



*Management Liability
Solution*

Management Liability Solution Insurance Policy

Great American Insurance Group - Executive Liability Division:
1515 Woodfield Road, Suite 500, Schaumburg, IL 60173

THIS IS A CLAIMS MADE POLICY. READ IT CAREFULLY.

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GREAT AMERICAN INSURANCE COMPANY®

Headquarters: 301 E. Fourth Street, Cincinnati, Ohio 45202

General Terms and Conditions

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the Proposal Form and subject to all terms, conditions and limitations in this Policy, the **Insurer** and **Insured** agree as follows:

The General Terms and Conditions, unless expressly indicated otherwise, apply to all Coverage Parts. If any provision in the General Terms and Conditions conflicts with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part. The terms and conditions of each Coverage Part do not apply to any other Coverage Part.

Section I. Discovery Period

With respect solely to the **Liability Coverage Parts**:

- A. In the event the **Insurer** refuses to renew this Policy or the **Named Entity** chooses to cancel or not renew this Policy, the **Named Entity** shall have the right, upon payment of the respective "Additional Discovery Premium Amount" stated in Item 5. of the Declarations, to an extension of the coverage provided by this Policy solely for any **Claim** first made against any **Insured** for the period of time (or one of the periods of time) stated in Item 5. of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. Only one such period may be elected, and this period shall be referred to in this Policy as the **Discovery Period**.
- B. As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid, and a written request together with payment of the appropriate Additional Discovery Premium Amount for the **Discovery Period** must be provided to the **Insurer** no later than sixty (60) days after the end of the **Policy Period**.
- C. The purchase of the **Discovery Period** shall not in any way increase the Limits of Liability set forth in Item 4. of the Declarations. For purposes of the Limits of Liability and any applicable Sub-Limits of Liability, the **Discovery Period** is part of, and not in addition to, the **Policy Period**.
- D. Upon the election of the **Discovery Period**, Section XIII. Conversion to Run-Off Coverage, is deleted in its entirety.

Section II. Definitions

- A. **Claim** shall mean a **Claim** as that term is defined in each **Liability Coverage Part**.
- B. **Company** shall mean the **Named Entity** or **Subsidiary** or, in the event of **Financial Insolvency** of the **Named Entity** or **Subsidiary**, the resulting debtor in possession or receiver (or foreign equivalent status), if any.
- C. **Costs of Defense** shall mean:
 - (1) reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond and, solely with respect to Coverage Part C (Fiduciary Liability Coverage), the costs of an independent fiduciary bond or similar bond (but without obligation on the part of the **Insurer** to apply for or furnish any such bond); or

- (2) reasonable and necessary legal fees, costs and expenses incurred resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for or any effort to obtain **Extradition** of that **Insured Person**, or appealing any order or other grant of **Extradition** of that **Insured Person**.

However, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Person**.

- D. Financial Insolvency** shall mean the **Company** becoming a debtor in possession, or the appointment of a creditors' committee, a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.
- E. Insured(s) and Insured Person** shall have the meaning as such terms are defined in each Coverage Part and shall also include any entities or persons as provided by endorsement to this Policy.
- F. Liability Coverage Part** shall mean:
- (1) if designated as "Included in Policy" in Column 1 of Item 4. of the Declarations:
 - (a) Coverage Part A (Directors' and Officers' and Entity Liability Coverage);
 - (b) Coverage Part B (Employment Practices Liability Coverage);
 - (c) Coverage Part C (Fiduciary Liability Coverage); or
 - (2) any other Coverage Part identified as a Liability Coverage Part and added by endorsement.
- G. Loss** shall mean a **Loss** as that term is defined in each **Liability Coverage Part**.
- H. Management Control** shall mean:
- (1) with respect to any corporation, partnership, limited liability company or other entity organized under the laws of any jurisdiction, the **Named Entity's** ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to elect, appoint, or exercise a majority control over such entity's directors, trustees, managers, members of the board of managers, natural person general partners or the functional equivalent; or
 - (2) with respect to any entity operated as a joint venture, the **Named Entity's** ownership, directly or indirectly, of exactly fifty percent (50%) of issued and outstanding voting securities and whose management and operation the **Named Entity** controls, pursuant to a written agreement or the by-laws, charter, operating agreement or similar documents of such entity, to elect, appoint or designate a majority of the management committee of such entity.
- I. Named Entity** shall mean the entity named in Item 1. of the Declarations.
- J. Non-Liability Coverage Event** shall mean a **Coverage Event** as that term is defined in each **Non-Liability Coverage Part**.
- K. Non-Liability Coverage Part** shall mean:
- (1) Coverage Part D (Commercial Crime Coverage), if designated as "Included in Policy" in Column 1 of Item 4. of the Declarations; or
 - (2) any other Coverage Part identified as a Non-Liability Coverage Part and added by endorsement.

- L. Policy Period** shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in Item 2. of the Declarations, or its earlier termination if applicable.
- M. Pollutant** shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, including any materials to be recycled, reconditioned or reclaimed.
- N. Related Wrongful Acts** shall mean all **Wrongful Acts** that have as a common nexus, or are causally connected by reason of any fact, circumstance, situation, event or decision.
- O. Single Claim** shall mean all **Claim(s)** involving the same **Wrongful Act** or **Related Wrongful Acts**.
- P. Subsidiary** shall mean:
- (1) any entity in which the **Named Entity** has **Management Control**:
 - (a) on or before the inception date of this Policy;
 - (b) subsequent to the inception date of this Policy by reason of being created or acquired by the **Named Entity** if the entity's total assets do not exceed fifty percent (50%) of the total consolidated assets of the **Named Entity** as of the inception date of this Policy;
 - (c) subsequent to the inception date of this Policy by reason of being created by the **Named Entity** or acquired by the **Named Entity** pursuant to Section XII.A. of the General Terms and Conditions of this Policy if such entity's total assets exceed fifty percent (50%) of the total consolidated assets of the **Named Entity** as of the inception date of this Policy and if the **Named Entity**, within ninety (90) days of such creation or acquisition, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**; or
 - (2) any nonprofit entity while such entity is controlled by the **Named Entity**.
- Q. Wrongful Act(s)** shall mean a **Wrongful Act** as that term is defined in each **Liability Coverage Part**.

Section III. Limit of Liability

- A.** Each **Liability Coverage Part** is offered with either a Shared Limit of Liability or a Separate Limit of Liability, as set forth in Item 4. of the Declarations, but never with both. With respect to each **Liability Coverage Part**,
- (1) if a Shared Limit of Liability is designated in Item 4. of the Declarations:
 - (a) the amount set forth in Column 2 of Item 4. of the Declarations shall be the Shared Limit of Liability for such **Liability Coverage Part** and any and all **Liability Coverage Parts** identified in Column 2 of Item 4. of the Declarations (Shared **Liability Coverage Parts**). Such Shared Limit of Liability shall be the **Insurer's** maximum aggregate liability for all **Loss** under any and all of the Shared **Liability Coverage Parts**, regardless of the number of **Claims** made against the **Insureds** under such Shared **Liability Coverage Parts**;

- (b) the **Insurer's** obligations under the Shared **Liability Coverage Parts** shall be deemed completely fulfilled and extinguished if the Shared Limit of Liability is exhausted by payment of **Loss** under any of the Shared **Liability Coverage Parts**, regardless of the time of payment or the number of **Claims**; and
 - (c) **Costs of Defense** shall be part of, and not in addition to, the Shared Limit of Liability and shall serve to reduce the Shared Limit of Liability. In the event any Shared Limit of Liability has been exhausted or extinguished by the payment of **Loss**, the **Insurer** shall not be obligated to pay any additional **Loss** under such Shared **Liability Coverage Parts** and, if applicable, the **Insurer's** duty to defend shall cease.
- (2) if a Separate Limit of Liability is set forth in Item 4. of the Declarations:
- (a) the amount set forth in Column 3 of Item 4. of the Declarations shall be the Separate Limit of Liability for such **Liability Coverage Part**. Such Separate Limit of Liability shall be the **Insurer's** maximum aggregate liability for all **Loss** under such **Liability Coverage Part**, regardless of the number of **Claims** made against the **Insureds** under such **Liability Coverage Part**; and
 - (b) **Costs of Defense** shall be part of, and not in addition to, the Separate Limit of Liability and shall serve to reduce the Separate Limit of Liability. In the event any applicable Separate Limit of Liability has been exhausted or extinguished by the payment of **Loss**, the **Insurer** shall not be obligated to pay any additional **Loss** under such **Liability Coverage Part** to which such Separate Limit of Liability applies, and, if applicable, the **Insurer's** duty to defend shall cease.

B. The **Non-Liability Coverage Parts** of this Policy are offered with either a Single Limit of Liability applicable in the aggregate to all Insuring Agreements or a Separate Limit of Liability applicable to each Insuring Agreement designated as "Insuring Agreement Included" as set forth in Coverage Schedule D. in Item 4. of the Declarations, but never with both.

- (1) If a Single Limit of Liability is designated in Coverage Schedule D. in Item 4. of the Declarations:
- (a) the **Insurer's** maximum aggregate liability for all loss under any and all Insuring Agreements shall be the Single Limit of Liability amount set forth in Item 4. of the Declarations;
 - (b) the **Insurer's** obligations under any and all Insuring Agreements shall be deemed completely fulfilled and extinguished if the Single Limit of Liability is exhausted by payment of loss, regardless of the time of payment or the number of **Non-Liability Coverage Events**; and
 - (c) the **Insurer** shall be liable to pay all covered loss in excess of the applicable Retention amount set forth in Coverage Schedule D. in Item 4. of the Declarations up to the Single Limit of Liability set forth in Item 4. of the Declarations.
- (2) If Separate Limits of Liability are indicated in Coverage Schedule D. in Item 4. of the Declarations:

- (a) the **Insurer's** maximum aggregate liability for all loss under each Insuring Agreement designated as "Insuring Agreement Included" in Coverage Schedule D. in Item 4. of the Declarations shall be the applicable Separate Limit of Liability amount set forth in Item 4. of the Declarations;
 - (b) the **Insurer's** obligations under each Insuring Agreement designated as "Insuring Agreement Included" in Coverage Schedule D. in Item 4. of the Declarations shall be deemed completely fulfilled and extinguished if the applicable Separate Limit of Liability is exhausted by payment of loss, regardless of the time of payment or the number of **Non-Liability Coverage Events**; and
 - (c) the **Insurer** shall be liable to pay all covered loss in excess of the applicable Retention amount set forth in Coverage Schedule D. in Item 4. of the Declarations up to the applicable Separate Limit of Liability set forth in Item 4. of the Declarations.
- C. Certain coverages extended by this Policy are subject to Sub-Limits of Liability as set forth in each **Liability Coverage Part** or **Non-Liability Coverage Part** or by endorsement to this Policy. Each such Sub-Limit of Liability shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 4. of the Declarations, unless expressly indicated otherwise.

Section IV. Retention

- A. The Retentions for the **Liability Coverage Parts** are set forth in Item 4. of the Declarations.
- B. The **Insurer** shall pay one hundred percent (100%) of the covered **Loss** from each **Claim** or **Single Claim** in excess of the applicable Retention, if any, up to the applicable Limit of Liability. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.
- C. Only one Retention shall be applicable to each **Claim** or **Single Claim**. In the event more than one Retention applies to the **Loss**, only the highest Retention shall be applied.

If and to the extent any covered **Loss** which is within any applicable Retention under this Policy is paid on behalf of the **Insured Persons** by any source, including another insurer pursuant to the terms and conditions of any Excess Difference in Conditions Side A policy which is specifically excess of this Policy, then such applicable Retention under this Policy shall be eroded by the amount so paid.

- D. For purposes of the application of the Retention, covered **Loss** applicable to **Claims** against **Insured Persons** includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the **Company** is unable to indemnify the **Insured Persons** solely by reason of its **Financial Insolvency**, the **Insurer** shall advance **Costs of Defense** incurred by the **Insured Persons** without first requiring payment of the Retention applicable to **Claims** made against **Insured Persons**. The certificate of incorporation, charter or other organizational documents of the **Company** or **Employee Benefit Plan**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** to the **Insured Persons** to the fullest extent permitted by law.

E. With respect solely to any **Non-Liability Coverage Parts**:

- (1) The **Insurer** will not pay for loss due to any one **Coverage Event** unless the amount of loss exceeds the Retention. The **Insurer** then will pay the amount of loss in excess of the Retention, up to the Limit of Liability. In the event more than one Retention could apply to loss, only the highest Retention shall be applied.
- (2) The Retention does not apply to loss sustained by any **Employee Benefit Plan**.

Section V. Allocation

A. Duty to Defend Coverage - Liability Coverage Parts

If the **Liability Coverage Parts** are subject to Duty-to-Defend coverage, then coverage shall apply as follows to any **Claim** made against any **Insured** that includes both covered and uncovered matters pursuant to this Policy or is made against others (including **Insureds** who are not extended coverage for such **Claim**):

- (1) one hundred percent (100%) of reasonable and necessary **Costs of Defense** incurred by the **Insurer** from such **Claim** will be considered covered **Loss**; and
- (2) all remaining amounts from such **Claim** will be allocated between covered **Loss** and uninsured amounts. The **Insureds** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation; provided, however, if there is no agreement on an allocation of **Loss**, the **Insurer** shall advance any **Loss** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined.

B. Indemnity Coverage - Liability Coverage Parts

If the **Liability Coverage Parts** are subject to Indemnity coverage or the **Insured** assumes the defense of a **Claim** pursuant to Section VI.A.(4), then as to any **Claim** made against any **Insured** that includes both covered and uncovered matters pursuant to this Policy or is made against others (including **Insureds** who are not extended coverage for such **Claim**) the **Insured** and the **Insurer** recognize there must be an allocation between covered **Loss** and uninsured amounts. The **Insureds** and **Insurer** shall use their best efforts to agree upon a fair and proper allocation; provided, however, if there is no agreement on an allocation of **Loss**, the **Insurer** shall advance **Costs of Defense** and any other **Loss** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined.

C. Non-Liability Coverage Parts

If there is a **Non-Liability Coverage Event** and such **Non-Liability Coverage Event** includes both covered and uncovered matters pursuant to this Policy, then the **Insured** and the **Insurer** recognize there must be an allocation between insured and uninsured loss. The **Insureds** and **Insurer** shall use their best efforts to agree upon a fair and proper allocation; provided, however, if there is no agreement on an allocation of loss, the **Insurer** shall pay loss which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined.

Section VI. Defense and Settlement - Liability Coverage Parts

A. Duty to Defend Coverage

If Item 3. of the Declarations indicates that the **Liability Coverage Parts** are issued subject to Duty-to-Defend coverage, then:

- (1) the **Insurer** shall assume the duty to defend any **Claim** covered under any **Liability Coverage Part**;
- (2) the **Insureds** shall at all times have the right to associate with the **Insurer** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply;
- (3) the **Insurer** has the right to settle any **Claim** with the consent of the **Insured**, such consent shall not be unreasonably withheld; and
- (4) the **Insureds** have the right to assume the defense of any **Claim** against them. The **Named Entity** shall exercise this option in writing on behalf of all **Insureds** within thirty (30) days of the reporting of the **Claim** to the **Insurer**. If this option is exercised, the **Insurer** shall not reassume the defense of the **Claim**, and the provisions of VI.B. shall apply.

B. Indemnity Coverage

If Item 3. of the Declarations indicates that the **Liability Coverage Parts** are issued subject to Indemnity coverage, or if the **Insured** assumes the defense of a **Claim** pursuant to paragraph A.(4) above, then:

- (1) it shall be the duty of the **Insured** and not the **Insurer** to defend **Claims** under any **Liability Coverage Part**;
- (2) the **Insurer** shall at all times have the right to associate with the **Insureds** in the investigation, defense or settlement of any **Claim** reasonably likely to result in payment under this Policy;
- (3) upon written request, the **Insurer** shall advance **Costs of Defense** in any **Claim** prior to its final disposition, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
 - (a) the appropriate Retention has been satisfied;
 - (b) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability set forth in Item 4. of the Declarations to the extent they are not in fact repaid;
 - (c) the **Insureds** and the **Insurer** have agreed upon the allocated portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if there is no agreement on an allocation of **Costs of Defense**, the **Insurer** shall advance **Costs of Defense** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
 - (d) in the event it is established that the **Insurer** has no liability under the Policy for such **Loss**, the **Insureds** will repay the **Insurer** upon demand all **Costs of Defense** advanced; and

C. Consent Obligations

The **Insureds** shall not retain counsel, incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insureds** shall provide the **Insurer** with all information and particulars it may reasonably request in order to reach a decision as to such consent. Any **Costs of Defense** incurred, or **Loss** resulting from any admission of liability or any offer or agreement to settle prior to the **Insurer's** consent shall not be covered.

Notwithstanding paragraphs A.3. and this section, if a **Claim** can be resolved in which all **Loss**, including **Costs of Defense**, does not exceed the applicable Retention, then the **Insurer's** consent shall not be required; provided, however, the **Insureds** agree to notify the **Insurer** of the disposition and provide the **Insurer** with all information and particulars it may reasonably request about the **Claim** and its disposition as soon as practicable and in no event later than the expiration of this Policy.

Section VII. Coordination Among Liability Coverage Parts and Priority of Payments

A. Except as provided in subsection B. below, in the event any **Claim** is covered under more than one **Liability Coverage Part**, any **Loss** payable by the **Insurer** as a result of such **Claim** shall be paid in the following order and subject to the applicable Limit of Liability:

- (1) first, under Coverage Part B (Employment Practices Liability Coverage), if such **Claim** falls within Coverage Part B; then
- (2) under Coverage Part A (Directors' and Officers' and Entity Liability Coverage), if such **Claim** does not fall within Coverage Part B but does fall within Coverage Part A; and then
- (3) under Coverage Part C (Fiduciary Liability Coverage), if such **Claim** falls within Coverage Part C.

If the Limit of Liability is not a Shared Limit of Liability, then the Aggregate Limit of Liability for each **Liability Coverage Part** shall be the maximum liability of the **Insurer** for all **Loss** arising from all **Claims** under each such **Liability Coverage Part**.

B. Notwithstanding subsection A. above, in the event of **Loss** as a result of a **Claim** payable by the **Insurer** under any **Liability Coverage Part** of this Policy, the **Insurer** shall:

- (1) first, pay on behalf of **Insured Persons** all **Loss** for which coverage is provided under Section I.A of Coverage Part A (including as extended by Section I.D. of Coverage Part A), Section I.F. of Coverage Part A and/or Section I. of Coverage Parts B and C; and then
- (2) only after payment of **Loss** has been made pursuant to subsection (1) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay such other **Loss** for which coverage is provided under any other applicable Insuring Agreements.

Section VIII. Notice

All notices to the **Insurer** with respect to any **Liability Coverage Part** or **Non-Liability Coverage Part** shall be emailed or mailed to the **Insurer** as indicated in Item 7. of the Declarations.

A. Specific Requirements for Submitting Notice under any Liability Coverage Part

- (1) With respect to any **Claim** under any **Liability Coverage Part**, the **Insureds** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of such **Claim** as soon as practicable after the General Counsel, or Risk Manager of the **Named Entity**, or person with equivalent responsibility becomes aware of such **Claim**, but in no event later than ninety (90) days after the end of the **Policy Period** or expiration date of the **Discovery Period** if applicable. However, the **Insured's** failure or decision not to give notice to the **Insurer** of a **Claim** that a **Liability Coverage Part** specifically permits the **Insured** to choose to report as a **Claim** under this Section VIII.A. shall not impair the **Insureds'** right to give notice of a subsequent **Claim** involving **Related Wrongful Acts** under this Policy or any renewal issued by the **Insurer** to the **Insured**.

- (2) If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Wrongful Act** and gives notice to the **Insurer** of:
 - (a) the specific **Wrongful Act**;
 - (b) the injury or damage which has or may result therefrom; and
 - (c) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Wrongful Act** which is subsequently made against the **Insured** shall be deemed to have been made at the time the **Insurer** received such written notice from the **Insured**.

- (3) All **Claims** constituting a **Single Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.
- (4) With respect to any **Claim** for which coverage is provided under any **Liability Coverage Part**, the **Insureds** shall give to the **Insurer** any such assistance, cooperation and information as the **Insurer** may reasonably require, including copies of reports, investigations, pleadings and other papers. The failure of any **Insured** to provide the **Insurer** with full cooperation and information it may reasonably request shall not impair the rights of any other **Insured** under this Policy.

B. Specific Requirements for Submitting Notice under Coverage Part D

- (1) Discovery of loss occurs when the **Insured** first becomes aware of facts which would cause a reasonable person to assume a loss covered by this insurance has been or will be incurred, even though the exact amount or details of loss may not then be known. Discovery also occurs when the **Insured** receives notice of an actual or potential claim alleging facts that, if true, would constitute a covered loss under this Coverage Part.
- (2) After discovery of a loss or a situation that may result in loss of, or loss from damage to **Money, Securities or Other Property**, the **Insureds** shall, as a condition precedent to their rights under this Policy:
 - (a) notify the **Insurer**, as soon as possible, not to exceed sixty (60) days after the date of discovery;
 - (b) give the **Insurer** a detailed, sworn proof of loss within one hundred twenty (120) days after the date of discovery;
 - (c) submit to examination under oath at the request of the **Insurer** and give the **Insurer** a signed statement of the **Insured's** answers; and
 - (d) cooperate with the **Insurer** in the investigation and settlement of any loss under Coverage Part D.
- (3) For loss covered under Insuring Agreement A, the **Insured** must:
 - (a) give the **Insurer** notice as soon as possible even if the loss falls entirely within the Retention; and
 - (b) upon the **Insurer's** request, give the **Insurer** a statement describing the loss.

Section IX. Cancellation or Non-Renewal

- A. This Policy may be canceled by the **Named Entity** at any time by written notice to the **Insurer**. If the **Named Entity** cancels this Policy, the **Insurer** shall refund any unearned premium on a pro rata basis. Payment of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.
- B. This Policy may only be canceled by the **Insurer** if the **Named Entity** does not pay the premium when due. The **Insurer** shall provide such Notice of Cancellation according to any applicable state requirements.
- C. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Named Entity** with no less than sixty (60) days advance notice thereof.

Section X. Proposal Forms

With respect to any **Liability Coverage Part**, it is agreed by the **Company** and the **Insured Persons** that the particulars and statements contained in the Proposal Form(s), any information provided therewith and any filing by the **Company** with the Securities and Exchange Commission within twelve (12) months prior to the date of the Proposal Form(s) (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Persons** that the statements in the Proposal Form(s), any information provided therewith and any filing by the **Company** with the Securities and Exchange Commission within twelve (12) months prior to the date of the Proposal Form(s) are their representations and this Policy is issued in reliance upon the truth of such representations. In the event any of the material statements, representations, or information in the Proposal Form(s), any material information provided therewith and/or any filing by the **Company** with the Securities and Exchange Commission within twelve (12) months prior to the date of the Proposal Form(s) (hereafter referred to as "Facts") are not true and accurate:

- A. there shall be no coverage for any **Insured Person** for any **Claim** if such **Insured Person** had knowledge, as of the inception date of the **Policy Period**, of any material Facts that were not truthfully and accurately disclosed in the Proposal Form(s) whether or not such **Insured Person** knew of such disclosure in the Proposal Form(s). The knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** for the purposes of determining if coverage is available;
- B. there shall be no coverage for the **Company** or any **Employee Benefit Plan**, to the extent that it indemnifies any **Insured Person** with knowledge as defined in paragraph A. above;
- C. there shall be no coverage for the **Company** or any **Employee Benefit Plan** for any **Claim** if either the person(s) who signed the Proposal Form(s) for this coverage or any **Insured Person** who is or was a past, present or future chief financial officer, or chief executive officer, of the **Named Entity**, had knowledge, as of the inception date of the **Policy Period**, of any material Facts that were not truthfully and accurately disclosed in the Proposal Form(s); and
- D. in no event shall this Policy be rescinded by the **Insurer**.

The terms and conditions contained in this section supersede any inconsistent terms and conditions contained in the Proposal Form.

Section XI. Action Against the Insurer

- A. With respect to any **Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until the **Insured's** obligation to pay has been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- B. With respect to any **Non-Liability Coverage Part**, no action shall be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy, and until ninety (90) days after the **Insured** has given the **Insurer** notice and has provided the **Insurer** with an affirmative proof of loss with full particulars and unless brought within two (2) years from the date the **Insured** discovers the loss.
- C. No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insureds** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such action.

Section XII. Merger or Acquisition

- A. If, during the **Policy Period**:
- (1) the **Named Entity** acquires **Management Control** of or acquires all or substantially all of the assets of an entity by merger or otherwise, and
 - (2) the total assets of such entity exceeds fifty percent (50%) of the total consolidated assets of the **Named Entity** as of the inception date of this Policy;

then written notice thereof shall be given to the **Insurer** as soon as practicable, but in no event later than ninety (90) days from the effective date of such acquisition, together with such information as the **Insurer** may request. Premium adjustment and coverage revisions shall be effected as may be required by the **Insurer**; provided, however, any such entity shall automatically be included as a **Subsidiary** for the first ninety (90) days after the effective date of such acquisition.

- B. There is no coverage for any **Wrongful Act** of any **Subsidiary** or the **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or the **Insured Persons** of such entity that merges with the **Company**, if such **Wrongful Act** occurs:
- (1) prior to the effective date such entity became a **Subsidiary** or was merged with the **Company**;
 - (2) subsequent to the effective date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
 - (3) subsequent to the date such entity ceased to be a **Subsidiary**.

- C. With respect to Coverage Part C (Fiduciary Liability Coverage), any **Employee Benefit Plan** (other than an Employee Stock Ownership Plan, as defined by **ERISA** or any related or similar state, local or foreign law or regulation) which, subsequent to the inception date of this Policy, is created or acquired by the **Company**, or merges with any **Employee Benefit Plan** which was afforded coverage under this Policy prior to such merger, shall be included as an **Insured** as of the effective date of creation, acquisition or merger unless the created, acquired, or merged **Employee Benefit Plan** is a **Pension Plan** whose assets exceed fifty percent (50%) of the assets of all **Pension Plans** of the **Company** as of the inception date of the Policy. In that event, if written notice thereof is given to the **Insurer** within ninety (90) days of such creation, acquisition, or merger, and the **Insured** agrees to any premium adjustments and/or coverage revision as may be required by the **Insurer**, then such **Pension Plan** shall be included as an **Insured** as of the date of creation, acquisition or merger. In any event, coverage shall only be afforded for **Wrongful Acts** actually or allegedly occurring after the date of such creation, acquisition or merger unless the **Insurer** agrees by written endorsement to provide coverage for **Wrongful Acts** actually or allegedly occurring at an earlier date.
- D. With respect to Coverage Part D (Commercial Crime Coverage), if through consolidation or merger with, or purchase or acquisition of assets or liabilities of, some other entity, any additional persons become **Employees**, or the **Insured** acquires the use and the control of any additional **Premises**:
- (1) the **Insured** must give the **Insurer** written notice and obtain the **Insurer's** written consent to extend this insurance to such additional **Employees** or **Premises**. The **Insurer** may condition its consent upon payment of an additional premium; but
 - (2) for the first sixty (60) days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, any insurance afforded for **Employees** or **Premises** also applies to these additional **Employees** or **Premises** for acts committed or events occurring within the sixty (60) day period.

Section XIII. Conversion to Run-Off Coverage

- A. If during the **Policy Period** an event occurs where: another person or entity, or a group of persons or entities acting in concert, gains control of the **Named Entity** through the ownership of more than fifty percent (50%) of the voting stock, securities or voting interests of the **Named Entity** or acquires all or substantially all of the assets of the **Named Entity**; or the **Named Entity's** responsibilities for the **Administration** of, or as a fiduciary of, any **Employee Benefit Plan** are assumed by another person or entity; then:
- (1) the **Named Entity** must give written notice of such event to the **Insurer** within ninety (90) days after the effective date of such event and provide the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary;
 - (2) this Policy shall only apply to any **Wrongful Acts** actually or allegedly committed on or before the effective date of such event, or any **Non-Liability Coverage Event** discovered before the effective date of such event, and shall be excess of any other insurance available;

- B. If, during the **Policy Period**, a change of control of the **Named Entity** occurs as specified in Section XIII.A. above, then there shall be no coverage under any **Non-Liability Coverage Part** for any **Non-Liability Coverage Event** discovered after the effective date of any such change in control of the **Named Entity**;
- C. the entire premium for this Policy shall be deemed earned as of the effective date of any event or change in control.

Section XIV. Coverage Extensions

A. Spousal and Domestic Partner Coverage

The coverage provided by this Policy shall also apply to the lawful spouse or “Domestic Partner” of an **Insured Person**, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**. The term “Domestic Partner” shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or any formal program established by the **Company**.

B. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

C. Worldwide Coverage

The coverage provided under this Policy shall apply worldwide except to the extent that:

- (1) a Coverage Part specifically provides otherwise;
- (2) any terms of this Policy conflict with the terms of any applicable laws, in which case such terms are hereby amended to conform to such laws; or
- (3) trade or economic sanctions or other laws or regulations prohibit the **Insurer** from providing insurance.

Section XV. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery. The **Insureds** shall execute all papers to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights to subrogation against an **Insured Person** under this Policy unless such **Insured Person**:

- A. has been convicted of a deliberate criminal act; or
- B. has been determined by a final, non-appealable adjudication adverse to the **Insured Person** to have committed a deliberate fraudulent act, or to have obtained any personal profit, financial advantage or remuneration to which such **Insured Person** was not legally entitled.

In the event the **Insurer** for any reason pays indemnifiable **Loss** on behalf of an **Insured Person**, the **Insurer** shall have the contractual right hereunder to recover from the **Company** the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Company** and shall be subrogated to rights of the **Insured Persons** hereunder.

The **Insurer** may also seek recourse against a fiduciary if Coverage Part C (Fiduciary Liability Coverage) was purchased and paid for by an **Employee Benefit Plan**.

Section XVI. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

Section XVII. Entire Agreement

This Policy (including the Declarations, Proposal Forms submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

Section XVIII. Named Entity Represents Insured

By acceptance of this Policy, the **Named Entity** shall be designated to act on behalf of the **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums and the receipt of any return premiums that may be due under this Policy.

Section XIX. Representative of the Insurer

Great American Insurance Group, Executive Liability Division, P.O. Box 66943, Chicago, Illinois 60666 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence; provided, however, notice of **Claims** and **Non-Liability Coverage Events** shall be given pursuant to Section VIII.

Section XX. Inconsistency with State Amendatory Endorsement

It is understood and agreed that, in the event there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, if permitted by law and the public policy of the state of domicile the **Insurer** shall apply those terms and conditions which are most favorable to the **Insured**.

Section XXI. Bankruptcy

The bankruptcy or insolvency of the **Company**, any **Subsidiary**, any **Employee Benefit Plan** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy. In the event of such bankruptcy or insolvency, the **Insureds** waive and release any automatic stay or injunction in such proceeding which may apply to this Policy or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insureds** to obtain relief from any such stay or injunction.

In witness whereof the **Insurer** has caused this Policy to be signed by its President and Secretary and countersigned, if required, on the Declarations page by a duly authorized agent of the **Insurer**.

GREAT AMERICAN INSURANCE GROUP



President



Secretary

Management Liability Solutions Insurance Policy

COVERAGE PART A
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SPECIMEN

**COVERAGE PART A
DIRECTORS' AND OFFICERS' AND ENTITY LIABILITY COVERAGE**

Section I. Insuring Agreements

A. Insured Persons Liability Coverage

The **Insurer** shall pay on behalf of any **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** first made against an **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, except for any **Loss** which the **Company** actually pays as indemnification.

B. Insured Persons Reimbursement Coverage

The **Insurer** shall pay on behalf of the **Company** all **Loss** which any **Insured Person** shall be legally obligated to pay as a result of a **Claim** first made against an **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, but only to the extent the **Company** is required or permitted by law to indemnify the **Insured Person**.

C. Company Coverage

The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** first made against the **Company** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**.

D. Outside Entity Coverage

Insuring Agreements I.A. and I.B. above are extended to cover all **Loss** which an **Insured Person** shall be legally obligated to pay as a result of a **Claim** first made against an **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act** arising out of their service as a director, officer, trustee, regent or governor of any **Outside Entity**; provided that coverage for such **Loss** is excess of any indemnification available to such **Insured Person** from the **Outside Entity** and any valid and collectible insurance including Directors' and Officers' Liability Insurance and/or Reimbursement Insurance provided for, to, by or on behalf of the **Outside Entity** or its directors, officers, trustees, regents or governors.

Section II. Definitions

A. Claim shall mean:

- (1) a written demand, other than a **Shareholder Derivative Demand**, for monetary or non-monetary relief;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by the filing of charges;
- (4) a formal administrative or regulatory proceeding commenced by the filing of charges, formal investigative order or similar document;
- (5) an arbitration, mediation or similar alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with the **Insurer's** written consent;

- (6) a civil, criminal, administrative, or regulatory investigation of any **Insured Person**, but only after such **Insured Person** is identified in writing by the investigating authority as a person against whom a proceeding described in paragraphs (2) through (5) above may be commenced, or in the case of an investigation by the Securities and Exchange Commission or a similar state or foreign government authority, after the service of a subpoena upon such **Insured Person**;
- (7) a civil, criminal, administrative, or regulatory investigation of the **Company**, but: (a) only after the **Company** is identified in writing by the investigating authority as a party against whom a proceeding described in paragraphs (2) through (5) above may be commenced, or in the case of an investigation by the Securities and Exchange Commission or a similar state or foreign government authority, after the service of a subpoena upon the **Company**; and (b) only while such investigation is also pending against an **Insured Person** pursuant to paragraph (6) above;
- (8) an official request for **Extradition** of any **Insured Persons** or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**;
- (9) a written request to toll any applicable statute of limitations related to a possible **Claim** as described in paragraphs (2) through (8) above, if the **Insured** chooses to report such written request to toll to the **Insurer** as a **Claim** under Section VIII.A. of the General Terms and Conditions; or
- (10) solely with respect to Insuring Agreement I.C., a **Shareholder Derivative Demand**.
- B. Employed Lawyer Legal Services Wrongful Act** shall mean any act, omission, error, misstatement, misleading statement, neglect or breach of duty in connection with legal services provided by any **Insured Person** as a lawyer, but only if such services are performed for the **Company** and in the **Insured Person's** capacity as an employee of the **Company**; provided, however, **Employed Lawyer Legal Services Wrongful Act** shall not include any act, omission, error, misstatement, misleading statement, neglect or breach of duty in connection with any legal services provided by such **Insured Person** for others for a fee.
- C. Employee** shall mean any natural person whose labor or service is engaged and directed by the **Company** in the ordinary course of the **Company's** business including past, present, future, part-time, seasonal, temporary or leased employees. However, **Employee** shall not mean independent contractors unless specifically included by written endorsement to this Policy.
- D. Extradition** shall mean any formal process by which an **Insured Person** located in any country is surrendered, arrested, or is sought to be surrendered, to any other country for trial or otherwise to answer any criminal accusation.
- E. Insured(s)** shall mean the **Company** and all **Insured Persons**.
- F. Insured Persons** shall mean
- (1) all persons who were, now are, or shall be directors, officers, management committee members, advisory committee members, members of the Board of Managers or natural person general partners of the **Company**; and
 - (2) all **Employees**.

In the event any **Company** is incorporated or domiciled outside the United States, **Insured Persons** shall include persons in equivalent positions in such foreign entities.

G. Investigative Costs shall mean reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the **Insured Persons**) incurred by the **Company** (including its board of directors or any committee of the board of directors of the **Company**) solely in connection with any investigation or evaluation of a **Shareholder Derivative Demand** required to determine whether it would be in the best interests of the **Company** to prosecute the claims alleged in the **Shareholder Derivative Demand**. **Investigative Costs** shall not include any costs, charges, fees or expenses incurred in any **Claim** related to any **Shareholder Derivative Demand** or in prosecuting any claims alleged in any **Shareholder Derivative Demand**.

H. Loss shall mean:

- (1) compensatory damages, punitive or exemplary damages, or the multiple portion of any multiplied damage award;
- (2) settlements;
- (3) judgments, including pre-judgment interest, post-judgment interest;
- (4) **Investigative Costs**;
- (5) **Costs of Defense**; and
- (6) **TCPA Statutory Damages**;

Provided, however, **Loss** shall not include:

- (7) taxes or criminal or civil fines or penalties imposed by law, except for:
 - (a) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the U.S. Foreign Corrupt Practices Act, 15 U.S.C. 78dd-2(g)(2)(B); or
 - (b) civil penalties assessed against any **Insured Person** pursuant to Section 7 of the UK Bribery Act (**UK Bribery Act Penalties**);
- (8) that portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of any securities representing the amount by which such price or consideration is effectively increased, but only with respect to coverage provided under Insuring Agreements I.B. and I.C.;
- (9) any amount allocated to uninsured amounts pursuant to Section V. of the General Terms and Conditions; or
- (10) any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

The enforceability of the foregoing coverage for punitive or exemplary damages or the multiplied portion of any multiplied damage award shall be governed by the applicable law which most favors coverage.

I. Outside Entity shall mean any non-profit or eleemosynary entity.

- J. Securities Claim** shall mean any **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission) made against an **Insured** alleging a violation of any federal, state, local or foreign securities law, regulation or rule, whether statutory or common law, which is:
- (1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities of the **Company**; or
 - (2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.
- K. Shareholder Derivative Demand** shall mean a written demand, by one or more shareholders of the **Company**, upon the board of directors of the **Company**, to bring a civil proceeding in a court of law against any **Insured Person** as defined within Section II.F.(1) for a **Wrongful Act**.
- L. TCPA Statutory Damages** shall mean any amounts imposed upon an **Insured** pursuant to the Telephone Consumer Protection Act of 1991 or any similar state or local law as such amounts relate to a **TCPA Wrongful Act**.
- M. TCPA Wrongful Act** shall mean any **Wrongful Act** involving any actual or alleged violation of the Telephone Consumer Protection Act of 1991 or any similar provisions of any federal, state or local laws or regulations pertaining to unsolicited or non-consensual communication, advertising or fundraising, through faxes, telephone calls, texting or any other medium.
- N. Wrongful Act(s)** shall mean:
- (1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect, breach of duty by any **Insured Persons** in their capacity as such, including any **Employed Lawyer Legal Services Wrongful Act**, or any matter claimed against any **Insured Persons** by reason of their status as **Insured Persons**;
 - (2) with respect only to Insuring Agreement I.C., any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Company**; or
 - (3) with respect only to Insuring Agreement I.D., any actual or alleged act, omission, error, misstatement, misleading statement, neglect, breach of duty by, or any matter claimed against, any **Insured Persons** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is with the consent or direction of the **Company**.

Section III. Exclusions

- A.** With respect to all Insuring Agreements, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:
- (1) brought about or contributed to by:
 - (a) any **Insureds** gaining any personal profit, financial advantage or remuneration to which they were not legally entitled; or
 - (b) the deliberately fraudulent or deliberately criminal acts of any **Insureds**;

provided, however, this exclusion: (i) shall not apply unless and until there is a final, non-appealable adjudication as to such conduct in the underlying proceeding; and (ii) shall not apply to **Loss** under Insuring Agreement I.B. For acts or omissions of an **Insured** which are considered a criminal violation in a Foreign Jurisdiction that are not considered a criminal violation in the United States of America or the imposition of a criminal fine or criminal sanction in such Foreign Jurisdiction will not trigger this exclusion. For purposes of this exclusion, Foreign Jurisdiction shall mean any jurisdiction, other than the United States of America or any of its territories or possession.

- (2) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given and accepted or **Claim** reported under any other policy that provided directors' and officers' liability coverage of which this Policy in whole or in part is a direct or indirect renewal or replacement;
- (3) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving the **Company** and/or any **Insured Persons** as of the date set forth in Column 5 of Item 4. of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- (4) for any actual or alleged:
 - (a) bodily injury, sickness, disease, or death of any person;
 - (b) damage to or destruction of any tangible property, including the loss of use thereof; or
 - (c) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;

provided, however, this exclusion shall not apply to any **Securities Claim**;

- (5) for any violation of the Employee Retirement Income Security Act of 1974 or any amendments thereto or any similar provisions of state, local or foreign statutory or common law, or any rules or regulations promulgated thereunder, involving an employee pension, welfare or benefit plan sponsored by the **Company** or for which the **Company** is a fiduciary;
- (6) by or on behalf of the **Company**, or any security holder of the **Company**, or any **Insured Person**; provided, however, this exclusion shall not apply to:
 - (a) any **Claim** brought by any **Insured Person** in the form of a cross-claim or third party claim for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy;
 - (b) any **Claim** brought by any security holder of the **Company**, whether directly or derivatively, if the security holder bringing such **Claim** is acting totally independent of, and without the solicitation, assistance, active participation or intervention of any past, present or future director, officer, management committee member, member of the Board of Managers or natural person General Partner of the **Company**, or the **Company**; provided, however, that whistleblower conduct protected under 18 U.S.C. 1514A(a) or any similar "whistleblower" protection provision of any applicable federal, state, local or foreign securities law, including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010:

- (i) by an **Insured Person**, other than a director, officer, management committee member, member of the Board of Managers or natural person general partner of the **Company**, shall not be considered “solicitation, assistance, active participation or intervention”; or
 - (ii) by an **Insured Person**, when alleged, certified or affirmed by any such security holder as providing likely support for such **Claim** due to such whistleblower conduct, shall not, in itself, demonstrate such security holder is not “acting totally independently of, and without the solicitation, assistance, active participation or intervention of any director, officer, management committee member, member of the Board of Managers or natural person General Partner of the **Company**, or the **Company**”;
 - (c) any **Claim** brought by the debtor in possession, creditor committee or receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Company**, if any, in the event of **Financial Insolvency**;
 - (d) any **Claim** brought by any **Insured Person** who has not served as a director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) or consultant for the **Company** for at least two (2) years prior to the commencement of such **Claim**, if such **Insured Person** brought such **Claim** totally independent of, and without the solicitation, assistance, active participation or intervention of any other **Insured Person** who also has not served in such capacity during the two (2) years prior to the commencement of such **Claim**; or
 - (e) any **Claim** brought and maintained by any **Insured Person** solely and entirely in a jurisdiction other than the United States of America and its territories and possessions, and subject to the substantive and procedural laws of such jurisdiction;
- (7) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual public offering of securities by the **Company** or the purchase or sale of such securities subsequent to the purported public offering; provided, however, this exclusion shall not apply to any **Claim** based upon or arising out of:
- (a) any purchase or sale of securities exempted under Section 3(b) of the Securities Act of 1933 if, within thirty (30) days after the effective date of the public offering, the **Company** provides written notice to the **Insurer** and provides any information relating to such securities as required by the **Insurer**;
 - (b) any public offering of securities (other than a public offering described in (a) above) and any purchase or sale of securities subsequent to such public offering if, within thirty (30) days prior to the public offering, the **Company** provides written notice of the proposed offering, provides any requested information relating to such securities as required by the **Insurer** and pays any additional premium when due. Upon request, the **Insurer** will provide a quote for this additional coverage which may include additional terms, conditions and limitations and additional premium. The **Company** is not obligated to purchase this additional coverage;

- (c) any **Wrongful Act**, including any **Wrongful Act** relating to “road show” presentations, which allegedly occurred at any time prior to 12:01 a.m. on the date of the initial public offering commencement (“IPO Effective Time”) which in any way relates to the preparation of the initial public offering (“IPO”), provided any **Claim** is made and reported to the **Insurer** pursuant to Section VIII.A. of the General Terms and Conditions of the Policy prior to the IPO Effective Time and the **Company** does not have other insurance that would apply; or
- (d) the failure of the **Company** to undertake or complete an IPO or other sale of securities of the **Company**;
- (8) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to any **Pollutant**; provided, however, this exclusion shall not apply to:
- (a) any **Securities Claim**; or
- (b) any coverage provided under Insuring Agreement I.A.;
- (9) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving employment-related **Wrongful Acts** by an **Employee** or independent contractor, including, but not limited to, wrongful dismissal, discharge or termination, misrepresentation, misclassification, wage and hour violations, harassment or discrimination; provided, however, this exclusion shall not apply to any **Securities Claim**;
- (10) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged discrimination or sexual harassment against or violation of the civil rights of any customer, client, supplier, distributor or independent contractor of the **Company**; provided, however, this exclusion shall not apply to any **Securities Claim**; or
- B.** With respect to Insuring Agreements I.A.-I.C., the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** for any **Wrongful Act** of any **Insured Persons** serving as a director, officer, trustee, regent or governor of any entity other than the **Company**, including but not limited to an **Outside Entity**, even if directed or requested to serve as a director, officer, trustee regent or governor of such entity.
- C.** With respect to Insuring Agreement I.C., the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Company**:
- (1) for any actual or alleged breach by the **Company** of an express or implied contract except and to the extent the **Company** would have been liable in the absence of such contract;
- (2) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving charges of price fixing, restraint of trade, monopolization or unfair trade, or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Antitrust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any rules or regulations promulgated under or in connection with such statutes, or any similar provision or any state, federal or local statutory law or common law;

- (3) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged plagiarism or infringement of copyright, patent, trademark or trade name, or misappropriation of ideas or trade secrets;
- (4) based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged defect, deficiency, inadequacy or dangerous condition of any of the **Company's** products, including warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of such products; or
- (5) for the performance of, or actual or alleged failure to perform, any services for others for a fee or other consideration, and caused by any act, error or omission; ~~provided, however,~~ this exclusion shall only apply to any **Claim** brought by or on behalf of any person or entity or affiliate of such person or entity for whom such services were, now are or shall be performed. This exclusion shall not apply to any **Securities Claim**.

D. With respect to Insuring Agreement I.D., the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (1) by or at the behest of the **Outside Entity**, or any affiliate of the **Outside Entity** or any director or officer of the **Outside Entity**; or
- (2) by any security holder of the **Outside Entity**, whether directly or derivatively, unless such security holder bringing such **Claim** is acting totally independent of, and totally without the solicitation of, or assistance of, or intervention of, any director or officer, or the **Outside Entity**, or any affiliate of the **Outside Entity**.

In determining the applicability of any of the above exclusions, the **Wrongful Acts** of any **Insured Person** shall not be imputed to any other **Insured Person** and only the **Wrongful Acts** of any past, present or future chief executive officer or chief financial officer of the **Named Entity** shall be imputed to the **Company**.

Section IV. Conditions

A. Other Insurance

If any **Loss** under this Coverage Part is insured in whole or in part by another valid and collectible policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), including any Directors' and Officers' Liability Insurance and/or Reimbursement Insurance, provided for, to, by or on behalf of the **Outside Entity** or its directors, officers, trustees, regents or governors, this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise.

B. Sub-Limits of Liability

The following D&O Coverage Sub-Limits of Liability (if included, respective amounts are set forth in Item 4 of the Declarations) shall be the **Insurer's** maximum aggregate liability for each coverage and, pursuant to Section III.C. of the General Terms and Conditions, such Sub-Limits shall also be subject to the applicable Limit of Liability set forth in Item 4 of the Declarations.:

- (1) all **Investigative Costs** as a result of all **Shareholder Derivative Demands**;
- (2) all **Loss** as a result of all **Claims** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged **TCPA Wrongful Acts**; and
- (3) all **UK Bribery Act Penalties**.

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**COVERAGE PART B.
EMPLOYMENT PRACTICES LIABILITY COVERAGE**

Section I. Insuring Agreements

- A. The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall be legally obligated to pay as a result of a **Claim** first made against an **Insured** during the **Policy Period** or the **Discovery Period** for an **Employment Practices Wrongful Act**.
- B. The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall be legally obligated to pay as a result of a **Claim** first made against an **Insured** during the **Policy Period** or the **Discovery Period** for a **Third Party Wrongful Act**.

Section II. Definitions

A. **Claim** shall mean:

- (1) a written demand for monetary or non-monetary relief;
- (2) a civil proceeding commenced by the filing of a complaint or similar pleading;
- (3) a criminal proceeding commenced by the filing of charges;
- (4) a formal administrative or regulatory proceeding commenced by the filing of charges, formal investigative order, service of summons or similar document;
- (5) an arbitration, mediation or similar alternative dispute resolution proceeding against an **Insured** if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding with the **Insurer's** written consent;
- (6) an administrative, or regulatory investigation of any **Insured** commenced by the filing of notice of charges or similar document, including any proceeding initiated against any **Insured** before the Equal Employment Opportunity Commission ("EEOC") or any similar governmental body; or
- (7) a written request to toll any applicable statute of limitations related to a possible **Claim** as described in paragraphs (1) through (6) above, if the **Insured** chooses to report such written request to toll to the **Insurer** as a **Claim** under Section VIII.A. of the General Terms and Conditions;

provided, however, **Claim** shall not include any labor or grievance proceeding pursuant to the terms and conditions of a collective bargaining agreement.

- B. **Claimant** shall mean any **Employee** or prospective **Employee** of the **Company**, any **Independent Contractor**, and any governmental agency acting on behalf of an **Employee** or prospective **Employee**.
- C. **Employee** shall mean any natural person whose labor or service is engaged and directed by the **Company** in the ordinary course of the **Company's** business including past, present, future, part-time, seasonal, temporary or leased employees, volunteers, interns and students. **Employee** shall not include any **Independent Contractor**.
- D. **Employment Practices Wrongful Act** shall mean any of the following acts by any **Insured** but only if alleged by or on behalf of a **Claimant**:

- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive, or breach of an express or implied employment contract;
- (2) employment related misrepresentation;
- (3) workplace harassment of any kind;
- (4) discrimination;
- (5) wrongful failure to employ or promote;
- (6) wrongful discipline;
- (7) wrongful demotion or deprivation of career opportunity, including defamatory statements made in connection with an employee reference;
- (8) failure to grant tenure;
- (9) negligent evaluation;
- (10) failure to provide and enforce adequate workplace or employment policies and procedures;
- (11) wrongful retaliation;
- (12) employment related libel, slander, defamation, or invasion of privacy;
- (13) workplace bullying;
- (14) sexual harassment whether “quid pro quo”, hostile work environment or otherwise;
- (15) negligent supervision, negligent training, negligent hiring or negligent retention; or
- (16) breach of any actual or alleged **Independent Contractor Agreement**.

E. Independent Contractor shall mean any natural person, other than an **Employee**, who performs services on behalf of the **Company** pursuant to an **Independent Contractor Agreement**.

F. Independent Contractor Agreement shall mean any express contract or agreement between the **Company** and any **Independent Contractor**, or any entity on behalf of an **Independent Contractor**, governing the **Company**'s engagement of such **Independent Contractor**.

G. Insured(s) shall mean the **Company** and all **Insured Persons**.

H. Insured Persons shall mean:

- (1) all persons who were, now are, or shall be directors, officers, management committee members, members of the board of managers or natural person general partners of the **Company**;
- (2) all **Employees**; and
- (3) **Independent Contractors**, but only if the **Company** provides indemnification to such **Independent Contractors** in the same manner as provided to any **Employee** of the **Company**.

I. Loss shall mean:

- (1) judgments, including pre-judgment interest, post-judgment interest;
- (2) compensatory damages, punitive or exemplary damages, or the multiple portion of any multiplied damage award;
- (3) settlements;
- (4) liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Family and Medical Leave Act or the Equal Pay Act;
- (5) back pay, front pay, **Claimant's** attorney's fees awarded by a court against an **Insured** or agreed to by the **Insurer** in connection with a settlement (but only if such **Claimant's** attorney's fees are agreed to in writing by the **Insurer** at the time of or after a final settlement); or
- (6) **Costs of Defense;**

provided, however, **Loss** shall not include:

- (7) taxes or criminal or civil fines or penalties imposed by law; or
- (8) any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

The enforceability of the foregoing coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award shall be governed by the applicable law which most favors coverage.

J. Third Party Wrongful Act shall mean any actual or alleged discrimination, sexual harassment or violation of any person's civil rights related to such discrimination or sexual harassment by any **Insured** but only if alleged by a customer, client, supplier, distributor or other person who is not a **Claimant**.

K. Wrongful Act(s) shall mean any **Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

Section III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. brought about or contributed to by:

- (1) any **Insured** gaining any personal profit, financial advantage or remuneration to which they were not legally entitled; or
- (2) the deliberately fraudulent or deliberately criminal acts of any **Insureds**;

provided, however, this exclusion shall not apply unless and until there is a final, non-appealable adjudication as to such conduct in the underlying proceeding. For acts or omissions of an **Insured** which are considered a criminal violation in a Foreign Jurisdiction that are not considered a criminal violation in the United States of America or the imposition of a criminal fine or criminal sanction in such Foreign Jurisdiction will not trigger this exclusion. For purposes of this exclusion, Foreign Jurisdiction shall mean any jurisdiction, other than the United States of America or any of its territories or possession.

- B.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given and accepted or **Claim** reported under any other policy that provided employment practices liability coverage of which this Policy in whole or in part is a direct or indirect renewal or replacement;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving any **Insured**, including any proceeding brought by or before the EEOC or any similar state, local or foreign agency, as of the date set forth in Item 4. of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- D.** for any actual or alleged:
- (1) bodily injury, sickness, disease, or death of any person with the exception of mental anguish or emotional distress;
 - (2) damage to or destruction of any tangible property, including the loss of use thereof; or
 - (3) non-employment related invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander;
- E.** for any **Wrongful Act** of any **Insured Persons** in their capacity as a director, officer, trustee, regent or governor of any entity other than the **Company**, even if directed or requested to serve as a director, officer, trustee or governor of such entity;
- F.** for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (except Section 510), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any amendments to any of these acts or any rules or regulations promulgated under these acts or any similar provisions of any federal, state, local or foreign law; provided, however, this exclusion shall not apply to any **Claim** alleging retaliation for the exercise of any rights under such laws;
- G.** for any actual or alleged violation of the Fair Labor Standards Act (except the Equal Pay Act), any amendments thereto or any rules or regulations promulgated thereunder or any similar provisions of any federal, state, local or foreign law, including the California Labor Code; provided, however, this exclusion shall not apply to any **Claim** alleging retaliation for the exercise of any rights under such laws;
- H.** other than **Costs of Defense**:
- (1) for any obligation of the **Company** as a result of a **Claim** seeking relief or redress in any form other than money damages, including but not limited to any obligation of the **Company** to modify any building or property; or
 - (2) for any obligation of the **Company** to pay:
 - (a) salary, wages or other employment-related benefits to any **Employee** pursuant to an express contract unless such obligation would exist absent the contract;
 - (b) compensation earned by an **Employee** in the course of employment but not paid by the **Company** including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, however, this exclusion shall not apply to front pay and back pay; or
 - (c) any money, benefits or other consideration to any **Independent Contractor** pursuant to any **Independent Contractor Agreement**;

- I. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to any **Pollutant**; provided, however, this exclusion shall not apply to any **Claim** for retaliation.

In determining the applicability of any of the above exclusions, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured**.

Section IV. Conditions

A. Other Insurance

- (1) For any **Claim** under Insuring Agreement I.A. of this Coverage Part that is also covered under any other valid and collectible insurance not written expressly excess of this Policy, then this Policy shall be primary with respect to such **Claim**. However, if such **Claim** is made against an **Insured Person** who is an **Independent Contractor**, leased or temporary employee, then this coverage shall be specifically excess of any such other insurance whether such insurance is stated to be primary, contributory, excess, contingent or otherwise.
- (2) For any **Claim** under Insuring Agreement I.B. of this Coverage Part that is also covered under any other valid and collectible insurance not written expressly excess of this Policy, then this Policy shall be excess of and shall not contribute with such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

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**COVERAGE PART C
FIDUCIARY LIABILITY COVERAGE**

Section I. Insuring Agreements

- A.** The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** shall be legally obligated to pay as a result of:
- (1) a **Claim** other than a **Fiduciary Pre-Claim Investigation** first made against an **Insured** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act** by an **Insured** or any person for whom the **Insured** is legally responsible; or
 - (2) any **Fiduciary Pre-Claim Investigation** first made against an **Insured** during the **Policy Period**.
- B.** The **Insurer** shall reimburse the **Insured** for **Voluntary Compliance Program Payments** incurred by the **Insured**, provided that the circumstances giving rise to the **Insured's** participation in the **Voluntary Compliance Program** are first discovered and reported to the **Insurer** during the **Policy Period** or **Discovery Period**, subject to the Sub-Limit of **Liability** set forth in Item 4. of the Declarations for all **Voluntary Compliance Program Payments** in the aggregate, which Sub-Limit of **Liability** shall be part of, and not in addition to, the applicable **Limit of Liability** stated in Item 4. of the Declarations.

Section II. Definitions

- A. Administration** shall mean any of the following activities:
- (1) giving employees of the **Company**, plan participants or beneficiaries any counsel or advice;
 - (2) determining or calculating **Benefits**;
 - (3) handling of records;
 - (4) preparing and distributing and/or filing required notices or documents; or
 - (5) enrolling, terminating or canceling the participation of employees of the **Company**, participants or beneficiaries.
- B. Benefits** shall mean any obligation pursuant to an **Employee Benefit Plan** or **Mandated Benefits Program** which is a payment of money or which conveys any property right, privilege, option, or perquisite to a plan participant and/or beneficiary; provided, however, **Benefits** shall not mean loss to an **Employee Benefit Plan** or loss in the actual accounts of participants in an **Employee Benefit Plan** by reason of a change in value of the investments held by that **Employee Benefit Plan**, including, but not limited to, employer securities, as defined by **ERISA**, whether the amounts sought in any **Claim** have been characterized as benefits or deemed by a court to be benefits.
- C. Civil Penalties** shall mean amounts imposed upon any **Insured** solely in connection with any **Employee Benefit Plan**:
- (1) for any violation of the privacy and/or security provisions of the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”) (“**HIPAA Penalties**”);
 - (2) under Section 502(c) of **ERISA**, including, but not limited to, the civil penalties created pursuant to the Pension Protection Act of 2006, as amended (“**PPA**”) (“**502(c) Penalties**”);

- (3) under the Patient Protection and Affordable Care Act, as amended (“PPACA”), including any rules or regulations promulgated thereunder (“PPACA Penalties”); however, PPACA Penalties shall not include civil money penalties imposed on any **Insured** pursuant to Section 4980H of the Internal Revenue Code (“IRC”);
- (4) under IRC Section 4975; provided, however, payment of such penalties shall be limited to a maximum of fifteen percent (15%) of the amount involved as defined in IRC Section 4975(f)(4)(A);
- (5) under 502(i) of **ERISA**; provided, however, payment of such penalties shall be limited to a maximum of five percent (5%) of the amount involved as defined in IRC Section 4975(f)(4)(A); or
- (6) under 502(l) of **ERISA**; provided, however, payment of such penalties shall be limited to a maximum of twenty percent (20%) of the applicable recovery amount as defined in Section 502(l)(2) of **ERISA** or a lesser amount if the amount is reduced by Section 502(l)(3) or 502(l)(4) of **ERISA**;

provided, however, amounts in (1) through (3) above shall be subject to the respective Sub-Limits of Liability set forth in Item 4. of the Declarations, which such Sub-Limits of Liability shall be part of, and not in addition to, the applicable Limit of Liability set forth in Item 4. of the Declarations.

D. Claim shall mean:

- (1) a written demand, other than a claim for **Benefits** pursuant to an **Employee Benefit Plan**, for monetary or non-monetary relief;
- (2) a written request that an **Insured** participate in an alternative dispute resolution proceeding;
- (3) a civil proceeding commenced by the service of a complaint or similar pleading;
- (4) a criminal proceeding commenced by the filing of charges;
- (5) a fact-finding investigation by the United States Department of Labor or the Pension Benefit Guaranty Corporation or any other similar governmental agency located outside of the United States of America which includes any allegation of a **Wrongful Act**;
- (6) an agency or regulatory adjudicative proceeding to which an **Insured** is subject;
- (7) a written request to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory or alternative dispute resolution proceeding, if the **Insured** chooses to report such written request to toll to the **Insurer** as a **Claim** under Section VIII.A. of the General Terms and Conditions;
- (8) an appeal by a plan participant or beneficiary pursuant to the United States Department of Labor’s reasonable claims procedures set forth in 29 CFR 2560.503-1(h) following an adverse benefits determination by an **Insured** if the **Insured** chooses to report such appeal to the **Insurer** as a **Claim** under Section VIII.A. of the General Terms and Conditions; or
- (9) a **Fiduciary Pre-Claim Investigation**, if the **Insured** chooses to report such **Fiduciary Pre-Claim Investigation** to the **Insurer** as a **Claim** under Section VIII.A. of the General Terms and Conditions.

E. Employee Benefit Law shall mean:

- (1) **ERISA**;
- (2) any state or local statute or common law to which an **Employee Benefit Plan** is subject and which is not otherwise preempted by **ERISA**;
- (3) any foreign statute or common law anywhere in the world which is similar to **ERISA** and to which an **Employee Benefit Plan** is subject; or
- (4) any rules and regulations promulgated under (1) through (3) above.

Employee Benefit Law shall not mean any law concerning workers' compensation, unemployment insurance, social security or disability benefits.

F. Employee Benefit Plan shall mean:

- (1) **Pension Plan**;
- (2) **Welfare Plan**;
- (3) **Foreign Plan**; or
- (4) any other plan, fund, trust or program not subject to Title I of **ERISA**

which was in existence on or before the inception of the **Policy Period** and which is sponsored solely by the **Company**.

Employee Benefit Plan shall not mean any **Mandated Benefit Program**, voluntary employee benefits association, multiple employer welfare arrangement, multiple employer plan, or multiemployer plan.

G. ERISA shall mean the Employee Retirement Income Security Act of 1974 and any amendments thereto, including but not limited to those made pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), HIPAA, PPA and PPACA.

H. Fiduciary Pre-Claim Investigation shall mean a fact-finding investigation by the United States Department of Labor or the Pension Benefit Guaranty Corporation or any other similar governmental agency located outside of the United States of America which does not include any allegation of a **Wrongful Act**.

I. Foreign Plan shall mean any plan, fund, trust or program maintained in a jurisdiction outside the United States of America primarily for nonresident aliens.

J. Insured(s) shall mean:

- (1) the **Company**;
- (2) any **Employee Benefit Plan**; or
- (3) any **Insured Person**;

provided, however, **Insured** shall not include any multiemployer plan, as defined in **ERISA**, in which the **Company** is a participating employer, other participating insurers in any such plan, or the fiduciaries or administrators of any such plan.

K. Insured Person shall mean any natural person who was, now is or shall be a director, officer, partner, trustee or employee of the **Company** or any **Employee Benefit Plan**.

L. Loss shall mean:

- (1) compensatory damages, punitive or exemplary damages, or the multiple portion of any multiplied damage award;
- (2) settlements;
- (3) judgments, including pre-judgment interest, post-judgment interest;
- (4) **Costs of Defense**; and
- (5) **Civil Penalties**;

Loss shall not include:

- (6) **Benefits**, contributions, or that portion of any settlement or award equal to the value of such **Benefits** or contributions, unless and to the extent the recovery of such **Benefits** or contributions is the result of a covered **Wrongful Act** and becomes payable as a personal obligation of an **Insured Person**;
- (7) taxes, tax penalties, civil fines or penalties other than **Civil Penalties** or **Voluntary Compliance Program Payments**;
- (8) salaries, wages, tips, commissions or any other form of compensation (including but not limited to stock options); or
- (9) any amount which may be deemed uninsurable under the law pursuant to which this Policy is construed.

The enforceability of the foregoing coverage for punitive or exemplary damages, the multiple portion of any multiplied damage award or **Civil Penalties** shall be governed by the applicable law which most favors coverage.

M. Managed Care Services shall mean the administration or management of a **Welfare Plan** utilizing cost control mechanisms, including, but not limited to:

- (1) case, disease, or pharmacy management;
- (2) the use of a preferred provider network or health maintenance organization; or
- (3) utilization review.

N. Mandated Benefit Program shall mean any government-mandated insurance program for workers' compensation, unemployment, social security, or disability benefits for employees of the **Company**, including programs governed by COBRA, and any health insurance available through any health care exchange established to facilitate the purchase of health insurance in accordance with PPACA.

O. Pension Plan shall mean any employee pension benefit plan, including an Employee Stock Ownership Plan, as defined by **ERISA**.

P. Voluntary Compliance Program Payments shall mean fines, penalties, sanctions and reasonable and necessary costs and expenses incurred pursuant to a **Voluntary Compliance Program**. However, **Voluntary Compliance Program Payments** shall not include salaries, wages, overhead and **Benefits** accruing to any **Insured**.

Q. Voluntary Compliance Program shall mean any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Department of Labor, the Internal Revenue Service, Pension Benefit Guaranty Corporation and any other similar governmental authorities located outside the United States of America. Such compliance resolution programs include, but are not limited to:

- (1) Employee Plans Compliance Resolution System;
- (2) Delinquent Filer Voluntary Compliance Program;
- (3) Voluntary Fiduciary Correction Program;
- (4) Self Correction Program;
- (5) Premium Compliance Evaluation Program; or
- (6) Participant Notice Voluntary Correction Program.

R. Welfare Plan shall mean any employee welfare benefit plan as defined in **ERISA**.

S. Wrongful Act(s) shall mean:

- (1) any actual or alleged violation of any of the responsibilities, obligations or duties imposed upon fiduciaries of an **Employee Benefit Plan** by **Employee Benefit Law** including, but not limited to, the actual or alleged negligent selection or failure to monitor any third-party service provider such as an investment manager or provider of **Managed Care Services** for any **Employee Benefit Plan**;
- (2) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty in **Administration** related to any **Employee Benefit Plan** or **Mandated Benefit Program**;
- (3) any actual or alleged violation of Section 301 of the Labor Management Relations Act by an **Insured** with respect to any collectively bargained contract in connection with an **Employee Benefit Plan**;
- (4) any actual or alleged act, omission, error, misstatement, misleading statement, neglect, or breach of duty in the **Administration** of any multiemployer plan, as defined in **ERISA**, in which the **Company** is a participating employer,
- (5) any other matter claimed against any **Insured** solely by reason of their status as a fiduciary of any **Employee Benefit Plan**; or
- (6) any other matter claimed against any **Insured** solely by reason of their status as settlor of any **Employee Benefit Plan**.

Section III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. brought about or contributed to by:

- (1) any **Insured** gaining any personal profit, financial advantage or remuneration to which they were not legally entitled;
- (2) the deliberately fraudulent or deliberately criminal acts of any **Insureds**; or

- (3) any **Insured** or person for whose actions the **Insured** is legally responsible knowingly or willfully violating any statute, rule or law including but not limited to an **Employee Benefit Law**;

provided, however, this exclusion shall not apply unless and until there is a final, non-appealable adjudication as to such conduct in the underlying proceeding. For acts or omissions of an **Insured** which are considered a criminal violation in a Foreign Jurisdiction that are not considered a criminal violation in the United States of America or the imposition of a criminal fine or criminal sanction in such Foreign Jurisdiction will not trigger this exclusion. For purposes of this exclusion, Foreign Jurisdiction shall mean any jurisdiction, other than the United States of America or any of its territories or possession.

- B.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given and accepted or **Claim** reported under any other policy which provided any coverage for fiduciary liability and of which this Policy in whole or in part is a direct or indirect renewal or replacement;
- C.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative, arbitration or investigative proceeding involving any **Insured** as of the date set forth in Item 4. of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
- D.** for any actual or alleged:
- (1) damage to or destruction of any tangible property, including the loss of use thereof; or
 - (2) bodily injury, sickness, disease, death, mental anguish, or emotional distress of any person;
- provided, however, part (2) of this exclusion shall not apply to any **Claim** involving the denial or delay of **Benefits** under a **Welfare Plan**;
- E.** for any **Wrongful Act** of any **Employee Benefit Plan** or **Insured Persons** of such **Employee Benefit Plan** occurring:
- (1) prior to the date such plan became an **Employee Benefit Plan** of the **Company**; or
 - (2) subsequent to the date such plan became an **Employee Benefit Plan** of the **Company**, which together with a **Wrongful Act** occurring prior to such date, would constitute **Related Wrongful Acts**;
- F.** for any **Wrongful Act** involving any **Employee Benefit Plan** identified below which occurs or is alleged to have occurred subsequent to the date:
- (1) the **Company's** or **Insured Person's** responsibilities for the **Administration** of, or as fiduciary of, an **Employment Benefit Plan** are assumed by another person or entity;
 - (2) of asset transfer in the event an **Employee Benefit Plan** is merged or consolidated with another plan;
 - (3) the residual assets of a **Pension Plan** terminated pursuant to Section 403(d)(1) of **ERISA** are distributed, or, in the event of no such residual assets being available, the date of the final distribution of plan assets;
 - (4) the assets of a **Welfare Plan** are distributed pursuant to Section 403(d)(2) of **ERISA**;

- (5) of final distribution of assets when a **Pension Plan** is terminated pursuant to Section 4041 of **ERISA** and no proceedings are initiated pursuant to Section 4042 of **ERISA**;
 - (6) of appointment of a Trustee pursuant to Section 4042 of **ERISA**; or
 - (7) an **Employee Benefit Plan** is otherwise spun-off, merged, or terminated;
- G.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to any **Pollutant**.

In determining the applicability of any of the above exclusions, the **Wrongful Acts** of an **Insured** shall not be imputed to any other **Insured**.

Section IV. Conditions

A. Disproven Allegations

In the event the **Insurer** makes any payment for **Loss** in connection with any **Claim** and it is subsequently established that the **Wrongful Act(s)** are disproven such that the **Claim** is outside the scope of coverage under this Policy because:

- (1) an **Insured Person** who was alleged to be a fiduciary of an **Employee Benefit Plan** was not a fiduciary; and/or
 - (2) a plan that is alleged to be an **Employee Benefit Plan** was not an **Employee Benefit Plan**;
- the **Insurer** shall not seek recovery of such **Loss**.

B. Other Insurance

If any **Loss** under this Coverage Part is insured in whole or in part by another valid and collectible policy or policies (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise. This Policy is specifically excess of, and shall not contribute with, any insurance policy for errors and omissions or fiduciary liability held by any **Insured Person** serving as trustee of any Employee Stock Ownership Plan, as defined by **ERISA**, sponsored by the **Company**;

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**COVERAGE PART D
COMMERCIAL CRIME COVERAGE**

Section I. Insuring Agreements

In return for the payment of the premium, and subject to the Declarations, Insuring Agreements, Definitions, Exclusions, Conditions and other terms of this Policy, the **Insurer** will pay for loss that the **Insured** sustains resulting directly from acts committed or events occurring at any time and discovered by the **Insured** during the **Policy Period**. Coverage is provided under this Coverage Part D only for those Insuring Agreements designated as "Insuring Agreement Included" in Coverage Schedule D. in Item 4. of the Declarations.

A. Fidelity

(1) Employee Theft

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

- (a) cause the **Insured** to sustain loss; and
- (b) obtain financial benefit (other than employee benefits earned in the normal course of employment, including salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
 - (i) the **Employee**; or
 - (ii) any person or entity intended by the **Employee** to receive that benefit.

(2) Employee Theft of Client Property

The **Insurer** will pay for loss of, and loss from damage to **Money, Securities and Other Property** that belongs to a **Client** of the **Insured**, resulting directly from dishonest acts committed by an identified **Employee**, acting alone or in collusion with other persons, with the manifest intent to:

- (a) cause a **Client** to sustain loss; and
- (b) obtain financial benefit (other than employee benefits earned in the normal course of employment, including salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
 - (i) the **Employee**; or
 - (ii) any person or entity, other than the **Insured**, intended by the **Employee** to receive that benefit.

(3) Employee Theft of Employee Benefit Plan Property

The **Insurer** will pay for loss of, and loss from damage to **Money, Securities and Other Property** that belongs to an **Employee Benefit Plan**, resulting directly from dishonest acts committed by an identified **Fiduciary**, acting alone or in collusion with other persons, with the manifest intent to:

- (a) cause an **Employee Benefit Plan** to sustain loss; and
- (b) obtain financial benefit (other than employee benefits earned in the normal course of employment, including salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
 - (i) the **Fiduciary**; or
 - (ii) any person or entity, other than the **Insured**, intended by the **Fiduciary** to receive that benefit.

B. Forgery or Alteration

- (1) The **Insurer** will pay for loss resulting directly from **Forgery** or alteration of checks, drafts, promissory notes, or similar written promises, orders, or directions to pay a sum certain in **Money** that are:
 - (a) made or drawn by or drawn upon the **Insured**;
 - (b) made or drawn by one acting as the **Insured's** agent;or that are purported to have been so made or drawn.
- (2) If the **Insured** is sued for refusing to pay any instrument covered in paragraph (1)(a) above on the basis that it has been forged or altered, and the **Insured** has the **Insurer's** written consent to defend against the suit, the **Insurer** will pay for any reasonable legal expenses incurred and paid in that defense. The amount the **Insurer** will pay is in addition to the Limit of Liability applicable to this Insuring Agreement.

C. Inside the Premises

- (1) The **Insurer** will pay for loss of **Money** and **Securities** inside the **Premises** or **Banking Premises** resulting directly from **Theft**, disappearance or destruction.
- (2) The **Insurer** will pay for loss of, and loss from damage to **Other Property**:
 - (a) inside the **Premises** resulting directly from an actual or attempted robbery of a **Custodian**; or
 - (b) inside the **Premises** in a safe or vault, resulting directly from an actual or attempted **Safe Burglary**.
- (3) The **Insurer** will pay for:
 - (a) loss from damage to the **Premises** or its exterior; or
 - (b) loss of, and loss from damage to, a locked safe, vault, cash register, cash box or cash drawer located in the **Premises**;resulting directly from an actual or attempted **Theft, Robbery** or **Safe Burglary**, if the **Insured** is the owner of the **Premises** or is liable for damage to it.

D. Outside the Premises

The **Insurer** will pay for loss of, and loss from damage to, **Money, Securities** and **Other Property** outside the **Premises** while in the care and custody of a **Messenger** or armored motor vehicle company:

- (1) for **Money** and **Securities** resulting from **Theft**, disappearance or destruction; and
- (2) for **Other Property** resulting from an actual or attempted **Robbery**.

E. Computer Fraud

The **Insurer** will pay for loss of, and loss from damage to, **Money**, **Securities** and **Other Property** resulting directly from the use of any computer to fraudulently cause a transfer of such property from inside the **Premises** or **Banking Premises**:

- (1) to a person (other than a **Messenger**) outside those **Premises**; or
- (2) to a place outside those **Premises**.

F. Money Orders and Counterfeit Paper Currency

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

- (1) **Money** Orders issued by any post office, express company or bank in the United States or Canada that are not paid upon presentation; or
- (2) **Counterfeit** United States or Canadian paper currency;

that is acquired during the regular course of business.

G. Funds Transfer Fraud Coverage

The **Insurer** will pay for loss of **Funds** resulting directly from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from a **Transfer Account**.

H. Claim Expense

The **Insurer** will pay for fifty percent (50%) of reasonable **Claim Expenses** that the **Insured** sustained in establishing the existence and amount of any direct loss in excess of the applicable retention and covered under any Insuring Agreement of this Coverage Part D (Commercial Crime Coverage). **Claim Expenses** payable to the **Insured** will be paid to the **Insured** at the same time as the payment of the valid and collectible loss under the Insuring Agreement that is the subject of a claim under this Coverage Part D (Commercial Crime Coverage).

Section II. Definitions

- A. Banking Premises** shall mean the interior of that portion of any building occupied by a banking institution or similar safe depository.
- B. Claim Expenses** shall mean reasonable fees, costs and expenses of outside accountants, attorneys, consultants or experts retained by the **Insured** to determine the amount and extent of loss covered under this Coverage Part D (Commercial Crime Coverage). The **Insurer** shall determine the reasonableness of such expenses; provided, however, such expenses shall not include salaries, wages, overhead, benefit expenses or other internal costs of the **Insured**.
- C. Client** shall mean any entity for which the **Insured** performs services as specified in a written agreement.

- D. Counterfeit** shall mean an imitation of an actual valid original which is intended to deceive and to be taken as the original.
- E. Coverage Event** shall mean:
- (1) as respects Insuring Agreement A, all loss or losses caused by, or involving, one or more **Employees**, whether the result of a single act or series of related acts.
 - (2) as respects Insuring Agreement B, all loss or losses caused by any person or in which that person is involved, whether the loss involves one or more instruments.
 - (3) as respects all other Insuring Agreements, all loss or losses caused by:
 - (a) an act, or series of related acts, involving one or more persons;
 - (b) an act or acts involving a person or group of persons acting together; or
 - (c) an act or event, or a series of related acts or events, not involving any identifiable person.
- F. Custodian** shall mean the **Insured**, any of the **Insured's** partners, or any **Employee** while having care and custody of property inside the **Premises**, excluding any person while acting as a **Watchperson** or janitor.
- G. Employee** shall mean:
- (1) any natural person:
 - (a) while in the **Insured's** service or for thirty (30) days after termination of service; and
 - (b) whom the **Insured** compensates directly by salary, wages or commissions; and
 - (c) whom the **Insured** has the right to direct and control while performing services for the **Insured**;
 - (2) any natural person who is furnished temporarily to the **Insured** to:
 - (a) substitute for a permanent **Employee** as defined in (1) above who is on leave; or
 - (b) meet seasonal or short-term workload conditions while that person is subject to the **Insured's** direction and control and performing services for the **Insured** excluding, however, any such person while having care and custody of property outside the **Premises**;
 - (3) any **Fiduciary**.
- Employee** does not mean any:
- (a) agent, broker, person leased to the **Insured** by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
 - (b) director or trustee except while performing acts within the scope of the usual duties of an employee.

H. Employee Benefit Plan shall mean any welfare or pension benefit plan listed in the Declarations or scheduled by endorsement to this Policy that is subject to the Employee Retirement Income Securities Act of 1974.

I. Fiduciary shall mean any natural person who is:

- (1) a trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any **Employee Benefit Plan** insured under this insurance; or
- (2) the **Insured's** director or trustee while that person is handling **Funds** or **Other Property** of any **Employee Benefit Plan** insured under this insurance.

Fiduciary does not mean any:

- (a) agent, broker, person leased to the **Insured** by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (b) director or trustee except while performing acts within the scope of the usual duties of an employee.

J. Forgery shall mean the signing of the name of another person or entity with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

K. Fraudulent Instruction shall mean:

- (1) an electronic, telegraphic, cable, teletype, facsimile or telephone instruction which purports to have been transmitted by an **Insured**, but which was in fact fraudulently transmitted by someone else without an **Insured's** knowledge or consent;
- (2) a written instruction (other than those described in Insuring Agreement B) issued by an **Insured**, which was forged or altered by someone other than an **Insured** without an **Insured's** knowledge or consent, or which purports to have been issued by an **Insured**, but was in fact fraudulently issued without an **Insured's** knowledge or consent; or
- (3) an electronic, telegraphic, cable, teletype, facsimile, telephone or written instruction initially received by an **Insured** which purports to have been transmitted by an **Employee** but which was in fact fraudulently transmitted by someone else without an **Insured's** or the **Employee's** knowledge or consent.

L. Funds shall mean **Money** and **Securities**.

M. Insured(s) shall mean the **Named Entity**, any **Subsidiary** and, in the event of **Financial Insolvency**, the resulting debtor in possession (or foreign equivalent status), if any.

N. Messenger shall mean the **Insured**, any of the **Insured's** partners or any **Employee** while having care and custody of **Property** outside the **Premises**.

O. Money shall mean:

- (1) currency, coins and bank notes in current use and having a face value; or
- (2) travelers checks, register checks and money orders held for sale to the public.

- P. Other Property** shall mean any tangible property other than **Money** and **Securities** that has intrinsic value but does not include any property excluded under this insurance.
- Q. Premises** shall mean the interior of the portion of any building that the **Insured** occupies in conducting its business.
- R. Robbery** shall mean the taking of property from the care and custody of a person by one who has:
- (1) caused or threatened to cause that person bodily harm; or
 - (2) committed an obviously unlawful act witnessed by that person.
- S. Safe burglary** shall mean the taking of:
- (1) property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
 - (2) a safe or vault from inside the **Premises**.
- T. Securities** shall mean negotiable and nonnegotiable instruments or contracts representing either **Money** or property and includes:
- (1) tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
 - (2) evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
- but does not include **Money**.
- U. Theft** shall mean any act of stealing to the deprivation of:
- (1) any **Insured**, or
 - (2) any **Client**, solely as respects any coverage under Insuring Agreement A(2).
- V. Transfer Account** shall mean an account maintained by an **Insured** at a financial institution from which an **Insured** can initiate the transfer, payment or delivery of **Funds**:
- (1) by means of electronic, telegraphic, cable, teletype, facsimile or telephone instructions communicated directly or through an electronic funds transfer system; or
 - (2) by means of written instructions (other than those described in Insuring Agreement B) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
- W. Watchperson** shall mean any person that the **Insured** retains specifically to have care and custody of property inside the premises and who has no other duties.

Section III. Exclusions

- A.** With respect to all Insuring Agreements, except as indicated, the **Insurer** will not pay for:
- (1) loss resulting from any dishonest act committed by the **Insured** or any of the **Insured's** partners whether acting alone or in collusion with other persons, except when covered under Insuring Agreement A.(3);

- (2) loss resulting from any dishonest act committed by any of the **Insured's Employees**, directors, trustees or authorized representatives:
 - (a) acting alone or in collusion with other persons; or
 - (b) while performing services for the **Insured** or otherwise;
 except when covered under Insuring Agreement A;
- (3) loss from damage to the **Premises** resulting from fire, however caused;
- (4) loss resulting from seizure or destruction of property by order of governmental authority;
- (5) loss that is an indirect result of any act or **Coverage Event** covered by this insurance including, but not limited to, loss resulting from:
 - (a) The **Insured's** inability to realize income that the **Insured** would have realized had there been no loss of, or loss from damage to, **Money, Securities or Other Property**; or
 - (b) Payment of damages of any type for which the **Insured** is legally liable. But, the **Insurer** will pay compensatory damages arising directly from a loss covered under this insurance;
- (6) expenses related to any legal action, except when covered under Insuring Agreement B;
- (7) loss resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident;
- (8) loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident, or
- (9) loss based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to any **Pollutant**.

B. With respect to the Insuring Agreements specified below, the **Insurer** will not pay for:

- (1) Under Insuring Agreement A:
Loss caused by any **Employee** of the **Insured**, or predecessor in interest of the **Insured**, for whom similar prior insurance has been canceled and not reinstated since the last such cancellation.
- (2) Under Insuring Agreements A and E:
Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (a) an inventory computation; or
 - (b) a profit and loss computation.
- (3) Under Insuring Agreement C and D:
 - (a) Loss resulting from accounting or arithmetical errors or omissions.
 - (b) Loss of property contained in any **Money** operated device unless the amount of **Money** deposited in it is recorded by a continuous recording instrument in the device

- (c) Loss of property after it has been transferred or surrendered to a person or place outside the **Premises** or **Banking Premises**:
 - (i) on the basis of unauthorized instructions; or
 - (ii) as a result of a threat to do:
 - (a) bodily harm to any person; or
 - (b) damage to any property;

provided, however, this exclusion does not apply under Insuring Agreement D to loss of **Money, Securities** and **Other Property** while outside the **Premises** or **Banking Premises** in the care and custody of a **Messenger** if the **Insured**:

- (iii) had no knowledge of any threat at the time the conveyance began; or
- (iv) had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.
 - (a) Loss from damage to any property, safe, vault, or to the **Premises** or its exterior, by vandalism or malicious mischief.
 - (b) Loss resulting from the giving or surrendering of property in any exchange or purchase.
- (4) Under Insuring Agreement D:
Loss of motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.
- (5) Under Insuring Agreements C, D, E and G:
 - (a) Loss resulting from the **Insured** having transferred, paid or delivered any **Money, Securities** or **Other Property** as a direct result of the intentional misleading of an **Employee** by a person purporting to be a vendor, **Client** or **Employee** of the **Insured** through the use of electronic, telephonic or written communications.
 - (b) Loss resulting from the **Insured**, or anyone acting on the **Insured's** express or implied authority, being induced by any dishonest act to part voluntarily with title to or possession of any **Money, Securities** or **Other Property**.

Section IV. Conditions

A. Applicable to All Insuring Agreements

- (1) Extended Period to Discover Loss
 - (a) The **Insurer** will pay for loss that the **Insured** sustained prior to the effective date of termination or cancellation of this Coverage Part D (Commercial Crime Coverage), which is discovered by the **Insured**:
 - (i) within sixty (60) days following the date of termination or cancellation; and

- (ii) as respects any **Employee Benefit Plan**, within one year following the date of termination or cancellation.
- (b) However, this extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the **Insured** replacing in whole or in part the insurance afforded by this Coverage Part whether or not such insurance provides coverage for loss sustained prior to its effective date.

(2) Loss Covered Under More Than One Insuring Agreement

If two or more Insuring Agreements cover the same loss, the **Insurer** will pay the lesser of:

- (a) the actual amount of loss; or
 - (b) the highest single Limit of Liability applicable to those coverages.
- (3) Ownership of Property, Interests Covered
- (a) Solely with respect to Insuring Agreement A (2), the property covered under Insuring Agreement A (2) is limited to property:
 - (i) that a **Client** owns or holds; or
 - (ii) for which a **Client** is legally liable.
 - (b) With respect to all Insuring Agreements other than Insuring Agreement A.(2), the property covered under this Coverage Part D is limited to property:
 - (i) that the **Insured** owns or holds; or
 - (ii) for which the **Insured** is legally liable.

However, this insurance is for the **Insured's** benefit only. It provides no rights or benefits to any other person or entity, including the **Client**. Any claim for loss to a **Client** that is covered under this insurance must be presented by the **Insured**.

(4) Records

The **Insured** must keep records of all covered property so that the **Insurer** can verify the amount of any loss.

(5) Recoveries

- (a) Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
 - (i) to the **Insured**, until the **Insured** is reimbursed for any loss that it sustains that exceeds the Limit of Liability and the Retention, if any;
 - (ii) then to the **Insurer**, until the **Insurer** is reimbursed for the settlement made;
 - (iii) then to the **Insured**, until the **Insured** is reimbursed for that part of the loss equal to the Retention, if any.

- (b) Recoveries do not include any recovery:
- (i) from insurance, suretyship, reinsurance, security or indemnity taken for the **Insurer's** benefit; or
 - (ii) of original **Securities** after duplicates of them have been issued.
- (6) Valuation - Settlement
- (a) Subject to the applicable Limit of Liability provision the **Insurer** will pay for:
- (i) loss of **Money** but only up to and including its face value. The **Insurer** may, at its option, pay for loss of **Money** issued by any country other than the United States of America:
 - (a) at face value in the **Money** issued by that country; or
 - (b) in the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered;
 - (ii) loss of **Securities** but only up to and including their value at the close of business on the day the loss was discovered. The **Insurer** may, at its option:
 - (a) pay the value of such **Securities**, or replace them in kind, in which event the **Insured** must assign to the **Insurer** all its rights, title and interest in and to those **Securities**; or
 - (b) pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **Securities**. However, the **Insurer** will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
 - (i) value of the **Securities** at the close of business on the day the loss was discovered; or
 - (ii) Limit of Liability; and
 - (iii) loss of, or loss from damage to **Other Property** or loss from damage to the **Premises** or its exterior for the replacement cost of the property without deduction for depreciation. However, the **Insurer** will not pay more than the least of the following:
 - (a) the Limit of Liability applicable to the lost or damaged property;
 - (b) the cost to replace the lost or damaged property with property:
 - (i) of comparable material and quality; and
 - (ii) used for the same purpose; or

- (c) the amount the **Insured** actually spends that is necessary to repair or replace the lost or damaged property.

The **Insurer** will not pay on a replacement cost basis for any loss or damage until the lost or damaged property actually is repaired or replaced and unless the repairs or replacement are made as soon as reasonably possible after the loss or damage. If the lost or damaged property is not repaired or replaced, the **Insurer** will pay on an actual cash value basis.

- (b) The **Insurer** may, at its option, pay for loss of, or loss from damage to, property other than **Money**:
 - (i) in the **Money** of the country in which the loss occurred; or
 - (ii) in the United States of America dollar equivalent of the **Money** of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.
- (c) Any property that the **Insurer** pays for or replaces becomes its property.

(7) Cancellation

- (a) The **Named Entity** may cancel this Coverage Part by mailing or delivering to the **Insured** advance written notice of cancellation.
- (b) The **Insurer** may cancel this Coverage Part by mailing or delivering to the **Named Entity** written notice of cancellation at least:
 - (i) ten (10) days before the effective date of cancellation if the **Insurer** cancels for nonpayment of premium; or
 - (ii) thirty (30) days before the effective date of cancellation if the **Insurer** cancels for any other reason.
- (c) The **Insurer** will mail or deliver notice to the **Named Entity's** last mailing address known to the **Insurer**.
- (d) Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date with respect to this Coverage Part.
- (e) If this Coverage Part is canceled, the **Insurer** will send the **Named Entity** any premium refund due. If the **Insurer** cancels, the refund will be pro rata. If the **Named Entity** cancels, the refund may be less than pro rata. The cancellation will be effective even if the **Insurer** has not made or offered a refund.
- (f) If notice is mailed, proof of mailing will be sufficient proof of notice.

(8) Territory

This Coverage Part covers only acts committed or events occurring within the United States of America, U.S. Virgin Islands, Puerto Rico or Canada. In addition, under Insuring Agreement A, the **Insurer** will pay for loss caused by any **Employee** while temporarily outside of said territories for a period of not more than ninety (90) days.

(9) Employee Benefit Plans

- (a) If any **Employee Benefit Plan** is insured jointly with any other entity under this insurance, the **Insured** or the plan administrator must select a Limit of Liability for Insuring Agreement A.(3) that is sufficient to provide a limit of liability for each plan that is at least equal to that required if each plan were separately insured.
- (b) If the **Named Entity** is an entity other than a plan, any payment made to that **Insured** for loss sustained by any plan will be held by that **Insured** for the use and benefit of the plan sustaining the loss.
- (c) If two or more plans are insured under this insurance, any payment made for loss:
 - (i) sustained by two or more plans; or
 - (ii) of commingled **Funds** or **Other Property** of two or more plansthat arises out of one occurrence, is to be shared by each plan sustaining loss in the proportion that the limit of liability required for each such plan bears to the total of those limits.

(10) Joint Insured

- (a) The first named **Insured** shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
- (b) If more than one **Insured** is named in the Declarations, the first named **Insured** will act for itself and for every other **Insured** for all purposes of this insurance. If the first named **Insured** ceases to be covered, then the next named **Insured** will become the first named **Insured**.
- (c) If any **Insured** or partner or officer of that **Insured** has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every **Insured**.
- (d) An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.
- (e) If this insurance or any of its coverage is canceled or terminated as to any **Insured**, loss sustained by that **Insured** is covered only if discovered during the period of time provided in the Extended Period to Discover Loss Condition IV.A.(1). However, this extended period to discover loss terminates as to that **Insured** immediately upon the effective date of any other insurance obtained by that **Insured** replacing in whole or in part the insurance afforded by this Coverage Part whether or not such insurance provides coverage for loss sustained prior to its effective date.
- (f) The **Insurer** will not pay more for loss sustained by more than one **Insured** than the amount the **Insurer** would pay if all the loss had been sustained by one **Insured**.

(11) Liberalization

If the **Insurer** adopts any revision that would broaden the coverage under this Coverage Part without additional premium within forty-five (45) days prior to or during the **Policy Period**, the broadened coverage will immediately apply to this Coverage Part.

(12) Non-Cumulation of Limit of Insurance

Regardless of the number of years this Coverage Part remains in force or the number of premiums paid, no Limit of Liability cumulates from year to year or **Policy Period** to **Policy Period**.

(13) Other Insurance

(a) This insurance does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this insurance will apply to that part of the loss, other than that falling within any Retention amount, not recoverable or recovered under the other insurance or indemnity. However, this insurance will not apply to the amount of loss that is more than the applicable Limit of Liability shown in the Declarations.

(b) Under Insuring Agreement D, the **Insurer** will pay only for the amount of loss that the **Insured** cannot recover:

- (i) under the **Insured's** contract with the armored motor vehicle company; and
- (ii) from any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

(14) Concealment, Misrepresentation or Fraud

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

- (a) this insurance;
- (b) the covered property;
- (c) the **Insured's** interest in the covered property; or
- (d) a claim under this insurance.

B. Applicable to Specific Insuring Agreements

(1) Insuring Agreement A

This insurance is cancelled as to any **Employee**:

- (a) Immediately upon discovery by:
 - (i) the **Insured**; or

- (ii) any of the **Insured's** partners, officers or directors not in collusion with the **Employee**; or
- (iii) as to **Employee Benefit Plans**, any **Fiduciary** not in collusion with the **Employee**;

of any dishonest act committed by that **Employee** whether before or after becoming employed by the **Insured**; or

- (b) on the date specified in a notice mailed to the **Insured**. That date will be at least thirty (30) days after the date of mailing. The mailing of notice to the **Insured** at the last mailing address known to the **Insurer** will be sufficient proof of notice. Delivery of notice is the same as mailing.

(2) Insuring Agreement B

- (a) Retention

The Retention does not apply to legal expenses paid under Insuring Agreement B.

- (b) Facsimile Signatures

The **Insurer** will treat mechanically reproduced facsimile signatures the same as handwritten signatures.

- (c) Proof of Loss

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

- (d) Territory

The **Insurer** will cover loss that the **Insured** sustains anywhere in the world. The Territory Condition set forth in Section IV.A.(8) does not apply to Insuring Agreement B.

(3) Insuring Agreements C and D

- (a) Special Limit of Insurance for Specified Property

The **Insurer** will pay up to \$5,000 for any one **Coverage Event** of loss of, and loss from damage to:

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

(b) Duties in the Event of Loss

If the **Insured** has reason to believe that any loss of, or loss from damage to, **Money, Securities or Other Property** involves a violation of law, the **Insured** must notify the police.

(4) Insuring Agreement E

(a) Special Limit of Insurance for Specified Property

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

(b) Duties in the Event of Loss

If the **Insured** has reason to believe that any loss of, or loss from damage to, **Money, Securities or Other Property** involves a violation of law, the **Insured** must notify the police.

(c) Territory

The **Insurer** will cover loss that the **Insured** sustains anywhere in the world. The Territory Condition set forth in Section IV.A.(8) does not apply to Insuring Agreement E.

(5) Insuring Agreement F

Duties in the Event of Loss

The **Insured** must notify the police if it has reason to believe that it may have accepted a **Counterfeit Money order or Counterfeit paper currency**.

(6) Insuring Agreement G

(a) Duties in the Event of Loss

If the **Insured** has reason to believe that any loss of **Funds** involves a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds from a Transfer Account**, the **Insured** must notify the police.

(b) Territory

The **Insurer** will cover loss that the **Insured** sustains anywhere in the world. The Territory Condition set forth in Section IV.A.(8) does not apply to Insuring Agreement G.