Insurance Company (the "Company"), we are submitting this filing to revise its Directors and Officers Liability Program. The revisions relate solely to the coverage for private companies and not-for-profit companies. In this filing, we are revising the Private Company Management Liability and Not-For-Profit Company Management Liability policies, declaration pages, applications and endorsements. The proposed form changes serve to update the program to include coverage enhancements currently available in the D&O marketplace for private and not-for-profit companies. Please see the enclosed memorandum for further details.

The Company respectfully requests that the proposed forms be implemented for all policies effective January 6, 2007

22.	**Filing Fees** (Filer must provide check # and fee amount if applicable) [If a state requires you to show how you calculated your filing fees, place that calculation below]

Check #: 101489
Amount: $50.00

Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.

*****Refer to the each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)**

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FORM FILING SCHEDULE

(This form must be provided ONLY when making a filing that includes forms)

(Do not refer to the body of the filing for the forms listing, unless allowed by state.)

1.	**This filing transmittal is part of Company Tracking #**	**WFIC-AR-DO-07-PR-343-F**
2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
01	Private Company Management Liability Policy Declarations	PF-22020 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14386 09/03	
02	Private Company Management Liability Policy	PF-22021 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14387 09/03	
03	Not-For-Profit Company Management Liability Policy Declarations	PF-22529 Ed. 08/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14384 09/03	
04	Not-For-Profit Company Management Liability Policy	PF-22530 Ed. 08/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14385 09/03	
05	Private Company Management Liability Insurance Application (Warrants)	PF-22888 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14499 07/03	
06	Private Company Management Liability Insurance Renewal Application (Warrants)	PF-22890 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14800 11/03	
07	Not-For-Profit Company Management Liability Insurance Application (Warrants)	PF-22904 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14801 11-03	
08	Not-For-Profit Company Management Liability Insurance Renewal Application (Warrants)	PF-22901 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF14802 11/03	
09	Pending and Prior Date - Limits	PF-14895 Ed. 11/03	☒ Replacement ☐ Withdrawn ☐ Neither	PF-14895 11/03	
10	Bankruptcy Exclusion	PF-14904 Ed. 11/03	☒ Replacement ☐ Withdrawn ☐ Neither	PF-14904 11/03	
11	Prior Acts - Effective Date	PF-14975 Ed. 11/03	☒ Replacement ☐ Withdrawn ☐ Neither	PF-14975 11/03	
12	Prior Acts - Specified Date	PF-14976 Ed. 11/03	☒ Replacement ☐ Withdrawn ☐ Neither	PF-14976 11/03	

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FORM FILING SCHEDULE *(Continued)*

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1.	**This filing transmittal is part of Company Tracking #**	**WFIC-AR-DO-07-PR-343-F**
2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
13	Retention - Third Party Employment Practices Liability	PF-15836 Ed. 05/04	☐ Replacement ☐ Withdrawn ☒ Neither		
14	Waiver of Application Endorsement	PF-16280 Ed. 06/04	☐ Replacement ☐ Withdrawn ☒ Neither		
15	Waiver of Application (No Underlying Application)	PF-21619 Ed. 04/06	☐ Replacement ☐ Withdrawn ☒ Neither		
16	Independent Contractors Coverage & Amended Third Party Coverage	PF-21931 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
17	Optional Duty To Defend Endorsement	PF-21932 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
18	Antitrust Sublimit and Retention (For Use With Single Aggregate Limit of Liability)	PF-21954 Ed. 03/07	☐ Replacement ☐ Withdrawn ☒ Neither		
19	Antitrust Sublimit and Retention (For Use With Separate Limits of Liability)	PF-21955 Ed. 03/07	☐ Replacement ☐ Withdrawn ☒ Neither		
20	Professional Services Exclusion – Property Management and Development	PF-22022 Ed. 05/07	☐ Replacement ☐ Withdrawn ☒ Neither		
21	Professional Services Exclusion– Advertising/Public Relations with Shareholder Carveout	PF-22023 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14978 11/03	
22	Professional Services Exclusion –Advertising/Public Relations	PF-22024 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14985 11/03	
23	Professional Services Exclusion – Architects with Shareholder Carveout	PF-22025 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14979 11/03	
24	Professional Services Exclusion – Architects	PF-22026 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14986 11/03	
25	Professional Services Exclusion – Broadcasting with Shareholder Carveout	PF-22027 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14980 11/03	

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FORM FILING SCHEDULE *(Continued)*

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1.	**This filing transmittal is part of Company Tracking #**	**WFIC-AR-DO-07-PR-343-F**
2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
26	Professional Services Exclusion – Broadcasting	PF-22028 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14987 11/03	
27	Professional Services Exclusion – Data Processing, Programming with Shareholder Carveout	PF-22029 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14981 11/03	
28	Professional Services Exclusion – Data Processing, Programming	PF-22030 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14988 11/03	
29	Professional Services Exclusion – Educators with Shareholder Carveout	PF-22031 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14989 11/03	
30	Professional Services Exclusion I – Educators	PF-22032 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14990 11/03	
31	Professional Services Exclusion – Engineer with Shareholder Carveout	PF-22033 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14991 11/03	
32	Professional Services Exclusion – Engineer	PF-22034 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14992 11/03	
33	Professional Services Exclusion – General Professional Services with Shareholder Carveout	PF-22035 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14993 11/03	
34	Professional Services Exclusion – General Professional Services	PF-22036 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14994 11/03	
35	Professional Services Exclusion – Insurance Agent or Broker with Shareholder Carveout	PF-22037 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14982 11/03	
36	Professional Services Exclusion – Insurance Agent or Broker	PF-22038 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14995 11/03	
37	Professional Services Exclusion – Insurer or Reinsurer	PF-22039 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14996 11/03	
38	Professional Services Exclusion – Insurer/Reinsurer with Shareholder Carveout	PF-22040 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14983 11/03	

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FORM FILING SCHEDULE *(Continued)*

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1.	**This filing transmittal is part of Company Tracking #**	**WFIC-AR-DO-07-PR-343-F**
2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
39	Professional Services Exclusion – Medical Services with Shareholder Carveout	PF-22041 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14984 11/03	
40	Professional Services Exclusion – Medical Services	PF-22042 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14997 11/03	
41	Professional Services Exclusion – Printers or Publishers	PF-22043 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14998 11/03	
42	Professional Services Exclusion – Real Estate Agents	PF-22044 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14999 11/03	
43	Notice Clause Amended – General Counsel, Risk Manager	PF-22045 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14959 11/03	
44	Parent Exclusion	PF-22046 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14968 11/03	
45	Major Shareholder Exclusion	PF-22047 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 15016 11/03	
46	Specific Matter Exclusion	PF-22048 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 15019 11/03	
47	60-Day Extended Post Policy Reporting Endorsement	PF-22049 Ed. 05/07	☐ Replacement ☐ Withdrawn ☒ Neither		
48	Amended Wrongful Employment Practice Delete Discrimination	PF-22050 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 21647 3/06	
49	Specific Matter Exclusion – Restatements	PF-22051 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 17143 08/04	
50	Financial Services Exclusion	PF-22052 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
51	EPL Sublimit	PF-22053 Ed. 05/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14920 11/03	

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FORM FILING SCHEDULE *(Continued)*

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2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
52	Known Wrongful Acts, Facts or Circumstances Exclusion	PF-22438 Ed. 06/07	☐ Replacement ☐ Withdrawn ☒ Neither		
53	Fiduciary Liability Insuring Agreement	PF-22516 Ed. 08/07	☐ Replacement ☐ Withdrawn ☒ Neither		
54	Fiduciary Liability Insuring Agreement	PF-22821 Ed. 08/07	☐ Replacement ☐ Withdrawn ☒ Neither		
55	Amended Definition of Loss - Excess Benefit Penalty Coverage	PF-22839 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
56	Antitrust Exclusion	PF-22840 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14897 11/03	
57	Claim Definition - Regulatory Exclusion	PF-22841 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14910 11/03	
58	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	PF-22842 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
59	Education Company Coverage Extension	PF-22844 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
60	Government Funds Exclusion and Defense Cost Sublimit Endorsement	PF-22845 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 17141 06/04	
61	Government Funds Exclusion and Defense Cost Sublimit Endorsement	PF-22846 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 17141 06/04	
62	HIPPA $25,000 Sub-Limit, Loss Amended	PF-22847 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 18366 05/05	
63	HIPPA $50,000 Sub-Limit, Loss Amended	PF-22848 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 18365 05/05	
64	Internal Standards or Rules Exclusion	PF-22849 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
65	Payments, Commissions, Gratuities, Benefits, Favors Exclusion and Political Contributions Exclusion	PF-22850 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		

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FORM FILING SCHEDULE *(Continued)*

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1.	**This filing transmittal is part of Company Tracking #**	**WFIC-AR-DO-07-PR-343-F**
2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
66	Health Care Amendatory Endorsement	PF-22851 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
67	Regulatory Authority and Government Agency Exclusion	PF-22853 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 15006 11/03	
68	Contract or Agreement (Absolute Exclusion)	PF-22854 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 18571 01/05	
69	Retention Amended - Class Actions	PF-22855 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 17136 10/04	
70	Runoff Endorsement	PF-22856 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
71	Sexual Misconduct, Child Abuse, Neglect Exclusion	PF-22857 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
72	Antitrust Sub-Limit of Liability	PF-22860 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
73	Specified Party Exclusion	PF-22861 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 15021 11/03	
74	Specified Party's Claim Exclusion	PF-22862 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 15018 11/03	
75	Third Party Employment Claims Coverage Deleted	PF-22863 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
76	Antitrust Sublimit	PF-22864 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 14899 11/03	
77	Contract or Agreement (Absolute Exclusion)	PF-22865 Ed. 09/07	☒ Replacement ☐ Withdrawn ☐ Neither	PF 18571 01/05	
78	Health Care Amendatory Endorsement	PF-22866 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		

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FORM FILING SCHEDULE *(Continued)*

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2.	**This filing corresponds to rate/rule filing number** (Company tracking number of rate/rule filing, if applicable)	**WFIC-AR-DO-07-PR-343-R**

3.	**Form Name /Description/Synopsis**	**Form # Include edition date**	**Replacement or Withdrawn?**	**If replacement, give form # it replaces**	**Previous state filing number, if required by state**
79	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	PF-22868 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
80	Designated Person / Entity Exclusion	PF-22878 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
81	Investment Company Act Exclusion	PF-22892 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
82	Delete Retention Waiver/Reimbursement Clause	PF-22893 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
83	Insured v. Insured Exclusion Amended (Former Insured Persons - Two Years)	PF-22897 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
84	Insured v. Insured Exclusion Amended (Former Insured Persons - Three Years)	PF-22898 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
85	Settlement Clause Amended	PF-22899 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
86	Insured v. Insured Exclusion Amended - Federal False Claims Act	PF-22902 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
87	financial services exclusion with shareholder carveout	PF-22896 Ed. 09/07	☐ Replacement ☐ Withdrawn ☒ Neither		
88	Unpaid Salary Exclusion Amended Non-Duty to Defend for Class Action FLSA Claims	PF-23217 Ed. 10/07	☐ Replacement ☐ Withdrawn ☒ Neither		
89			☐ Replacement ☐ Withdrawn ☐ Neither		

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Westchester Fire Insurance Company

Directors and Officers Liability Program
Forms and Rules ONLY Filing Revision

Arkansas Filing Memorandum

Westchester Fire Insurance Company (WFIC) is filing to revise its Directors and Officers Liability Program, filed under the Other Liability annual statement line of business. The revisions relate solely to the coverage for private companies and not-for-profit companies. The Directors and Officers Liability ("D&O") Program was originally filed for both ACE American Insurance Company ("AAIC") and WFIC. This revision does not apply to AAIC. Rather, the revision applies only to WFIC. As a result, WFIC and AAIC will ultimately utilize different forms and rules to provide D&O coverage to private and not-for-profit companies. WFIC and AAIC distribute their insurance products through different channels, AAIC through the retail market and WFIC through the wholesale broker market.

The Private Company Liability Policy and Not-For-Profit Company Liability Policy provide D&O, Employment Practices Liability ("EPLI") and Fiduciary Liability coverage. There are separate rates for each of these coverages. We would like to clarify that WFIC currently utilizes and will continue to utilize (subject to the changes filed herein) the 2003 EPLI rating plan submitted under filing number ACE-AR-2003-PR-466-R. A stand-alone EPLI product was introduced for AAIC and WFIC in 2006. In the actuarial memorandum of that filing, it was erroneously stated that the 2006 rates replaced all EPLI rates previously filed for WFIC, which was incorrect.

In this filing, we are revising the Private Company Management Liability and Not-For-Profit Company Management Liability policies, declaration pages, applications and endorsements. The attached forms list details the changes to each form/endorsement. Redlined versions of the main policy forms have also been included.

The proposed form changes serve to update the program to include coverage enhancements currently available in the D&O marketplace for private and not-for-profit companies. A list of the principal form changes introduced in this filing is shown below.

- Fiduciary liability coverage has been removed from the base policy form and will be offered by endorsement. The reason for this change is the form was too long and not all applicants wanted to purchase D&O, EPL and Fiduciary, but most applicants wanted D&O and EPL. The form number for the Fiduciary Endorsement is PF-22516 (08-07).
- Non-rescindable for all coverages
- Section IV-Severability of exclusions – only knowledge possessed by CEO and CFO imputed to Company
- "Application" limited to previous 36 months of submissions and no reference to publicly filed documents
- Section X Defense and settlement –Changed to Insurer has Duty to Defend
- No co-insurance penalty in the event insured withholds consent of settlement
- Retention waiver in the event insureds consent to Settlement Opportunity within 90 days after Claim is reported

- Broad Third Party EPL Coverage – all persons, including clients, customers, vendors, suppliers
- "Claim" includes investigations against entity triggered by written notice
- Conduct Exclusions – final adjudication wording
- Fraud/Crime Exclusion – "deliberately" fraudulent or criminal
- Pollution Exclusion – Non-Indemnifiable Loss/Financial Impairment carve-outs for all Claims
- Insured vs. Insured Exclusion – carve-outs include SOX whistleblowers, claims brought by employees, bankruptcy trustees, former executives (4 years) or foreign executives, and cross-claims/third party claims
- Public Offering Exclusion
- Private Form only: only applies to offerings actually undertaken or consummated (not merely attempted), and exception for all 1933 Securities Act exemptions
- Pending and Prior Litigation Exclusion – an insured must have notice of pending/prior proceeding
- "Subsidiary" includes LLP's and JV's
- Auto-Subsidiary threshold – 25% of Named Insured's total assets; 90-days of coverage for sub's exceeding 25%
- Outside Entity coverage – specific request or direction (no written request requirement)

The revised policies will continue to be rated according to the rates and rules previously filed in Arkansas, under company filing number ACE-AR-2003-PR-466-R, with some minor rule changes. Specifically, in this filing, we are introducing a Company Exception Page applicable only to WFIC. The Company Exception Page is intended to make the product more competitive for smaller insureds by providing lower deductible options than those included in the original filing.

Westchester Fire Insurance Company
Directors and Officers Liability Program
FORMS LIST AND DESCRIPTION OF CHANGES

Old Form Number (Ed. Date)	New Form Number (Ed. Date)	Endorsement Name	Private Company (PC) or Not-for-Profit (NFP)	Description of Changes if revising form/endorsement
PF 14386 09/03	PF-22020 (05/07)	Private Company Management Liability Policy Declarations	PC	Editorial
PF 14387 09/03	PF-22021 (05/07)	Private Company Management Liability Policy	PC	See attached Red Lined Version
PF 14384 09/03	PF-22529 (08/07)	Not-For-Profit Company Management Liability Policy Declarations	NFP	Editorial
PF 14385 09/03	PF-22530 (08/07)	Not-For-Profit Company Management Liability Policy	NFP	See attached Red Lined Version
PF 14499 07/03	PF-22888 (09/07)	Private Company Management Liability Insurance Application (Warrants)	PC	Editorial
PF 14800 11/03	PF-22890 (09/07)	Private Company Management Liability Insurance Renewal Application (Warrants)	PC	Editorial
PF 14801 11-03	PF-22904 (09-07)	Not-For-Profit Company Management Liability Insurance Application (Warrants)	NFP	Editorial
PF14802 11/03	PF-22901 (09/07)	Not-For-Profit Company Management Liability Insurance Renewal Application (Warrants)	NFP	Editorial
SAME AS BEFORE	PF-14895 (11/03)	Pending and Prior Date - Limits	PC & NFP	No change
SAME AS BEFORE	PF-14904 (11/03)	Bankruptcy Exclusion	PC & NFP	No change
SAME AS BEFORE	PF-14975 (11/03)	Prior Acts - Effective Date	PC & NFP	No change
SAME AS BEFORE	PF-14976 (11/03)	Prior Acts - Specified Date	PC & NFP	No change
NEW	PF-15836 (05/04)	Retention - Third Party Employment Practices Liability	PC & NFP	N/A
NEW	PF-16280 (06/04)	Waiver of Application Endorsement	PC & NFP	N/A
NEW	PF-21619 (04-06)	Waiver of Application (No Underlying Application)	PC & NFP	N/A
NEW	PF-21931 (09/07)	Independent Contractors Coverage & Amended Third Party Coverage	PC & NFP	N/A
NEW	PF-21932 (09/07)	Optional Duty To Defend Endorsement	PC & NFP	N/A
NEW	PF-21954 (03/07)	Antitrust Sublimit and Retention (For Use With Single Aggregate Limit of Liability)	NFP	N/A
NEW	PF-21955 (03/07)	Antitrust Sublimit and Retention (For Use With Separate Limits of Liability)	NFP	N/A
NEW	PF-22022 (05/07)	Professional Services Exclusion – Property Management and Development	PC	N/A
PF 14978 11/03	PF-22023 (05/07)	Professional Services Excl– Advertising/Public Relations with Shareholder Carveout	PC	Editorial
PF 14985 11/03	PF-22024 (05/07)	Professional Services Excl – Advertising/Public Relations	PC	Editorial
PF 14979 11/03	PF-22025 (05/07)	Professional Services Excl – Architects with Shareholder Carveout	PC	Editorial
PF 14986 11/03	PF-22026 (05/07)	Professional Services Excl – Architects	PC	Editorial
PF 14980 11/03	PF-22027 (05/07)	Professional Services Excl – Broadcasting with Shareholder Carveout	PC	Editorial
PF 14987 11/03	PF-22028 (05/07)	Professional Services Excl – Broadcasting	PC	Editorial
PF 14981 11/03	PF-22029 (05/07)	Professional Services Excl – Data Processing, Programming with Shareholder Carveout	PC	Editorial
PF 14988 11/03	PF-22030 (05/07)	Professional Sservices Excl – Data Processing, Programming	PC	Editorial
PF 14989 11/03	PF-22031 (05/07)	Professional Services Excl – Educators with Shareholder Carveout	PC	Editorial
PF 14990 11/03	PF-22032 (05/07)	Professional Services Excl – Educators	PC	Editorial
PF 14991 11/03	PF-22033 (05/07)	Professional Services Excl – Engineer with Shareholder Carveout	PC	Editorial
PF 14992 11/03	PF-22034 (05/07)	Professional Services Excl – Engineer	PC	Editorial
PF 14993 11/03	PF-22035 (05/07)	Professional Services Excl – General Professional Services with Shareholder Carveout	PC	Editorial
PF 14994 11/03	PF-22036 (05/07)	Professional Services Excl – General Professional Services	PC	Editorial
PF 14982 11/03	PF-22037 (05/07)	Professional Services Excl – Insurance Agent or Broker with Shareholder Carveout	PC	Editorial
PF 14995 11/03	PF-22038 (05/07)	Professional Services Excl – Insurance Agent or Broker	PC	Editorial
PF 14996 11/03	PF-22039 (05/07)	Professional Services Excl – Insurer or Reinsurer	PC	Editorial
PF 14983 11/03	PF-22040 (05/07)	Professional Services Excl – Insurer/Reinsurer with Shareholder Carveout	PC	Editorial
PF 14984 11/03	PF-22041 (05/07)	Professional Sservices Excl – Medical Services with Shareholder Carveout	PC	Editorial
PF 14997 11/03	PF-22042 (05/07)	Professional Sservices Excl – Medical Services	PC	Editorial

Westchester Fire Insurance Company
Directors and Officers Liability Program
FORMS LIST AND DESCRIPTION OF CHANGES

Old Form Number (Ed. Date)	New Form Number (Ed. Date)	Endorsement Name	Private Company (PC) or Not-for-Profit (NFP)	Description of Changes if revising form/endorsement
PF 14998 11/03	PF-22043 (05/07)	Professional Services Excl – Printers or Publishers	PC	Editorial
PF 14999 11/03	PF-22044 (05/07)	Professional Services Excl – Real Estate Agents	PC	Editorial
PF 14959 11/03	PF-22045 (05/07)	Notice Clause Amended – General Counsel, Risk Manager	PC	Editorial
PF 14968 11/03	PF-22046 (05/07)	Parent Exclusion	PC & NFP	Editorial
PF 15016 11/03	PF-22047 (05/07)	Major Shareholder Exclusion	PC	Editorial
PF 15019 11/03	PF-22048 (05/07)	Specific Matter Exclusion	PC	Editorial
NEW	PF-22049 (05/07)	60-Day Extended Post Policy Reporting Endorsement	PC	N/A
PF 21647 3/06	PF-22050 (05/07)	Amended Wrongful Employment Practice Delete Discrimination	PC	Editorial
PF 17143 08/04	PF-22051 (05/07)	Specific Matter Exclusion – Restatements	PC	Editorial
NEW	PF-22052 (09/07)	Financial Services Exclusion	PC & NFP	Editorial
PF 14920 11/03	PF-22053 (05/07)	EPL Sublimit	PC	Editorial
NEW	PF-22438 (06/07)	Known Wrongful Acts, Facts or Circumstances Exclusion	PC	Editorial
NEW	PF-22516 (08/07)	Fiduciary Liability Insuring Agreement	PC	Fiduciary Coverage now added by endorsemant and has been removed from basic form .
NEW	PF-22821 (08/07)	Fiduciary Liability Insuring Agreement	NFP	Fiduciary Coverage now added by endorsemant and has been removed from basic form .
NEW	PF-22839 (09/07)	Amended Definition of Loss - Excess Benefit Penalty Coverage	PC & NFP	
PF 14897 11/03	PF-22840 (09/07)	Antitrust Exclusion	NFP	Editorial
PF 14910 11/03	PF-22841 (09/07)	Claim Definition - Regulatory Exclusion	PC & NFP	
NEW	PF-22842 (09/07)	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	NFP	N/A
NEW	PF-22844 (09/07)	Education Company Coverage Extension	PC & NFP	N/A
PF 17141 06/04	PF-22845 (09/07)	Government Funds Exclusion and Defense Cost Sublimit Endorsement	PC & NFP	Editorial
PF 17141 06/04	PF-22846 (09/07)	Government Funds Exclusion and Defense Cost Sublimit Endorsement	PC & NFP	Editorial
PF 18366 05/05	PF-22847 (09/07)	HIPPA $25,000 Sub-Limit, Loss Amended	PC & NFP	Editorial
PF 18365 05/05	PF-22848 (09/07)	HIPPA $50,000 Sub-Limit, Loss Amended	PC & NFP	Editorial
NEW	PF-22849 (09/07)	Internal Standards or Rules Exclusion	PC & NFP	N/A
NEW	PF-22850 (09/07)	Payments, Commissions, Gratuities, Benefits, Favors Exclusion and Political Contributions Exclusion	PC & NFP	N/A
NEW	PF-22851 (09/07)	Health Care Amendatory Endorsement	NFP	N/A
PF 15006 11/03	PF-22853 (09/07)	Regulatory Authority and Government Agency Exclusion	PC & NFP	Editorial
PF 18571 01/05	PF-22854 (09/07)	Contract or Agreement (Absolute Exclusion)	NFP	Editorial
PF 17136 10/04	PF-22855 (09/07)	Retention Amended - Class Actions	PC & NFP	Editorial
NEW	PF-22856 (09/07)	Runoff Endorsement	PC & NFP	N/A
NEW	PF-22857 (09/07)	Sexual Misconduct, Child Abuse, Neglect Exclusion	PC & NFP	N/A
NEW	PF-22860 (09/07)	Antitrust Sub-Limit of Liability	NFP	N/A
PF 15021 11/03	PF-22861 (09/07)	Specified Party Exclusion	PC & NFP	Editorial
PF 15018 11/03	PF-22862 (09/07)	Specified Party's Claim Exclusion	PC & NFP	Editorial
NEW	PF-22863 (09/07)	Third Party Employment Claims Coverage Deleted	PC & NFP	N/A
PF 14899 11/03	PF-22864 (09/07)	Antitrust Sublimit	PC	Editorial
PF 18571 01/05	PF-22865 (09/07)	Contract or Agreement (Absolute Exclusion)	PC	Editorial
NEW	PF-22866 (09/07)	Health Care Amendatory Endorsement	PC	N/A
NEW	PF-22868 (09/07)	Health Care Amendatory Endorsement (Antitrust Sub-Limit)	PC	N/A

Westchester Fire Insurance Company
Directors and Officers Liability Program
FORMS LIST AND DESCRIPTION OF CHANGES

Old Form Number (Ed. Date)	New Form Number (Ed. Date)	Endorsement Name	Private Company (PC) or Not-for-Profit (NFP)	Description of Changes if revising form/endorsement
NEW	PF-22878 (09/07)	Designated Person / Entity Exclusion	PC & NFP	N/A
NEW	PF-22892 (09/07)	Investment Company Act Exclusion	PC & NFP	N/A
NEW	PF-22893 (09/07)	Delete Retention Waiver/Reimbursement Clause	PC & NFP	N/A
NEW	PF-22897 (09/07)	Insured v. Insured Exclusion Amended (Former Insured Persons - Two Years)	PC & NFP	N/A
NEW	PF-22898 (09/07)	Insured v. Insured Exclusion Amended (Former Insured Persons - Three Years)	PC & NFP	N/A
NEW	PF-22899 (09/07)	Settlement Clause Amended	PC & NFP	N/A
NEW	PF-22902 (09/07)	Insured v. Insured Exclusion Amended - Federal False Claims Act	NFP	N/A
NEW	PF-22896 (09/07)	financial services exclusion with shareholder carveout	PC & NFP	N/A
NEW	PF-23217 (10/07)	Unpaid Salary Exclusion Amended Non-Duty to Defend for Class Action FLSA Claims	PC & NFP	N/A

Westchester Fire Insurance Company

ACE Westchester Advantage℠
Not-For-Profit Company Management Liability Policy
Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED REPORTING PERIOD, AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY . PLEASE READ THIS POLICY CAREFULLY. THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No.

Item 1. **Named Insured:**
Principal Address:

State of Incorporation:

Item 2. **Policy Period**:
From 12:01 a.m. To 12:01 a.m.
(Local time at the address shown in Item 1)

Item 3. Limit(s) of Liability and Retention(s):

A. Single Aggregate Limit of Liability and Retention: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$ _____each **Claim**
__ Employment Practices Liability		$ _____each **Claim**

B. Separate Limits of Liability and Retentions: Granted: __ Yes __ No

Insuring Agreements Purchased:	Limit(s) of Liability: (including **Defense Costs**)	Retention(s):
__ Management Liability	$ _____Aggregate Limit	$_____each **Claim**
__ Employment Practices Liability	$ _____Aggregate Limit	$ _____each **Claim**

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Item 4.	Notice to **Insurer**: A. Notice of **Claim** or **Wrongful Act**: Director of Claims ACE Westchester Specialty Group Professional Risk Division 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076 - B. All other notices: Chief Underwriting Officer ACE Westchester Specialty Group Professional Risk Division 500 Colonial Center Parkway, Suite 200 Roswell, GA 30076
Item 5.	Prior or Pending Proceeding Date: __ Management Liability _____ __ Employment Practices Liability _____
Item 6.	A. **Policy** Premium: $_____ B. **Extended Reporting Period** Premium: [ ] % of Policy Premium

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

DATE: _____ _____

Authorized Representative

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ACE Advantage℠
Not-For-Profit Company Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

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1. any **Employee** of the **Company**; or
2. any natural person who is a customer or client of the **Company**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability: or

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to

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furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee, member of a duly constituted committee, staff, faculty member (salaried or non-salaried), or volunteer. **Employee** also means any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

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F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

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6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

Deleted: , which qualifies as a not-for-profit organization under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended. THIS REVISION NOT MADE IN ACE USE FORM.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**., In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

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O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

R. **Securities** means:

1. common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or

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2. notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States.

S. **Securities Law** means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company,** including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**.

T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

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V. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:
   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;
   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or
   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.
2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or by the **Company**.

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X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

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C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

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H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any rules or regulations of the Securities Exchange Commission adopted thereunder, or any federal, state, or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto, or any other federal, state or provincial law or common law relating to securities. However, this exclusion shall not apply to the issuance by the **Company** of tax exempt bond debt or **Claims** brought by holders of tax exempt bonds.

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Deleted: (2) any **Wrongful Act,** including without limitation any actual or alleged violation of any ¶ **Securities Laws**, relating in any way to a Public Offering or to any **Securities** issued, sold ¶ or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or ¶ allegedly occurs prior to, during, or after such Public Offering¶ ¶ provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.¶ ¶

J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, trustee emeritus, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

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d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or Member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

2. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

3. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

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N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A

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change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later

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than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which

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the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy.**

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named**

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Insured and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors or trustees of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Not-For-Profit Status

If, during the **Policy Period**, the **Company** ceases to qualify as a not-for-profit organization, then such organization and its **Insured Persons** shall be covered under this **Policy** only with respect to **Claims** for **Wrongful Acts** taking place prior to such cessation.

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XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the

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Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

SPECIMEN

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

SPECIMEN

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

SPECIMEN

Westchester Fire Insurance Company

ACE Westchester Advantage℠ Private Company Management Liability Policy

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

I. INSURING AGREEMENTS

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A. Management Liability

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If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

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2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

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3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

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4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

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B. Employment Practices Liability

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If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or,

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if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of the **Company**; or
2. any natural person who is a customer or client of the **Company**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity**.

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement, or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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Deleted: C. . Fiduciary Liability¶ If Fiduciary Liability coverage is purchased as indicated in Item 3 of the Declarations:¶ The **Insurer** shall pay the **Loss** of the **Insureds** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.¶ **II.** .
Deleted: A. . **Administration** means (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plans**, (ii) providing interpretations with respect to any **Plan**, (iii) handing records in connection with any **Plan**, and (iv) enrolling, terminating or canceling employees under any **Plan**.¶ B. . **Annual Premium** means th ... [1]
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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, and any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company**, pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee),
1. general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

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6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), or similar executive of a **Company**, or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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Deleted: T. . **Pension Plan** means any employee pension benefit plan as defined in **ERISA**, other than:¶
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1. . any employee stock ownership plan as defined in **ERISA**; or¶
¶
2. . any other plan, fund, trust or program which was, is or shall be sponsored solely by the **Named Insured**, or jointly by the **Named Insured** and a labor organization, solely for the benefit of the employees and/or the directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Named Insured**, under which investments are made primarily in securities of the **Named Insured**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Named Insured**.¶
¶
U. . **Plan** means: ¶
¶
1. . any **Pension Plan** or any **Welfare Plan** which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**; provided any **Pension Plan** created or acquired by the **Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of section XIII of this **Policy**; ¶
¶
<#>any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, but solely for a ... [33]

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R. **Securities** means:

1. common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or

2. notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States.

S. **Securities Law** means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company**, including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**.

T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

V. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:

   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;

   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or

   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.

2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person**,

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Deleted: Z. . **Voluntary Compliance Loss**

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1. . Fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by

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2. . Penalties assessed by the

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_____ in his or her capacity as such, or by the **Company**.

X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** or applicant for employment with the **Company** or an **Outside Entity** **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any

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a. any violation by any **Insured** of any of the responsibilities, obligations or duties imposed upon fiduciaries under **ERISA** with respect to any **Plan**,

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b. any negligent act, error or omission actually or allegedly committed or attempted by any **Insured** solely in the **Administration** of a **Plan**.¶
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alleging, based upon, arising out of or attributable to any actual or al ... [34]

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of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in

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Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to:

(1) any public offering of **Securities** undertaken or consummated by or on behalf of the **Company** ("Public Offering"), or the solicitation, sale, purchase, distribution, or issuance of any such **Securities**, whether any such activity occurs or allegedly occurs prior to, during, or after such Public Offering; or

(2) any **Wrongful Act**, including without limitation any actual or alleged violation of any **Securities Laws**, relating in any way to a Public Offering or to any **Securities** issued, sold or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or allegedly occurs prior to, during, or after such Public Offering

provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.

J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof, before the date the **Subsidiary** became an **Insured**, or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

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J. . Public Offering or Ownership¶
¶
alleging, based upon, arising out of, or attributable to:¶
¶
1. . any actual or attempted public offering, solicitation, sale, distribution or issuance of **Securities** by or on behalf of the **Company**, including all activities in connection therewith; and¶
¶
2. . any **Wrongful Act** actually or allegedly committed subsequent to any such actual or attempted public offering, solicitation, sale, distribution or issuance of **Securities** by or on behalf of the **Company**.¶
¶
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d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

3. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

Deleted: 4. Intellectual Property and **Company** Goods and Products¶ alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**. However, this exclusion shall apply only to that part of **Loss** otherwise covered under Insuring Agreement A3, **Company** Liability. ¶ 5. Outside Directorship Liability¶

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4. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of

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such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum aggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the

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Deleted: and, if elected, the **Extended Reporting Period**,

Deleted: , regardless of the number of **Claims** or **Losses** or the time of payment by the **Insurer**. The **Voluntary Compliance Loss** Sublimit of Liability set forth in Item 7 of the Declarations is the maximum aggregate limit of the Insurer's liability for each **Policy Period** and, if elected, the for all **Voluntary Compliance Loss**. The **Voluntary Compliance Loss** Sublimit of Liability is part of, and not in addition to, the respective Limit of Liability set forth in Item 3B of the Declarations and in no way shall be deemed to increase the respective Limit of Liability as ... [67]

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extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer**, and not the **Insureds**, to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent. The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including

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Defense Costs, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy.**

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

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Deleted: <#>The **Insurer** shall, on a quarterly basis, advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Defense Costs** shall be subject to the condition that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled to coverage for such **Defense Costs** under the terms and conditions of this **Policy**.¶

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then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization, exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

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b. pay any additional premium required by the **Insurer**; and¶
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Publicly-Held Organization¶
¶
If, during the **Policy Period**, the **Company**:¶
¶
1. acquires voting securities in another organization or creates another organization which is a publicly-held organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or¶
2. acquires any publicly-held organization by merger into or ... [70]

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If before or during the **Policy P** ... [71]

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4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

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Deleted: B. . In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, this **Policy** shall be void ab initio as to (i) any **Company** or **Plan** if any **Executive Officer** knew the facts that were not truthfully disclosed or that were omitted in the Application, and (ii) any **Insured Person** who knew the facts that were not truthfully disclosed or that were omitted, whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission. Except with respect to the **Company's** Chief Executive Officer and Chief Financial Officer, such knowledge shall not be imputed to any other **Insured Persons**.¶ **XVI.** .
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XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall

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be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer**, shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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A. **Administration** means (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plans**, (ii) providing interpretations with respect to any **Plan**, (iii) handing records in connection with any **Plan**, and (iv) enrolling, terminating or canceling employees under any **Plan**.

B. **Annual Premium** means the original annualized premium and the fully annualized amount of any additional premiums charged by the **Insurer** for or during the **Policy Period**.

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. **Application** also includes any public documents filed by the **Company**, prior to inception of this **Policy**, with any federal, state, local or foreign regulatory body.

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, except with respect to Insuring Agreement B, Employment Practices Liability,

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proceeding against the **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;

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proceeding against the **Insured** commenced by a return of an indictment, information, or similar document, or receipt or filing of a notice of charges;

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proceeding against the **Insured** seeking monetary damages or non-monetary or injunctive relief;

5. a civil

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against the **Insured** commenced by the filing of a notice of charges, investigative order or similar document; or

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civil, administrative or regulatory investigation or proceeding

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including any appeal therefrom.

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of the directors, officers, trustees or employees of the **Company**.

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qualifying as a domestic partner under the provisions of any applicable federal, state

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local law or under the provisions of any formal program established

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H. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended (

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but not limited to amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996, the Newborns'

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Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996

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the Women's Health and Cancer Rights Act of 1998, as amended),or any similar state or local common or statutory law, and any rules and regulations promulgated thereunder. **ERISA** also means, but solely with respect to paragraph 3b of the definition of **Wrongful Act**, Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as HIPAA Privacy Regulations.

I. **Executive Officer** means the chairperson, president, chief executive officer, chief financial officer, in-house general counsel and, with respect to Insuring Agreement B, Employment Practices Liability, if purchased, the director of human resources or equivalent position.

J. **Extended Reporting Period** means the period for the extension of coverage, if elected, described in section VI, **Extended Reporting Period**.

K. **Financial Impairment** means the status of

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resulting from (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the

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becoming a debtor in possession

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3. Solely with respect to Insuring Agreement C, Fiduciary Liability, the **Company** and **Plans**.

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officer or similar executive of the **Company**, and any member of the management board of a limited liability company;

2. a person not described in paragraph 1 of this definition who was, is or shall become a full time or part time employee

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. However, such person shall not be considered an **Insured Person** for purposes of Exclusion N3 (**Insured** vs. **Insured**) of this **Policy;** and

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3. Solely for purposes of coverage under Insuring Agreement C, Fiduciary Liability, any one or more natural person who were, now are, or shall become duly elected or appointed trustees, directors, officers or employees of any **Plan**.

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, including such damages and **Defense Costs** if incurred in connection with the U.S. Department of Labor's (DOL) Voluntary Fiduciary Correction Program as set forth in the Federal Register, resulting from an **Wrongful Act** occurring during the **Policy Period**, or during the policy period of any policy of which this **Policy** is a continuous renewal, provided that such compliance with such DOL Program results in the **Insured** obtaining a 'No Action' letter from the DOL.

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. However, solely with respect to Insuring Agreement C, fines or penalties shall not be construed to include (i) the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**, (ii) the 20% or less penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to covered settlements or judgments, or (iii) **Voluntary Compliance Loss** to the extent set forth in Item 7 of the Declarations;

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punitive or exemplary damages, or the multiple portion of

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multiplied damage award;

4. any

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the **Company,** including its board of directors or

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committee of the board of directors, in connection with the

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or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Company**;

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7. solely with respect to Insuring Agreement A, Management Liability:

a. any amount that represents or is substantially equivalent to disgorgement, restitution or rescission damages, or forfeiture of any profits or remuneration;

b. dividends or other distributions of **Company** profits;

c. the cost of any remedial, preventative or other non-monetary relief, including without limitations any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority.

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T. **Pension Plan** means any employee pension benefit plan as defined in **ERISA**, other than:

1. any employee stock ownership plan as defined in **ERISA**; or

2. any other plan, fund, trust or program which was, is or shall be sponsored solely by the **Named Insured**, or jointly by the **Named Insured** and a labor organization, solely for the benefit of the employees and/or the directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Named Insured**, under which investments are made primarily in securities of the **Named Insured**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Named Insured**.

U. **Plan** means:

1. any **Pension Plan** or any **Welfare Plan** which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**; provided any **Pension Plan** created or acquired by the **Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of section XIII of this **Policy**;

   any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, but solely for a **Wrongful Act** as defined in subsection 3b of the definition of **Wrongful Act**; and

   any deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan for a select group of management or highly compensated directors, officers and/or employees.

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A. Antitrust

alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world. However, this exclusion shall apply only to that part of **Loss** otherwise covered under Insuring Agreement A3, **Company** Liability.

B. Bodily Injury and Property Damage

alleging, based upon, arising out of, or attributable to

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(except with respect to any **Claim** under Insuring Agreement B, Employment Practices Liability)

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C. Employee Benefits and Statutes

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or (vi) any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.

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2. an accounting of profits in fact made from the purchase and sale or sale and purchase by any **Insured Person** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any state statutory law, regulation or common law.

G. Pollution

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2.

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However, this exclusion shall not apply to:

1.

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any actual or alleged retaliatory treatment of the claimant

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is neither permitted nor required to grant such indemnification

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Financial Impairment of the

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2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.

I. Prior or Pending Proceeding

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1. the Securities Act of 1933, the Securities Exchange Act of 1934, any rules or regulations of the Securities Exchange Commission adopted thereunder, any federal, state or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto, or any other federal, state or provincial law or common law relating to liability in connection with the offering, sale or purchase of **Securities** of a

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, except as provided in subsection 2 immediately below;

2. any offering,

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Securities in excess of $5 million which is exempt from the registration requirements of the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933 and rules and regulations promulgated thereunder. However, this exclusion shall not apply if, prior to such Offering, the **Insurer** agrees in writing to extend coverage for **Wrongful Acts** in connection with such **Offering**, and the **Insureds** have paid the premium required by the **Insurer** for such coverage extension; or

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3. any activities or transactions dealing in any way with the **Company's** Offering.

L. **Subsidiary Wrongful Acts**

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for improper payroll deductions

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Contract or Agreement

alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, express or implied contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement, or where such **Claim** is covered entirely under Insuring Agreement A1, Management Liability, and A2, **Company** Reimbursement, and no part of such **Claim** is covered under Insuring Agreement A3, **Company** Liability.

2. Customer or Client

brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client. However, this exclusion shall not apply to:

a. that part of **Loss** otherwise covered under Insuring Agreement A1, Management Liability, and A2, **Company** Reimbursement; or

b. any **Claim** covered in whole or in part under Insuring Agreement B, Employment Practices Liability.

3. **Insured** vs. **Insured**

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, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**

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this exclusion shall not apply:

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Insured Person, other than an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body)

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management board, General Counsel, Risk Manager

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P. The following exclusions shall apply only to any **Claim** covered in whole or in part under Insuring Agreement C, Fiduciary Liability:

1. Benefits Due

benefits due or to become due under any **Plan**, benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or that portion of any settlement or judgment which constitutes such benefits. However, this exclusion shall not apply to **Defense Costs** or to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**.

2. Contract or Agreement

   alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, express or implied contract or agreement. However, this exclusion shall not apply to (i) **Defense Costs**, and (ii) to the extent that liability would have attached to the **Company** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

3. Contributions Owed

   alleging, based upon, arising out of, or attributable to the failure to collect from the **Company** contributions it owed to any **Plan**, or the failure to fund a **Plan** in accordance with **ERISA**, any similar state or local law, or the **Plan** instrument**.** However, this exclusion shall not apply to **Defense Costs**.

4. Discrimination

   for discrimination in violation of any law other than (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits or similar law, (ii) the Employee Retirement Income Security Act of 1974; (ii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Occupational Safety and Health Act, or (vi) any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.

5. Government Mandated Insurance

   alleging, based upon, arising out of, or attributable to any actual or alleged obligation of any **Insured** pursuant to any government-mandated insurance for worker's compensation, unemployment, social security or disability benefits. However, this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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Insider Trading, of section III, Exclusions, the **Wrongful Act** of any

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who had no knowledge of and did not participate in the conduct

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the **Wrongful Act** of any **Executive Officer** of the **Company**

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the **Extended Reporting Period**

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, regardless of the number of **Claims** or **Losses** or the time of payment by the **Insurer**. The **Voluntary Compliance Loss** Sublimit of Liability set forth in Item 7 of the Declarations is the maximum aggregate limit of the Insurer's liability for each **Policy Period** and, if elected, the for all **Voluntary Compliance Loss**. The **Voluntary Compliance Loss** Sublimit of Liability is part of, and not in addition to, the respective Limit of Liability set forth in Item 3B of the Declarations and in no way shall be deemed to increase the respective Limit of Liability as set forth therein.

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or similar documents of the **Company** or the execution of any contract. The **Company** further agrees to advance **Defense Costs** actually and reasonably incurred by any **Insured Person** in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the **Insured Person** to indemnification, where permitted by law to do so. The financial ability of any **Insured Person** to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of **Defense Costs** herein is a contractual right. The agreements

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A. Acquisition or Creation of Another Organization or **Plan**

For purposes of this subsection A:

(i) Publicly-held organization means any company with securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933.

(ii) Privately-held organization means any company which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933, amendments thereto, and rules and regulations promulgated thereunder.

(iii) Not-for-profit organization means any company which qualifies as a not-for-profit organization under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

Privately-Held or Not-for-Profit Organization

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Publicly-Held Organization

If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which is a publicly-held organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any publicly-held organization by merger into or consolidation with the **Company**;

the **Named Insured**, as a condition precedent to coverage for such organization, **Plan** and its **Insured Persons**, shall, prior to such acquisition:

a. give written notice

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D. Termination of a **Plan**

If before or during the **Policy Period** a **Plan** is terminated, sold or run-off, coverage with respect to such **Plan** under Insuring Agreement C, Fiduciary Liability, if purchased, shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Plan** was terminated, sold or run-off.

E. Other Organizational Changes

Coverage with respect to an **Insured** or **Plan** under Insuring Agreement C, Fiduciary Liability, if purchased, is afforded only for **Wrongful Acts** committed or allegedly committed after the effective time such **Insured** or **Plan** became an **Insured** and prior to the effective time that such **Insured** or **Plan** ceases to be an **Insured** or **Plan**.

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specialty group

Regulatory Compliance
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678-795-4314 *tel*
678-795-4170 *fax*

barbara.robinson@ace-ina.com
www.ace-ina.com

Barbara A. Robinson
Vice President

August 17, 2007

To Whom It May Concern:

Perr & Knight, Inc. is hereby authorized to submit rate, rule and form filings on behalf of Westchester Fire Insurance Company. This authorization includes providing additional information and responding to questions regarding the filings on our behalf as necessary. This authorization is deemed to be in effect until rescinded in writing.

Please direct all correspondence and inquiries related to this filing to Perr & Knight, Inc., at the following address:

State Filings Department
Perr & Knight, Inc.
881 Alma Real Drive, Suite 205
Pacific Palisades, CA 90272
Telephone: (888) 201-5123
Fax: (310) 230-1061

Please contact me at 678-795-4314 if you have any questions regarding this authorization.

Sincerely,

Barbara A. Robinson

Barbara A. Robinson
Vice President

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INDEPENDENT CONTRACTORS COVERAGE AND AMENDED THIRD PARTY COVERAGE

It is agreed that Section I, Insuring Agreements, subsection B, Employment Practice Liability, is deleted in its entirety and replaced with the following:

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**;
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity**; **or**
3. any independent contractor of the **Company**.

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Deleted: any natural person other than an employee or applicant for employment with the **Company** or any **Outside**

It is further agreed that Section II, Definitions, subsection G, definition of **Insured Person**, is amended by adding the following at the end thereof:

4. Solely for purposes of coverage under Insuring Agreement B, Employment Practices Liability, a person not described in paragraph 1 of this definition who was, is or shall become an independent contractor of the **Company**, but only if the **Company** provides indemnification to such independent contractor in the same manner as that provided to the **Company's** employees.

All other terms and conditions of this **Policy** remain unchanged.

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_____

Authorized Representative

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ACE Westchester Advantage℠
Not-For-Profit Company
Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of

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this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**; or

2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

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II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or

2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee, member of a duly constituted committee, staff, faculty member (salaried or non-salaried), or volunteer. **Employee** also means any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other

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type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

S. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

T. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

U. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:
   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;
   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or
   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.
2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or by the **Company**.

V. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** of, or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;

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5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion

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shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any rules or regulations of the Securities Exchange Commission adopted thereunder, or any federal, state, or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto, or any other federal, state or provincial law or common law relating to securities. However, this exclusion shall not apply to the issuance by the **Company** of tax exempt bond debt or **Claims** brought by holders of tax exempt bonds.

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J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

   and provided further that this exclusion shall not apply to:

   a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

   b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

   c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

   d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

   e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past,

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present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

2. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

3. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

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4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

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B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;

2. a description of the anticipated **Wrongful Act** allegations;

3. the identity of the **Insureds** allegedly involved;

4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;

5. the consequences which have resulted or may result; and

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6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

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XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy**. Regarding **Loss** arising out of an **Outside Entity Insured Person's** service with an **Outside Entity**, this **Policy** shall cover such **Loss**, under the applicable Insuring Agreements and subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of any indemnification provided by such **Outside Entity**, and any insurance coverage afforded to such **Outside Entity** or its executives, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

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XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

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B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors or trustees of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Not-For-Profit Status

If, during the **Policy Period**, the **Company** ceases to qualify as a not-for-profit organization, then such organization and its **Insured Persons** shall be covered under this **Policy** only with respect to **Claims** for **Wrongful Acts** taking place prior to such cessation.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

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XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

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XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

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XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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Westchester Fire Insurance Company

ACE Westchester Advantage℠ Private Company Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or,

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if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**; or
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

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II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, and any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

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6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee) or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Securities** means:

1. common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or

2. notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States.

S. **Securities Law** means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company,** including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**.

T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

V. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:

   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;

   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or

   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.

2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person**

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in his or her capacity as such, or by the **Company**.

X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** of, or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any

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of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in

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Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to:

(1) any public offering of **Securities** undertaken or consummated by or on behalf of the **Company** ("Public Offering"), or the solicitation, sale, purchase, distribution, or issuance of any such **Securities**, whether any such activity occurs or allegedly occurs prior to, during, or after such Public Offering; or

(2) any **Wrongful Act,** including without limitation any actual or alleged violation of any **Securities Laws**, relating in any way to a Public Offering or to any **Securities** issued, sold or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or allegedly occurs prior to, during, or after such Public Offering

provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.

J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

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d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

3. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

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4. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of

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such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum aggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the

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extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including

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Defense Costs, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy.** Regarding **Loss** arising out of an **Outside Entity Insured Person's** service with an **Outside Entity**, this **Policy** shall cover such **Loss**, under the applicable Insuring Agreements and subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of any indemnification provided by such **Outside Entity**, and any insurance coverage afforded to such **Outside Entity** or its executives, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

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XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

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2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

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3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

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B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing

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commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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Superseded Attachments

Please note that all items on the following pages are items, which have been replaced by a newer version. The newest version is located with the appropriate schedule on previous pages. These items are in date order with most recent first.

Original Date:	Schedule	Document Name	Replaced Date	Attach Document
No original date	Form	Private Company Management Liability Policy	12/04/2007	PF-22021 _05-07_.pdf
No original date	Form	Not-For-Profit Company Management Liability Policy	12/04/2007	PF-22530 _08-07_.pdf
No original date	Form	Pending and Prior Date - Limits	12/04/2007	PF-14895 _11-03_ _2_.pdf
No original date	Form	Bankruptcy Exclusion	12/04/2007	PF-14904 _11-03_ _2_.pdf
No original date	Form	Prior Acts - Effective Date	12/04/2007	PF-14975 _11-03_ _2_.pdf
No original date	Form	Prior Acts - Specified Date	12/04/2007	PF-14976 _11-03__2_.pdf
No original date	Form	Independent Contractors Coverage & Amended Third Party Coverage	12/10/2007	Indep Contractors Coverage PF-21931 (final).pdf
No original date	Form	Independent Contractors Coverage & Amended Third Party Coverage	12/04/2007	PF-21931 _09-07_.pdf

Westchester Fire Insurance Company

ACE Westchester Advantage℠ Private Company Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or,

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if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of the **Company**; or
2. any natural person who is a customer or client of the **Company**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, and any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

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6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee) or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Securities** means:

1. common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or

2. notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States.

S. **Securities Law** means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company,** including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**.

T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

V. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:

   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;

   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or

   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.

2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person**

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in his or her capacity as such, or by the **Company**.

X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any

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of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in

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Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to:

(1) any public offering of **Securities** undertaken or consummated by or on behalf of the **Company** ("Public Offering"), or the solicitation, sale, purchase, distribution, or issuance of any such **Securities**, whether any such activity occurs or allegedly occurs prior to, during, or after such Public Offering; or

(2) any **Wrongful Act,** including without limitation any actual or alleged violation of any **Securities Laws**, relating in any way to a Public Offering or to any **Securities** issued, sold or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or allegedly occurs prior to, during, or after such Public Offering

provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.

J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

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d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

3. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

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4. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of

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such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the

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extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including

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Defense Costs, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy.**

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

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then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

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4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

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XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall

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be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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ACE Westchester Advantage℠
Not-For-Profit Company
Management Liability Policy

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

I. INSURING AGREEMENTS

A. Management Liability

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. Management Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company** Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company** Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity** Management Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period,** but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of

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this **Policy,** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of the **Company**; or
2. any natural person who is a customer or client of the **Company**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity.**

II. DEFINITIONS

When used in this **Policy:**

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Claim** means:

1. a written demand for monetary damages or non-monetary or injunctive relief; or
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:

   (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or

   (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or

3. a civil, criminal, administrative or regulatory investigation commenced by:

   (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
   (b) the service upon or other receipt by any **Company** of a written notice;

   from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or

4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

C. **Company** means the **Named Insured** and any **Subsidiary,** including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

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D. **Defense Costs** means reasonable and necessary costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee, member of a duly constituted committee, staff, faculty member (salaried or non-salaried), or volunteer. **Employee** also means any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.

F. **Insured** means:

1. any **Insured Person**;
2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.

G. **Insured Person** means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
3. an **Employee** of the **Company**.

H. **Insurer** means the insurance company providing this insurance.

I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

Loss does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other

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type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

Loss includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

K. **Named Insured** means the organization first named in Item 1 of the Declarations.

L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.

M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.

N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), trustee emeritus, executive director, department head, or similar executive of a **Company,** or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.

O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.

P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.

Q. **Retaliation** means retaliatory treatment on account of:

1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;

2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;

3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or

5. any strike by any **Employee** of the **Company**.

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R. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.

S. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors or board of trustees if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

T. **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a Federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b).

U. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:
   a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;
   b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or
   c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.
2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or by the **Company**.

V. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;

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5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

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

III. EXCLUSIONS

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

A. for bodily injury, mental anguish or emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.

B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iii) the National Labor Relations Act or Labor Management Relations Act; (iv) the Worker Adjustment and Retraining Notification Act; (v) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vi) the Occupational Safety and Health Act, (vii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.

E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion

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shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.

F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:

   1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or

   2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

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

   For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

G. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.

H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.

I. alleging, based upon, arising out of, or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any rules or regulations of the Securities Exchange Commission adopted thereunder, or any federal, state, or provincial statute or common law regulating securities similar to the foregoing, including any amendments thereto, any rules or regulations adopted pursuant thereto, or any other federal, state or provincial law or common law relating to securities. However, this exclusion shall not apply to the issuance by the **Company** of tax exempt bond debt or **Claims** brought by holders of tax exempt bonds.

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J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured,** or after the date the **Subsidiary** ceased to be an **Insured**.

K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:

1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company,** whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

   and provided further that this exclusion shall not apply to:

   a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;

   b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

   c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the board of managers, general counsel (or equivalent position) of, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;

   d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

   e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

2. for a **Wrongful Act** by any **Insured Person** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.

3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past,

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present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, and intervention of, any **Outside Entity** or such person.

4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.

5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:

1. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

2. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.

3. alleging, based upon, arising out of, or attributable to (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services, or (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:

1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.

2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.

3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.

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4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. **EXTENDED REPORTING PERIOD**

A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period.**

B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMITS OF LIABILITY

A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

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B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.

C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:

1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.

2. If more than one Insuring Agreement applies to a **Claim**, the maximum **a**ggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.

3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.

C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy,** and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;

2. a description of the anticipated **Wrongful Act** allegations;

3. the identity of the **Insureds** allegedly involved;

4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;

5. the consequences which have resulted or may result; and

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6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer,** and not the **Insureds,** to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent**.** The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.

D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim.**

E. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim,** the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.

F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:

(i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
(ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
(iii) such **Claim** is reported within the first 30 days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

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XI. PRESUMPTIVE INDEMNIFICATION

A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.

B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy.**

XIII. MATERIAL CHANGES IN CONDITIONS

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or

2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors or trustees of the **Named Insured**;

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then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Not-For-Profit Status

If, during the **Policy Period**, the **Company** ceases to qualify as a not-for-profit organization, then such organization and its **Insured Persons** shall be covered under this **Policy** only with respect to **Claims** for **Wrongful Acts** taking place prior to such cessation.

XIV. PAYMENT PRIORITY

A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such Limit of Liability) in the following priority:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;

3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;

4 fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

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XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

XVII. TERMINATION OF THE **POLICY**

A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

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XX. ACTION AGAINST THE **INSURER**

Except as provided in Section XXIV, Alternative Dispute Resolution**,** no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of Its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

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

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

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XXV. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Defense Costs)** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss.**

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Pending and Prior Date –Limits

It is agreed that Item 5 of the Declarations is deleted in its entirety and the following is inserted, but solely with respect to:

- that portion of the limit of liability of $_____ in excess of $_____ for each **Loss**, and

- that portion of the limit of liability of $_____ in excess of $_____ for each **Policy Period**.

The portions of the limits referenced above are part of and not in addition to the Limits of Liability otherwise set forth in Item 3A of the Declarations.

Prior or Pending Proceeding Date:_____

All other terms and conditions of this **Policy** remain unchanged.

_____
Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Bankruptcy Exclusion

It is agreed that Section III, Exclusions, is amended by adding the following:

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

- alleging, based upon, arising out of, or attributable to the appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor-in-possession.

All other terms and conditions of this **Policy** remain unchanged.

_____

Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Prior Acts –Effective Date

It is agreed that Section III, Exclusions, is amended by adding the following:

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

  Prior Acts

  alleging, based upon, arising out of, or attributable to any **Wrongful Acts** committed, attempted, or allegedly committed or attempted, in whole or in part, before the effective date of this endorsement.

All other terms and conditions of this **Policy** remain unchanged.

_____
Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

Prior Acts - Specified Date

It is agreed that Section III, Exclusions, is amended by adding the following:

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

  Prior Acts

  alleging, based upon, arising out of, or attributable to any **Wrongful Acts** committed, attempted, or allegedly committed or attempted, in whole or in part, before _____.

All other terms and conditions of this **Policy** remain unchanged.

_____
Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INDEPENDENT CONTRACTORS COVERAGE AND AMENDED THIRD PARTY COVERAGE

It is agreed that Section I, Insuring Agreements, subsection B, Employment Practice Liability, is deleted in its entirety and replaced with the following:

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**;
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity**; or
3. any independent contractor of the **Company**.

It is further agreed that Section II, Definitions, subsection G, definition of **Insured Person**, is amended by adding the following at the end thereof:

4. Solely for purposes of coverage under Insuring Agreement B, Employment Practices Liability, a person not described in paragraph 1 of this definition who was, is or shall become an independent contractor of the **Company**, but only if the **Company** provides indemnification to such independent contractor in the same manner as that provided to the **Company's** employees.

All other terms and conditions of this **Policy** remain unchanged.

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Authorized Representative

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective
Issued By (Name of Insurance Company)			

INDEPENDENT CONTRACTORS COVERAGE AND AMENDED THIRD PARTY COVERAGE

It is agreed that Section I, Insuring Agreements, subsection B, Employment Practice Liability, is deleted in its entirety and replaced with the following:

B. Employment Practices Liability

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of the **Company**;
2. any natural person other than an employee or applicant for employment with the **Company** or any **Outside Entity**; or
3. any independent contractor of the **Company**.

It is further agreed that Section II, Definitions, subsection G, definition of **Insured Person**, is amended by adding the following at the end thereof:

4. Solely for purposes of coverage under Insuring Agreement B, Employment Practices Liability, a person not described in paragraph 1 of this definition who was, is or shall become an independent contractor of the **Company**, but only if the **Company** provides indemnification to such independent contractor in the same manner as that provided to the **Company's** employees.

All other terms and conditions of this **Policy** remain unchanged.

_____
Authorized Representative

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