



*Management Liability Solution 2.0*

## Management Liability Solution 2.0

Great American Insurance Company - Executive Liability Division  
Headquarters: 301 E. Fourth Street, Cincinnati, OH 45202

**NOTICE APPLICABLE TO THE LIABILITY COVERAGE PARTS: THIS POLICY IS WRITTEN ON A "CLAIMS MADE" BASIS. AS SUCH, COVERAGE, SUBJECT TO APPLICABLE TERMS AND CONDITIONS, IS AVAILABLE ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS MADE AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE DISCOVERY PERIOD APPLIES. FURTHER, COSTS OF DEFENSE ARE SUBJECT TO THE APPLICABLE RETENTION AND COSTS OF DEFENSE IN EXCESS OF THE APPLICABLE RETENTION SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY ALL OTHER LOSS, INCLUDING SETTLEMENTS AND JUDGMENTS. PLEASE READ THIS POLICY CAREFULLY.**

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### 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. Terms that appear in boldface type shall have the meaning set forth in Section II. Definitions of the General Terms and Conditions or in the applicable 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 have the meaning 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. Indemnifiable Loss** means **Loss** for which the **Company** (or with respect to Coverage Part C, Fiduciary Liability Coverage, any **Employee Benefit Plan**) is permitted or required to indemnify an **Insured Person**.
- F. 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.
- G. 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);
    - (d) Coverage Part D (Errors and Omissions Liability Coverage);
    - (e) Coverage Part E (Cyber Liability Coverage); or
  - (2) any other Coverage Part identified as a Liability Coverage Part in the Declarations or added by endorsement.
- H. Loss** shall have the meaning as that term is defined in each **Liability Coverage Part**.
- I. 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.
- J. Named Entity** shall mean the entity named in Item 1. of the Declarations.
- K. Non-Indemnifiable Loss** means **Loss** for which the **Company** (and with respect to Coverage Part C, Fiduciary Liability Coverage, all **Employee Benefit Plans**) is neither permitted nor required to indemnify an **Insured Person**.
- L. Non-Liability Coverage Event** shall mean a **Coverage Event** as that term is defined in each **Non-Liability Coverage Part**.

**M. Non-Liability Coverage Part** shall mean:

- (1) if designated as “Included in Policy” in Column 1 of Item 4. of the Declarations:
  - (a) Coverage Part F (Cyber Risk Coverage); or
  - (b) Coverage Part G (Commercial Crime Coverage); or
- (2) any other Coverage Part identified as a Non-Liability Coverage Part in the Declarations or added by endorsement.

**N. 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.

**O. 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.

**P. 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.

**Q. Single Claim** shall mean all **Claim(s)** involving the same **Wrongful Act** or **Related Wrongful Acts**.

**R. Subsidiary** shall mean:

- (1) any entity in which and while the **Named Entity** has **Management Control**, provided the **Named Entity** obtains **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**.

**S. Wage and Hour Violation** shall mean any actual or alleged violation of the duties and responsibilities imposed upon an **Insured** by any federal, state, local or foreign law or regulation, including but not limited to the Fair Labor Standards Act, California Labor Code, or any similar law (except the Equal Pay Act), which governs wage, hour and payroll practices. Such practices include but are not limited to:

- (1) the calculation and payment of wages, overtime wages, minimum wages and prevailing wage rates;
- (2) the calculation and payment of any benefits;
- (3) reimbursement of any business expenses;
- (4) the classification of any person or entity for wage and hour purposes;

- (5) garnishments, withholdings and other deductions from wages;
- (6) the use of child labor; or
- (7) the furnishing of pay stubs and wage statements.

**T. Wrongful Act(s)** shall have the meaning 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.** 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. Retentions for Liability Coverage Parts**

**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.** In the event the **Company** is unable to indemnify **Insured Persons** solely by reason of its **Financial Insolvency**, then: (1) the **Insurer** shall advance **Costs of Defense** incurred by the **Insured Persons** without first requiring payment of the Retention applicable to any **Claim** made against them; and (2) with respect to **Loss** incurred solely by **Insured Persons** as a result of a **Claim** made against them, no Retention shall apply. For the purpose of applying the Retention, the **Company** and **Employee Benefit Plans** agree that the certificate of incorporation, charter or other organizational documents of the **Company** or **Employee Benefit Plans**, 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.

## 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.

### 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 Coverage Parts and Priority of Payments**

A. Subject to subsection B. below, in the event that **Loss** from 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 E (Cyber Liability Coverage), if **Loss** from such **Claim** falls within Coverage Part E; then
- (2) under Coverage Part D (Errors and Omissions Liability Coverage), to the extent any remaining **Loss** from such **Claim** falls within Coverage Part D; then
- (3) under Coverage Part B (Employment Practices Liability Coverage), to the extent any remaining **Loss** from such **Claim** falls within Coverage Part B; then
- (4) under Coverage Part A (Directors' and Officers' and Entity Liability Coverage), to the extent any remaining **Loss** from such **Claim** falls within Coverage Part A; and then
- (5) under Coverage Part C (Fiduciary Liability Coverage), to the extent any remaining **Loss** from 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. With respect to **Non-Indemnifiable Loss** from any **Claim** made against any **Insured Person** which is covered under any **Liability Coverage Part**, the **Insurer** shall first pay such **Loss** on behalf of such **Insured Person** under Section I.A. of Coverage Part A (including as extended by Section I.D. of Coverage Part A) or any other applicable **Liability Coverage Part** (and shall pay such **Loss** in the order set forth in subsection A. above). Only after payment of all such **Non-Indemnifiable Loss** has been made, with respect to whatever remaining amount of the Limit of Liability is available after such payment, the **Insurer** shall pay in the order set forth in subsection A. above any other **Loss** for which coverage is provided under any other applicable Insuring Agreement or **Liability Coverage Part**.

- C. In the event any **Coverage Event** is covered under more than one **Non-Liability Coverage Part**, any amounts payable by the **Insurer** as a result of such **Coverage Event** shall be paid in the following order and subject to the applicable Limit of Liability:
- (1) first, under Coverage Part F (Cyber Risk Coverage), to the extent any amount from such **Coverage Event** falls within Coverage Part F; and then
  - (2) under Coverage Part G (Commercial Crime Coverage), to the extent any remaining amount from such **Coverage Event** falls within Coverage Part G.

#### **Section VIII. Notice to the Insurer - Liability Coverage Parts**

- A. All notices to the **Insurer** with respect to any **Liability Coverage Part** shall be emailed or mailed to the **Insurer** as indicated in Item 7. of the Declarations.
- B. 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**.
- C. 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:
- (1) the specific **Wrongful Act**;
  - (2) the injury or damage which has or may result therefrom; and
  - (3) 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**.
- D. 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.
- E. 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.
- F. All notices to the **Insurer** with respect to any **Non-Liability Coverage Part** shall be provided as set forth in such **Non-Liability Coverage Part**.

## 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 including but not limited to timely notice of the **Non-Liability Coverage Event**, and until ninety (90) days after the **Insured** 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, subject to any further conditions or limitations on coverage with respect to such acquisition set forth in any Coverage Part.

- B.** There is no coverage for any **Wrongful Act** or any **Non-Liability Coverage Event** of any **Subsidiary** or any **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or any **Insured Persons** of such entity that merges with the **Company**, if:
- (1) such **Wrongful Act** occurs or **Non-Liability Coverage Event** is first discovered prior to the effective date such entity became a **Subsidiary** or was merged with the **Company**;
  - (2) such **Wrongful Act** occurs 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) such **Wrongful Act** occurs or **Non-Liability Coverage Event** is first discovered 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.

### 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 another person or entity assumes the **Named Entity's** responsibilities for the **Administration** of, or as a fiduciary of, any **Employee Benefit Plan** (other than through the **Named Entity's** engagement or employment of a third party administrator or third party trustee); 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; and
  - (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 and such conviction is considered a final, non-appealable adjudication; or

**B.** has been determined by a final, non-appealable adjudication in the underlying action 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 natural person 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**

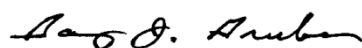
It is understood and agreed that, in the event there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, if permitted by law and the public policy of the state of domicile the **Insurer** shall apply those terms and conditions which 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 Solution 2.0

**COVERAGE PART A**  
**Directors' And Officers' and Entity Liability Coverage**

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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 **Indemnifiable 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**.

**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, or any appeal thereof;
- (3) a criminal proceeding commenced by the filing of charges, the return of an indictment or similar document or any appeal thereof;
- (4) a formal administrative or regulatory proceeding commenced by the filing of charges, formal investigative order or similar document, or any appeal thereof;
- (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, or any appeal thereof;



- (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**, or any appeal thereof;
- (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. Executives** shall mean 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**
- E. 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.
- F. Insured(s)** shall mean the **Company** and all **Insured Persons**.
- G. Insured Persons** shall mean:
- (1) all **Executives**; 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.

**H. 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**. No Retention shall apply to **Investigative Costs**.

**I. 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.

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

**K. 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**.
- L. 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 **Executive** for a **Wrongful Act**.
- M. 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**.
- N. 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.
- O. 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. Any 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 a Foreign Jurisdiction that would not be imposed in the United States of America 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 possessions.

- (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) brought or maintained by or on behalf of any **Insured**; provided, however, this exclusion shall not apply to any **Claim**:
- (a) brought by a debtor in possession, creditor committee, receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Company** in the event of **Financial Insolvency**;
  - (b) brought on behalf of the **Company** by:
    - (i) any entity other than the **Company**;
    - (ii) any individual who is not an **Executive**;
    - (iii) any **Executive** if the **Executive** who brought the **Claim** has not served as an **Executive** with the **Company** for at least one (1) year prior to commencement of such **Claim**;

provided, such entity, individual or **Executive** is acting totally independent of, and without the solicitation, assistance, active participation or intervention of an **Executive**. In applying this, "solicitation, assistance, active participation or intervention" shall not include:

- (a) any whistleblower conduct of an **Executive**; and
- (b) any conduct of an **Executive** who has not served as an **Executive** with the **Company** for at least one (1) year prior to the commencement of such **Claim**;
- (c) brought by an **Insured Person**:
  - (i) for contribution or indemnity arising from another **Claim** otherwise covered under this **Coverage Part**;

- (ii) outside of the United States of America and its respective territories or possessions, provided such **Claim** is not brought on behalf of the **Company**; or
  - (iii) if such **Insured Person** is an **Employee** and is bringing such **Claim** as a shareholder directly seeking relief; or
  - (d) brought by an **Executive** against another **Insured Person**, if the **Executive** who brought the **Claim** has not served as an **Executive** with the **Company** for at least one (1) year prior to commencement of such **Claim**;
- (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 any employment-related **Wrongful Acts** brought by or on behalf of any natural person, including any present or former independent contractor of the **Company**. Such employment-related **Wrongful Acts** include but are not limited to any actual or alleged: wrongful dismissal, discharge or termination; misrepresentation; **Wage and Hour Violation**, 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 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, any rules or regulations promulgated under or in connection with such statutes, or any similar provision of 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 C. 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) brought or maintained by or on behalf of an **Outside Entity**, or any affiliate of the **Outside Entity** or any director or officer or functional equivalent 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 the **Outside Entity**, any affiliate of the **Outside Entity**, or any director or officer or functional equivalent of the **Outside Entity**. Whistleblower conduct of an affiliate of the **Outside Entity** or any director or officer or functional equivalent of the **Outside Entity** that is protected under applicable law shall not in and of itself constitute "solicitation, assistance or intervention" for purposes of determining such security holder's independence in bringing such **Claim**.

This exclusion shall not apply if such **Claim** is brought and maintained:

- (a) by a debtor in possession, creditor committee, receiver, conservator, liquidator, trustee, rehabilitator, examiner or similar official of the **Outside Entity** appointed to control, supervise, manage or liquidate the **Outside Entity**;
- (b) by a director or officer or functional equivalent of the **Outside Entity** if such person has ceased serving in such capacity for at least one (1) year and only if acting totally independent of, and totally without the solicitation of, or assistance of, or intervention of the **Outside Entity**, any affiliate of the **Outside Entity**, or any director or officer or functional equivalent of the **Outside Entity**; or
- (c) in a jurisdiction outside the United States of America or its territories or possessions;

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, except as provided under Section VII. of the General Terms and Conditions of this Policy.

**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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**Management Liability Solution 2.0**

**Coverage Part B  
Employment Practices Liability Coverage**

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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, or any appeal thereof;
- (3) a criminal proceeding commenced by the filing of charges, the return of an indictment or similar document or any appeal thereof;
- (4) a formal administrative or regulatory proceeding commenced by the filing of charges, formal investigative order, service of summons or similar document, or any appeal thereof;
- (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, or any appeal thereof;
- (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 any appeal thereof; 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, harassment or violation of any person's civil rights related to such discrimination or 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 **Wage and Hour Violation** brought by or on behalf any **Employee** or present or former **Independent Contractor**; provided, however, this exclusion shall not apply to that part of any **Claim** alleging retaliation for the exercise of any rights under such laws or regulations governing wage, hour and payroll practices.
- 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, except as provided under Section VII. of the General Terms and Conditions of this Policy.
- (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, except as provided under Section VII. of the General Terms and Conditions of this Policy.

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Management Liability Solution 2.0

**Coverage Part C  
Fiduciary Liability Coverage**

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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, or any appeal thereof;
- (3) a civil proceeding commenced by the service of a complaint or similar pleading, or any appeal thereof;
- (4) a criminal proceeding commenced by the filing of charges, the return of an indictment or similar document or any appeal thereof;
- (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, or any appeal thereof;
- (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, or any appeal thereof;
- (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, except as provided under Section VII. of the General Terms and Conditions of this Policy. 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**  
**Errors and Omissions Liability Coverage**

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**COVERAGE PART D  
ERRORS AND OMISSIONS LIABILITY COVERAGE**

**Section I. Insuring Agreement**

The **Insurer** shall pay on behalf of any **Insured** all **Loss** which the **Insured** shall be legally obligated to pay as the result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Discovery Period** for a **Wrongful Act** in the performance of or the failure to perform **Professional Services**, including **Personal Injury**.

**Section II. Definitions**

- A. Bodily Injury** shall mean physical injury, sickness, or disease sustained by any person including death resulting from any of these at any time. **Bodily Injury** shall also mean mental illness, mental anguish, emotional distress, pain or suffering, or shock sustained by that person, whether or not resulting from physical injury, sickness, disease, or death of any person.
- B. Claim** shall mean:
- (1) a written demand for money or services received by an **Insured**;
  - (2) a civil proceeding in a court of law, or arbitration proceeding, against the **Insured**, commenced by the service of summons or receipt of an arbitration demand, or any appeal thereof; or
  - (3) a written request to toll or waive a statute of limitations relating to any of the above arising out of an act or omission in the performance of **Professional Services**.
- C. Disciplinary Action** shall mean an action or proceeding brought against the **Insured** by or in front of any regulatory agency, disciplinary board, peer review committee, supervising court, or similar governing entity, alleging misconduct in providing **Professional Services**. **Disciplinary Action** does not include criminal charges.
- D. Loss** shall mean a monetary judgment, award or settlement which the **Insured** is legally obligated to pay, including statutory damages, punitive, multiplied, or exemplary damages where insurable by law, pre-judgment and post-judgment interest, and **Costs of Defense**. However, **Loss** does not include:
- (1) taxes, fines, penalties, forfeitures, or court-imposed monetary sanctions;
  - (2) the return, restitution, reduction, compromise, or refund of commissions, fees, premiums, charges, gratuities, or other compensation paid to an **Insured**;
  - (3) the cost to correct, complete, or re-perform any **Professional Services**;
  - (4) the cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including services or injunctive relief; or
  - (5) any amount deemed uninsurable under the law pursuant to which this policy is construed.
- E. Insured** shall mean the **Company** and any **Insured Person**.
- F. Insured Person** shall mean the persons or entities listed below, but only while in the performance of **Professional Services** on behalf of the **Company** for clients of the **Company**:
- (1) any present or former partner, member, officer, director, or employee of the **Company**;
  - (2) any independent contractor, but only for **Professional Services** performed on behalf and at the direction of the **Company** and only if the **Company** has agreed to provide insurance for the independent contractor's **Professional Services**; or
  - (3) any leased employee, but only while acting under the direct supervision and exclusively on behalf of the **Company**.



- G. Personal Injury** shall mean injury other than **Bodily Injury** arising out of one or more of the following offenses by reason of an act or omission in the performance of **Professional Services**:
- (1) false arrest, detention, or imprisonment;
  - (2) malicious prosecution;
  - (3) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, if such eviction, entry or invasion is by or on behalf of its owner, landlord or lessor; or
  - (4) any oral or written publication, in any manner, of material that:
    - (a) slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or
    - (b) violates a person's right of privacy, except any oral or written publication, in any manner which arises out of advertising, broadcasting, or telecasting activities conducted by or on behalf of any **Insured**.
- H. Professional Services** shall mean those services specified in Item 4. of the Declarations performed by an **Insured** for others for a fee.
- I. Property Damage** shall mean:
- (1) physical injury to tangible property, including all resulting loss of use of that property; or
  - (2) loss of use of tangible property that is not physically injured.
- J. Supplementary Payments** shall mean the payments set forth in Sections IV.A.(1), (2) and (3) of this Coverage Part.
- K. Wrongful Act** shall mean any actual or alleged act, omission, error, misstatement, misleading statement, neglect, or breach of duty by any **Insured** in their capacity as such.

### 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.** based upon or arising out of:
- (1) any dishonest, intentionally wrongful, fraudulent, criminal, or malicious act or omission by an **Insured**; or
  - (2) any **Insured** gaining any personal profit, financial advantage or remuneration to which they were not legally entitled;

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.

Any acts or omissions of an **Insured** 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 any criminal fine or criminal sanction in a Foreign Jurisdiction that would not be imposed in the United States of America 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 possessions.

- 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 or **Claim** reported under any other policy that provided professional 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 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;
- D. based upon or arising out of **Bodily Injury** or **Property Damage**;
- E. based upon or arising out of **Professional Services** performed for or by any entity other than the **Company** if on or after the date or time of the act or omission giving rise to such **Claim**:
- (1) any **Insured** controlled, owned, operated, or managed such entity; or
  - (2) any **Insured** was an owner, partner, member, director, officer, or employee of such entity;
- Control of or ownership in a business enterprise is presumed if any **Insured** owned or held 10% or more of the equity and/or debt instruments of such enterprise;
- F. by or on behalf of an **Insured**;
- G. based upon or arising out of actual or alleged violation of:
- (1) the Employee Retirement Income Security Act of 1974;
  - (2) the Securities Act of 1933;
  - (3) the Securities Act of 1934;
  - (4) any state Blue Sky or securities law; or
  - (5) any rules, regulations or amendments issued in relation to any of the foregoing acts, any similar state or federal statutes or regulations, or any similar common law principles of liability;
- H. based upon or arising out of, whether suddenly or over a long period of time:
- (1) the actual, alleged or threatened emission, discharge, dispersal, seepage, release, or escape of **Pollutants**; or
  - (2) any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization, or cleanup of **Pollutants**;
- I. based upon or arising out of liability of others assumed by the **Insured** under any contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement;
- J. 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; or
- K. 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.

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. Supplementary Payments** are not subject to a Retention and are payable in addition to the applicable Limit of Liability set forth in Item 4. of the Declarations:

- (1) The **Insurer** will pay up to \$750 for loss of earnings to the **Insured** for each day or part of a day the **Insured** is in attendance, at the **Insurer's** request, at a trial, hearing, mediation, or arbitration proceeding involving a **Claim** against the **Insured**. The maximum amount payable, regardless of the number of trials, hearings, mediations, or arbitration proceedings or the number of **Insureds**, shall be \$7,500 per **Claim** and \$25,000 for all **Claims** during the **Policy Period**.
- (2) The **Insurer** will reimburse the **Insured** for reasonable attorney fees, costs, and expenses incurred in responding to a **Disciplinary Action** that is first received by the **Insured** and reported in writing to the **Insurer** during the **Policy Period** by reason of an act, error, or omission in the performance of **Professional Services**. The maximum amount payable, regardless of the number of **Disciplinary Actions** or the number of **Insureds**, shall be \$10,000 per **Policy Period**. The **Company** shall not be obligated to defend any **Disciplinary Action**, or pay any fine, penalty, or award resulting from any **Disciplinary Action**.
- (3) The **Insurer** will pay expenses incurred while assisting the **Insured** in responding to a subpoena which the **Insured** first receives and reports in writing to the **Insurer** during the **Policy Period** resulting from the performance of **Professional Services** by the **Insured**; provided, however, if Coverage Part A (Directors' and Officers' and Entity Liability Coverage) is purchased, no **Supplementary Payment** coverage shall be provided under this Coverage Part for expenses incurred in responding to a subpoena arising from a civil, criminal, administrative, or regulatory investigation of any **Insured**. The maximum amount payable regardless of the number of subpoenas or number of **Insureds** shall be \$10,000.

#### **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, except as provided under Section VII. of the General Terms and Conditions of this Policy.

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**COVERAGE PART E  
Cyber Liability Coverage**

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**COVERAGE PART E  
CYBER LIABILITY COVERAGE**

**Section I. Insuring Agreements**

**A. Liability Coverage (Including Regulatory Actions)**

The **Insurer** shall pay on behalf of an **Insured** all **Loss** incurred as a result of any **Claim** for a **Multimedia Wrongful Act, Network Security Wrongful Act** or **Privacy Wrongful Act**, provided:

- (1) such **Claim** is first made against the **Insured** during the **Policy Period** or any applicable **Discovery Period** and reported pursuant to Section VIII.B. of the Policy; and
- (2) the **Wrongful Act** occurs after the Retroactive Date set forth in Item 4. Schedule Part E. of the Declarations.

**B. Public Relations Coverage**

Subject to the **Insurer's** prior written consent, the **Insurer** shall pay on behalf of the **Company** the costs of a public relations consultation:

- (1) in response to **Reputational Harm** related to a **Claim**; or
- (2) necessary to inform potentially impacted individuals, vendors or suppliers of **Business Impersonation** first discovered and noticed to the **Insurer** during the **Policy Period**.

**Section II. Definitions**

**A. Business Impersonation** shall mean fraudulent communications (including but not limited to websites, e-mails, or phone calls) from an entity or individual other than an **Insured** designed to impersonate the **Company** (including but not limited to its **Content**, products, services, or websites) and/or any **Insured Person** with the goal of deceiving any customer or supplier of the **Company** into sharing credentials and/or personally identifiable information with, or fraudulently inducing such parties to transfer their money or property to the sender of such fraudulent communication.

**B. Claim** shall mean:

- (1) a written demand for monetary damages or injunctive relief;
- (2) a **Regulatory Action**;
- (3) a written request to enter into an agreement to toll any applicable statute of limitations prior to the commencement of any judicial, administrative, regulatory, or alternative dispute resolution proceeding, or any appeal thereof;
- (4) a written request that an **Insured** participate in an alternative dispute resolution proceeding, or any appeal thereof; or
- (5) a civil or criminal proceeding brought against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, or any appeal thereof.

A demand, written request or proceeding alleging **PCI Compliance Violations** shall not constitute a **Claim**.

**C. Computer Systems** shall mean:

- (1) the **Covered Network**;
- (2) **Insured Person** owned devices when used in connection with the **Company's** business activities; and

(3) **Third Party Networks.**

**D. Content** shall mean communicative material of any kind or nature whatsoever, including words, pictures, sounds, images and graphics, conveyed via any method or medium including print, broadcast, digital and electronic, for any purpose including news, entertainment, art, information, advertising and corporate communications, if created:

- (1) by or on behalf of the **Company** for its own use; or
- (2) by third parties and collected, maintained, moderated or disseminated by or on behalf of the **Company**, including via any chat room, blog, bulletin board, website or social media site moderated, owned or operated by or on behalf of the **Company**;

provided, however, **Content** shall not include advertising created by the **Insured** for others, product design, labeling or packaging, architectural or industrial design, or the goods, products or services described or displayed in communicative materials.

**E. Costs of Defense** shall include, solely with respect to the coverage afforded by this Coverage Part, forensic fees incurred to investigate the cause of and/or to identify persons or entities affected by an intrusion of the **Computer System** which resulted in **Unauthorized Access** to, **Unauthorized Use** of, loss of control over, or disclosure of, **Protected Information** in the care, custody, or control of the **Insured** or an independent contractor of the **Insured** that is holding, processing or transferring such information on behalf of the **Insured**.

**F. Covered Network** shall mean all leased or **Company** owned:

- (1) computer hardware (including but not limited to desktops, laptops, mobile devices, printers, copiers, and servers); and
- (2) networking equipment (including but not limited to routers, switches, gateways, and hubs);

operated by the **Company** solely in connection with the **Company's** business operations.

**G. Cyber Crime** shall mean the following, if committed by a person or entity other than an **Insured** and without the involvement of an **Insured**:

- (1) the transmission of fraudulent instructions electronically to a financial institution which direct that financial institution to initiate an electronic funds transfer from the **Company** or otherwise debit the **Company's** accounts;
- (2) the **Unauthorized Access**, through electronic means, of the credentials (including but not limited to passwords, PINs, or security codes) related to the **Company's** financial accounts or the accounts of third parties which are under the **Company's** control;
- (3) **Telecommunications Hacking**; and
- (4) **Ransom Demands**.

**H. Data Asset** shall mean software and electronic data (including but not limited to databases, audio/video files, websites, intranets, and extranets) maintained by or on behalf of the **Company** in connection with the **Company's** business operations.

**I. Data Asset Damage** shall mean loss of control over, damage to, or destruction of a **Data Asset**.

**J. Data Breach** shall mean **Unauthorized Access** to, **Unauthorized Use** of, loss of control over (including but not limited to the loss of any laptop, smartphone or other portable device that contains **Protected Information**), or disclosure of, **Protected Information** stored (or captured solely for purposes of processing electronic payments) by or on behalf of the **Company** in connection with the **Company's** business activities.

**K. Data Compromise** shall mean a **Data Breach**, **Ransom Demands**, **Data Asset Damage**, **Cyber Crime**, **PCI Compliance Violation** or **Network Disruption** sustained by the **Company**.

**L. Employee** shall mean any natural person whose labor or service is engaged and directed by the **Company** including any permanent, temporary, leased, or volunteer worker. **Employee** shall not mean an **Executive** or an independent contractor.

**M. Executive** shall mean any natural person who is the **Company's**:

- (1) Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, Chief Information Security Officer;
- (2) General Counsel;
- (3) Insurance Risk Manager;
- (4) General Partner, in the event a **Company** or **Subsidiary** is organized as a partnership; or
- (5) Managing Member, in the event a **Company** or **Subsidiary** is organized as a Limited Liability Company;

or the respective functional equivalents of (1) through (5) above.

**N. Insured** shall mean the **Company** and any **Insured Person**.

**O. Insured Person** shall mean any past, present or future:

- (1) **Executive**;
- (2) **Employee**;
- (3) members of the **Company's** Board of Directors; or
- (4) trustees of the **Company's** Board of Trustees.

**P. Loss** shall mean:

- (1) **Costs of Defense**;
- (2) solely with respect to any **Claim** other than a **Regulatory Action**:
  - (a) monetary damages, settlements or judgments;
  - (b) pre-judgment or post-judgment interest; and
  - (c) punitive or exemplary damages, or the multiple portion of any multiplied damages award, but only to the extent such damages are insurable under the applicable law most favorable to the insurability of such damages; and
- (3) solely with respect to a **Regulatory Action**:
  - (a) the amount paid to establish a consumer redress fund created as a result of a **Regulatory Action**; or
  - (b) any civil fines or penalties imposed as a result of such **Regulatory Action**;

provided, however, **Loss** shall not include: taxes; the return or repayment of fees, deposits, commissions or charges for goods or services; the costs incurred in the recall, re-performance or correction of services, **Content**, goods or activities; the costs of the **Insured's** compliance with or any **Loss** incurred as a result of an injunction or other equitable order or judgment, other than the amount paid to establish a consumer redress fund as a result of a **Regulatory Action**; or civil or criminal fines or penalties, other than civil fines or penalties imposed as a result of a **Regulatory Action**.

**Q. Malicious Code** shall mean any virus, worm, trojan horse, backdoor or similar malicious software program.

**R. Multimedia Activity** shall mean:

- (1) the dissemination of **Content** by the **Insured**, by any form, method or medium of communication;

- (2) the creation or gathering of **Content** by the **Insured**; or
- (3) the dissemination of **Content** by any party with whom the **Insured** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding such **Content**.

**S. Multimedia Wrongful Act** shall mean any actual or alleged:

- (1) libel, slander, trade libel, product disparagement or any other defamation or harm to the character or reputation of any person or entity;
- (2) invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light or misappropriation of name or likeness;
- (3) outrage or infliction of emotional distress;
- (4) dilution or infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
- (5) copyright infringement, plagiarism, or misappropriation of information, ideas or other similar property rights; or
- (6) piracy or unfair competition, but only if arising out of (1) through (5) above;

resulting from any **Multimedia Activity**.

**T. Network Disruption** shall mean:

- (1) **Security Event Related Outage**; or
- (2) **Vendor Error Related Outage**;

provided, however, **Network Disruption** shall not mean an outage related to a **Third Party Network** unless this Policy is specifically endorsed to cover such outage.

**U. Network Security Wrongful Act** shall mean an actual or alleged negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Company's** business that causes or fails to prevent:

- (1) **Unauthorized Access** to or **Unauthorized Use** of the **Covered Network**;
- (2) the transmission of any **Malicious Code** from the **Covered Network** to a third party's computer systems;
- (3) **Business Impersonation**; and/or
- (4) a **Network Disruption**.

**V. PCI Compliance Violation** shall mean alleged or actual violation of the applicable Payment Card Industry Data Security Standards (PCI-DSS) in effect when such violation is first discovered.

**W. Privacy Wrongful Act** shall mean any actual or alleged:

- (1) negligent act, error or omission by or on behalf of the **Insured** in the performance of the **Company's** business that actually or allegedly causes or fails to prevent **Unauthorized Access** to, **Unauthorized Use** of, loss of control over (including but not limited to the loss of any laptop, smartphone or other portable device that contains **Protected Information**), or disclosure of, **Protected Information** in the care, custody, or control of the **Insured** or an independent contractor of the **Insured** that is holding, processing or transferring such information on behalf of the **Insured**;
- (2) violation of any federal, state, local or foreign law or regulation regarding the maintenance, protection, use or disclosure of **Protected Information**; or



- (3) violation of any publicly stated policy of the **Company** relating to **Protected Information**.
- X. Protected Information** shall mean:
- (1) any non-public personally identifiable information (including but not limited to personal health information), whether in electronic form or otherwise, which is protected from **Unauthorized Access, Unauthorized Use**, or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Company**; and
  - (2) any confidential, non-public business information of a third party that is the subject of a confidentiality agreement between the **Company** and such third party.
- Y. Ransom Demands** shall mean a threat or series of threats by someone other than an **Insured** to cause or prolong a **Data Compromise**.
- Z. Regulatory Action** shall mean a written request for information, civil investigation or administrative proceeding or civil proceeding brought by any local, state, federal or regulatory agency for any **Privacy Wrongful Act** in connection with a **Data Breach**. However, **Regulatory Action** shall not include any written request, investigation, or proceeding of any kind brought by or on behalf of the Securities and Exchange Commission or its functional equivalent in any foreign jurisdiction.
- AA. Reputational Harm** shall mean adverse media reporting related to a **Claim** covered under Insuring Agreements I.A.
- BB. Security Event Related Outage** shall mean actual and measurable interruption, failure, degradation or delay in the performance of the **Covered Network** due to:
- (1) **Data Asset Damage** resulting from **Malicious Code** introduced into the **Covered Network** by **Unauthorized Access** or **Unauthorized Use**;
  - (2) a denial of service attack upon the **Covered Network**; and/or
  - (3) the **Company's** suspension of its normal business activities conducted via the **Covered Network** for the purpose of avoiding or mitigating a **Data Compromise** or the possibility of transmitting **Malicious Code** to a third party.
- CC. Telecommunications Hacking** shall mean infiltration and manipulation of the telephone or fax system used by the **Company** in connection with its normal business activities.
- DD. Third Party Network** shall mean all the computer hardware, software, and networking equipment owned, leased, or operated by an entity or individual other than an **Insured**, and, who is operating under contract with the **Company** or other entity to provide business process outsourcing services (including but not limited to call center services, database administration, and fulfillment services) and/or information technology services (including but not limited to hosting, co-location, software-as-a-service, infrastructure-as-a-service, and data storage) in support of the **Company's** business operations.
- EE. Unauthorized Access** shall mean access, whether physical or electronic, by a person or entity without permission.
- FF. Unauthorized Use** shall mean:
- (1) any manner of use by an unauthorized person or entity; and
  - (2) use in an unauthorized manner by an authorized person or entity.

**GG. Vendor Error Related Outage** shall mean an accidental, unintentional, or negligent, act, error or omission by an entity or individual other than an **Insured** who is operating under contract with the **Company** to provide programming services (including but not limited to configuration, customization, data entry, development, deployment, modification, or maintenance) in support of the **Covered Network**, which directly results in an actual and measurable interruption, failure, degradation or delay in the performance of the **Covered Network**. **Vendor Error Related Outage** shall not mean the architecture, configuration, or design of any element of the **Covered Network** that has not proven stable in a live environment for more than thirty (30) days.

**HH. Wrongful Act** shall mean any **Network Security Wrongful Act, Privacy Wrongful Act or Multimedia Wrongful Act**.

### Section III. Exclusions

The **Insurer** shall not pay **Loss** or make any other payment under any Insuring Agreement if such **Loss** or payment is:

- A.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:
- (1) any **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received notice before the date set forth in Column 5 of in Item 4. of the **Declarations**;
  - (2) any **Wrongful Act(s)** of which any **Executive** had knowledge prior to the earlier of the:
    - (a) Inception Date as set forth in Item 2. of the **Declarations**; or
    - (b) inception date of the first insurance policy issued to the **Company** of which this Policy, in whole or in part, is a direct or indirect renewal or replacement;
  - (3) any **Wrongful Act** which, before the Inception Date as set forth in Item 2. of the **Declarations**, was the subject of any notice given by or on behalf of any **Insured** under any other insurance policy;
  - (4) any actual or alleged violation of the Telephone Consumer Protection Act, or any other similar state, local, foreign (including but not limited to CAN-SPAM) or federal statutes or regulations relating to unsolicited facsimile transmissions, email transmissions, text message transmissions and/or telephone communications to any person or entity;
  - (5) any actual or alleged price fixing, restraint of trade, or monopolization;
  - (6) any actual or alleged bodily injury or damage to or destruction of tangible property;
  - (7) any **Wrongful Acts** committed by any **Subsidiary** or its **Insured Persons** subsequent to the date such entity ceased to be a **Subsidiary**;
  - (8) any actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services;
  - (9) any actual or alleged loss of or drop in the value of any financial instruments or contracts representing money or other property;
  - (10) any actual or alleged harassment or discrimination of any kind;
  - (11) any **Content** deemed pornographic by the **Insurer**;
  - (12) any actual or alleged:
    - (a) dishonest, fraudulent or intentional act(s) of any **Insured**; or
    - (b) gain of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

provided, however:

- (i) solely with respect to Section III.A.(12)(a), such act(s) by an **Employee** shall not be imputed to any other **Insureds**; and
  - (ii) Sections III.A.(12)(a) and (b) shall not apply to **Costs of Defense** unless and until there is either an admission by an **Insured** as to such conduct or there is a final adjudication or adverse finding of fact against an **Insured** as to such conduct, at which time, the **Insurer** shall be entitled to reimbursement of any **Costs of Defense**;
- (13) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, including any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to:
- (a) any liability that an **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee;
  - (b) a **Network Security Wrongful Act** or **Privacy Wrongful Act** when the actual or alleged breach of contract or agreement is to secure or maintain **Protected Information**; or
  - (c) a **Multimedia Wrongful Act**, if the breach of a written, oral or implied-in-fact indemnification or hold harmless agreement between the **Insured** and any party disseminating **Content** by or on behalf of the **Insured** arises out of the dissemination of such **Content**;
- (14) any chargebacks of payment card transactions made or processed by the **Company**;
- (15) any investigation or proceeding by a federal, state, foreign or local regulatory agency or other governmental body concerning a potential violation of any federal, state, foreign or local law or regulation; provided, however, this exclusion shall not apply to a **Regulatory Action**;
- (16) any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (17) (a) the mechanical failure of a **Computer System** as a result of routine wear and tear; or
- (b) the interruption or disruption of any infrastructure service or utility supplied by a third party (including but not limited to power, water, gas, communications or connectivity);
- provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (18) any lawful or unlawful seizure, confiscation, nationalization or other expropriation undertaken by a governmental authority, whether foreign or domestic, provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act** or a **Network Security Wrongful Act**;
- (19) any actual or alleged misappropriation, infringement or theft, or inducement of any misappropriation, infringement or theft, of any patent or trade secret belonging to an individual or entity other than an **Insured**; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**; or
- (20) any awards, coupons, gambling, or prizes; provided, however, this exclusion shall not apply to a **Claim** for a **Privacy Wrongful Act**.

- B.** based upon or arising out of any **Claim** brought by or on behalf of:
- (1) any other **Insured**, or any other natural person or entity for whom or which an **Insured** is legally liable; provided this exclusion shall not apply to an otherwise covered **Claim** by an **Insured Person** alleging a **Network Security Wrongful Act** or **Privacy Wrongful Act**;
  - (2) any entity which is a parent, affiliate, joint venture, co-venturer, or partner of any **Insured**; or
  - (3) any entity directly or indirectly controlled, operated or managed by an **Insured**;
- C.** any of the following:
- (1) any **Loss** incurred by any **Insured** prior to the date a **Claim** is reported to the **Insurer** pursuant to the General Terms and Conditions;
  - (2) any of the **Company's** overhead expenses (including but not limited to compensation or benefits);
  - (3) any expenses to improve, restore, replace or update the **Computer System** and/or **Data Asset(s)** to a level beyond that which existed prior to any **Data Compromise** or **Wrongful Act**, or to identify, correct or remediate any software errors, vulnerabilities, or deficiencies;
  - (4) any expense incurred to research and develop **Data Assets**; or
  - (5) the economic or market value of a **Data Asset**, including trade secrets.

#### **Section IV. Conditions**

##### **A. Sub-Limits of Liability**

The following Cyber Liability Coverage Sub-Limits of Liability (if included, respective amounts are set forth in Schedule Part E. in Item 4. of the Declarations) shall be the **Insurer's** maximum aggregate liability for each coverage and, pursuant to Section III.B. 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 **Loss**, other than **Costs of Defense**, from all **Claims** for **Network Security Wrongful Acts** that cause or fail to prevent **Business Impersonation**; and
- (2) all **Loss**, other than **Costs of Defense**, from all **Regulatory Actions**.

##### **B. Notice of Data Compromise**

If, during the **Policy Period** or **Discovery Period**, any **Insured** first becomes aware of a specific **Data Compromise** and gives notice to the **Insurer** of:

- (1) the specific **Data Compromise**;
- (2) the injury or damage which has or may result therefrom; and
- (3) the circumstances by which the **Insured** first became aware thereof;

then any **Claim** arising out of such **Data Compromise** 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**.

##### **C. Other Insurance**

If any covered **Claim** is insured by any other valid and collectable policy with a sublimit applicable to such **Claim** that is lower than the available limit of liability under this Coverage Part, then this Coverage Part shall apply as the primary policy.

If any covered **Claim** is insured by any other valid and collectable policy with an available limit of liability that is greater than or equal to the available limit of liability under this Coverage Part, then this Coverage Part shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Coverage Part, except as provided under Section VII. of the General Terms and Conditions of this Policy.

When this Coverage Part provides Duty-to-Defend coverage and this Coverage Part is excess, the **Insurer** shall have no duty under this Policy to defend the **Insured** against any **Claim** if any other insurer has a duty to defend the **Insured** against that **Claim**; provided that, if no other insurer defends, the **Insurer** will undertake to do so and the **Insurer** will be entitled to the **Insured's** rights against those other insurers.

When this Coverage Part is primary, the **Insurer** shall be subrogated to all of the **Insureds** rights under any other policy.

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Management Liability Solution 2.0

**COVERAGE PART F**  
**Cyber Risk Insurance Coverage**

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**COVERAGE PART F  
CYBER RISK INSURANCE COVERAGE**

**Section I. Insuring Agreements**

**A. Data Compromise Coverage**

If a **Data Compromise** is first discovered during the **Policy Period** and reported pursuant to Section IV.D., then:

- (1) for a **Data Breach**, the **Insurer** shall pay on behalf of the **Company** the reasonable and necessary:
  - (a) legal fees, costs, or expenses charged by an **Incident Response Expert** in coordinating the investigation and response efforts related to a **Data Breach** including but not limited to a determination regarding the extent that any law, regulation, statute or contract requires notification of the **Data Breach** to any government agency or the persons or entities affected by the **Data Breach**;
  - (b) forensic fees incurred to investigate the cause of the **Data Breach** and/or to identify persons or entities affected by the **Data Breach**;
  - (c) costs of notification of the **Data Breach** to any persons or entities affected by the **Data Breach** or any government agency or other third party, but only to the extent:
    - (i) the **Incident Response Expert** determines applicable law, regulation, statute or contract requires such notification; or
    - (ii) the **Incident Response Expert** determines applicable law, regulation, statute or contract does not require such notification but the **Insurer** provides its prior written consent for such costs of notification to be incurred voluntarily;
  - (d) costs incurred to provide identity theft prevention (including but not limited to credit monitoring) and identity restoration services for persons affected by the **Data Breach**; and
  - (e) costs incurred to provide call center services in support of the **Company's** efforts to address inquiries from the persons or entities affected by the **Data Breach**;

provided each of the above are incurred with the **Insurer's** consent, which shall not be unreasonably withheld.
- (2) for a **PCI Compliance Violation**, the **Insurer** shall pay on behalf of the **Company** the **Assessments** the **Company** becomes obligated under contract to pay and any related reasonable and necessary legal fees, costs and expenses charged by an **Incident Response Expert** in coordinating the investigation and response efforts related to the **PCI Compliance Violation**; provided such amounts are incurred with the **Insurer's** consent, which shall not be unreasonably withheld;
- (3) for a **Network Disruption**, the **Insurer** shall reimburse the **Company** for **Business Income Loss**;
- (4) for **Data Asset Damage**, the **Insurer** shall pay **Restoration Costs** incurred by or under the direction of an **Incident Response Expert**; provided such amounts are incurred with the **Insurer's** consent, which shall not be unreasonably withheld;

- (5) for a **Cyber Crime**, the **Insurer** shall:
- (a) pay on behalf of the **Company**:
    - (i) reasonable and necessary forensic fees incurred by or under the direction of an **Incident Response Expert** to investigate the cause of the **Cyber Crime** and/or to discover if any other **Data Compromise** may be present; and
    - (ii) money paid with the **Insurer's** prior written consent to a third party to terminate that party's **Ransom Demands**;
    - (iii) reward money for information that leads to the arrest and conviction of persons responsible for making **Ransom Demands**, if such reward money is not offered or paid:
      - a. to **Insured Persons** or external auditors and/or investigators working under contract with the **Company**;
      - b. to law enforcement; or
      - c. in connection with **Ransom Demands** made by an entity directly or indirectly controlled, operated, or managed by the **Company** or an entity with whom the **Company** has entered into any form of agreement;
- provided such amounts are incurred or paid with the **Insurer's** consent, which consent shall not be unreasonably withheld; and
- (b) reimburse the **Company** for any **Fraud Loss** that is not otherwise reimbursed by a financial institution directly resulting from the **Cyber Crime**; and
- (6) for **Reputational Harm**, the **Insurer** shall reimburse the **Company** for **Reputational Damage Loss**.

**B. Public Relations Coverage**

Subject to the **Insurer's** prior written consent, the **Insurer** shall pay on behalf of the **Company** the costs of a public relations consultation in response to **Reputational Harm** related to a **Data Compromise**.

**Section II. Definitions**

**A. Assessments** shall mean any of the following amounts assessed against the **Company** pursuant to a merchant service agreement as a result of a **PCI Compliance Violation**:

- (1) Account Data Compromise ("ADC") Fraud Recovery losses;
- (2) ADC operational reimbursement costs for reissuing payment cards or monitoring compromised or potentially compromised accounts;
- (3) Case management fees for the card association's costs to investigate the **PCI Compliance Violation**; or
- (4) Fines or penalties.

**B. Business Impersonation** shall mean fraudulent communications (including but not limited to websites, e-mails, or phone calls) from an entity or individual other than an **Insured** designed to impersonate the **Company** (including but not limited to its **Content**, products, services, or websites) and/or any **Insured Person** with the goal of deceiving any customer or supplier of the **Company** into sharing credentials and/or personally identifiable information with, or fraudulently inducing such parties to transfer their money or property to the sender of such fraudulent communication.



**C. Business Income Loss** shall mean:

- (1) net profit before income taxes that the **Company** is prevented from earning due to a **Network Disruption**;
- (2) normal operating expenses incurred by the **Company** (including payroll) if such operating expenses must continue during the **Restoration Period** and would not have been incurred had there not been a **Network Disruption**; and
- (3) reasonable and necessary expenses incurred by the **Company** with the **Insurer's** prior consent to minimize, avoid or reduce a **Network Disruption**, if over and above the **Company's** normal operating and payroll expenses.

**Business Income Loss** shall be subject to the **Waiting Period Retention**, limited by the **Restoration Period**, and calculated on an hourly basis by the sum of (1) through (3) above, each sustained during the **Restoration Period**. In determining the amount of net profit or loss and expenses covered under Insuring Agreement I.A.(3), the **Insurer** will give due consideration to the net profit or loss of the **Company** before the **Network Disruption** and the **Company's** probable net profit or loss if no **Network Disruption** had occurred. However, net profit or loss calculations shall not include, and the Policy will not cover, any net income that would likely have been earned as a result of an increase in the volume of the **Company's** business due to favorable business conditions caused by the impact of any event similar to a **Network Disruption** suffered by other businesses.

**Business Income Loss** shall not include: **Costs of Defense**; damages, settlements or judgments; **Fraud Loss, Reputational Damage Loss**; contractual penalties; goodwill impairment; liability to a third party; break-up fees; any other consequential losses or damages not mentioned above; or any related legal costs or expenses.

**D. Computer Systems** shall mean:

- (1) the **Covered Network**;
- (2) **Insured Person** owned devices when used in connection with the **Company's** business activities; and
- (3) **Third Party Networks**.

**E. Coverage Event** shall mean a **Data Compromise**.

**F. Covered Network** shall mean all leased or **Company** owned:

- (1) computer hardware (including but not limited to desktops, laptops, mobile devices, printers, copiers, and servers); and
- (2) networking equipment (including but not limited to routers, switches, gateways, and hubs).

operated by the **Company** solely in connection with the **Company's** business operations.

**G. Cyber Crime** shall mean the following, if committed by a person or entity other than an **Insured** and without the involvement of an **Insured**:

- (1) the transmission of fraudulent instructions electronically to a financial institution which direct that financial institution to initiate an electronic funds transfer from the **Company** or otherwise debit the **Company's** accounts;
- (2) the **Unauthorized Access**, through electronic means, of the credentials (including but not limited to passwords, PINs, or security codes) related to the **Company's** financial accounts or the accounts of third parties which are under the **Company's** control;

- (3) **Telecommunications Hacking**; and
- (4) **Ransom Demands**.
- H. Data Asset** shall mean software and electronic data (including but not limited to databases, audio/video files, websites, intranets, and extranets) maintained by or on behalf of the **Company** in connection with the **Company's** business operations.
- I. Data Asset Damage** shall mean loss of control over, damage to, or destruction of a **Data Asset**.
- J. Data Breach** shall mean **Unauthorized Access** to, **Unauthorized Use** of, loss of control over (including but not limited to the loss of any laptop, smartphone or other portable device that contains **Protected Information**), or disclosure of, **Protected Information** stored (or captured solely for purposes of processing electronic payments) by or on behalf of the **Company** in connection with the **Company's** business activities.
- K. Data Compromise** shall mean a **Data Breach**, **Ransom Demand**, **Data Asset Damage**, **Cyber Crime**, **PCI Compliance Violation** or **Network Disruption** sustained by the **Company**.
- L. Employee** shall mean any natural person whose labor or service is engaged and directed by the **Company** including any permanent, temporary, leased, or volunteer worker. **Employee** shall not mean an **Executive** or an independent contractor.
- M. Executive** shall mean any natural person who is the **Company's**:
- (1) Chief Executive Officer, Chief Financial Officer, Chief Technology Officer, Chief Information Security Officer;
  - (2) General Counsel;
  - (3) Insurance Risk Manager;
  - (4) General Partner, in the event a **Company** or **Subsidiary** is organized as a partnership; or
  - (5) Managing Member, in the event a **Company** or **Subsidiary** is organized as a Limited Liability Company;
- or the respective functional equivalents of (1) through (5) above.
- N. Fraud Loss** shall mean:
- (1) loss of **Money** and/or **Securities**; or
  - (2) solely with respect to **Telecommunications Hacking**, the charges for unauthorized calls; incurred by the **Company**; provided, however, **Fraud Loss** shall not mean any indirect or consequential damages; or unless this Policy is specifically endorsed to provide such coverage, any loss to the **Company** resulting from the transfer of any property of the **Company** (including but not limited to **Money** or **Securities**) by an authorized person by reason of that person having been deceived by a third party, regardless of whether or not such deception involves electronic means and/or manipulation.
- O. Incident Response Expert** shall mean the firm retained by the **Insured** or the **Insurer** pursuant to Section IV.C. of this Coverage Part in connection with a **Data Compromise**.
- P. Insured** shall mean the **Company** and any **Insured Person**.
- Q. Insured Person** shall mean any past, present or future:
- (1) **Executive**;
  - (2) **Employee**;
  - (3) members of the **Company's** Board of Directors; or
  - (4) trustees of the **Company's** Board of Trustees.

- R. Malicious Code** shall mean any virus, worm, trojan horse, backdoor or similar malicious software program.
- S. Money** shall mean:
- (1) currency, including virtual currency (bitcoins), 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.
- T. Network Disruption** shall mean:
- (1) **Security Event Related Outage**; or
  - (2) **Vendor Error Related Outage**;
- provided, however, **Network Disruption** shall not mean an outage related to a **Third Party Network** unless this Policy is specifically endorsed to cover such outage.
- U. PCI Compliance Violation** shall mean alleged or actual violation of the applicable Payment Card Industry Data Security Standards (PCI-DSS) in effect when such violation is first discovered.
- V. Protected Information** shall mean:
- (1) any non-public personally identifiable information (including but not limited to personal health information), whether in electronic form or otherwise, which is protected from **Unauthorized Access, Unauthorized Use**, or disclosure by any federal, state, local or foreign law or regulation or by any publicly stated policy of the **Company**; and
  - (2) any confidential, non-public business information of a third party that is the subject of a confidentiality agreement between the **Company** and such third party.
- W. Ransom Demand** shall mean a threat or series of threats by someone other than an **Insured** to cause or prolong a **Data Compromise**.
- X. Related Events** shall mean all **Data Compromises** which are based upon, arise out of, directly or indirectly result from, in consequence of, or in any way involve the same or a related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.
- Y. Reputational Damage Loss** shall mean the net profit or loss before income taxes the **Company** is prevented from earning due to **Reputational Harm** and resulting in a measureable reduction of the **Company's** sales. In determining the amount of net profit or loss, the **Insurer** will give due consideration to the net profit or loss earned by the **Company** before the **Reputational Harm** and the **Company's** probable net profit or loss if no **Reputational Harm** had occurred. The calculation of **Reputational Damage Loss** shall be limited by the earlier of:
- (1) the date the **Company's** gross revenues are restored to the level they had been prior **Reputational Harm**; or
  - (2) ninety (90) days from the date of the earliest **Reputational Harm**.
- Reputational Damage Loss** shall not include: **Costs of Defense**; damages, settlements or judgments; **Fraud Loss**; **Business Income Loss**; goodwill impairment; contractual penalties; liability to a third party; break-up fees; any other consequential losses or damages not mentioned above; or any related legal costs or expenses.
- Z. Reputational Harm** shall mean adverse media reporting related to a **Data Compromise** covered under Insuring Agreements I.A. **Reputational Harm** shall not mean the media's ordinary dissemination of substitute notice of a **Data Breach**.

**AA. Restoration Costs** shall mean reasonable and necessary:

- (1) legal, security, or forensic fees, costs, and expenses to determine the scope and cause of **Data Asset Damage**; or
- (2) costs incurred to restore control over **Data Assets** or to replace, restore or recollect **Data Assets** from written records or partially or fully matching **Data Assets** due to their corruption or destruction from **Data Asset Damage**.

**Restoration Costs** shall not include any consequential losses or damages resulting from **Data Asset Damage**.

**BB. Restoration Period** shall mean the period of time which begins with the first instance of a **Network Disruption** and ends with the earlier of:

- (1) the point in time when the **Covered Network** returns to, or could have been restored with reasonable efforts to, substantially the level of operation that existed prior to such **Network Disruption**; or
- (2) exactly thirty (30) days from the first instance of the **Network Disruption**; provided, however, **Restoration Period** shall not include the **Waiting Period Retention**.

**CC. Securities** shall mean negotiable and nonnegotiable instruments or contracts representing **Money** 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 the **Company**;

provided, however, **Securities** shall not mean **Money**.

**DD. Telecommunications Hacking** shall mean infiltration and manipulation of the telephone or fax system used by the **Company** in connection with its normal business activities.

**EE. Third Party Network** shall mean all the computer hardware, software, and networking equipment owned, leased, or operated by an entity or individual other than an **Insured**, and, who is operating under contract with the **Company** or other entity to provide business process outsourcing services (including but not limited to call center services, database administration, and fulfillment services) and/or information technology services (including but not limited to hosting, co-location, software-as-a-service, infrastructure-as-a-service, and data storage) in support of the **Company's** business operations.

**FF. Unauthorized Access** shall mean access, whether physical or electronic, by a person or entity without permission.

**GG. Unauthorized Use** shall mean:

- (1) any manner of use by an unauthorized person or entity; and
- (2) use in an unauthorized manner by an authorized person or entity.

**HH. Vendor Error Related Outage** shall mean an accidental, unintentional, or negligent, act, error or omission by an entity or individual other than an **Insured** who is operating under contract with the **Company** to provide programming services (including but not limited to configuration, customization, data entry, development, deployment, modification, or maintenance) in support of the **Covered Network**, which directly results in an actual and measurable interruption, failure, degradation or delay in the performance of the **Covered Network**. **Vendor Error Related Outage** shall not mean the architecture, configuration, or design of any element of the **Covered Network** that has not proven stable in a live environment for more than thirty (30) days.

**II. Waiting Period Retention** shall mean the Waiting Period stated in Item 4. Coverage Schedule Part F. of the Declarations.

### Section III. Exclusions

The **Insurer** shall not make any payment under any Insuring Agreement if such payment is:

**A.** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving:

- (1) a **Data Compromise** first discovered prior to the earlier of the:
  - (a) Inception Date as set forth in Item 2. of the Declarations; or
  - (b) inception date of the first insurance policy issued to the **Company** of which this Policy, in whole or in part, is a direct or indirect renewal or replacement;
- (2) any **Data Compromise** which, before the Inception Date as set forth in Item 2. of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other insurance policy;
- (3) any actual or alleged bodily injury or damage to or destruction of tangible property;
- (4) any **Data Compromises** involving a **Subsidiary** discovered subsequent to the date such entity ceased to be a **Subsidiary**;
- (5) any actual or alleged loss of or drop in the value of any financial instruments or contracts representing money or other property;
- (6) any actual or alleged:
  - (a) dishonest, fraudulent or intentional act(s) of any **Insured**; or
  - (b) gain of any profit, remuneration or advantage to which such **Insured** is not legally entitled;provided, however solely with respect to Section III.A.(6)(a), such act(s) by an **Employee** shall not be imputed to any other **Insureds**; and
- (7) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, including any express or implied contract or agreement to pay royalties or to account for same; provided, however, this exclusion shall not apply to any **Assessment** the **Company** incurs as a result of a **PCI Compliance Violation**;
- (8) any chargebacks of payment card transactions made or processed by the **Company**, provided, however, this exclusion shall not apply to **Assessments** in connection with **PCI Compliance Violations**;
- (9) any fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail or act of God or any other physical event, however caused;
- (10)
  - (a) the mechanical failure of a **Computer System** as a result of routine wear and tear; or
  - (b) the interruption or disruption of any infrastructure service or utility supplied by a third party (including but not limited to power, water, gas, communications or connectivity); or
- (11) any lawful or unlawful seizure, confiscation, nationalization or other expropriation undertaken by a governmental authority, whether foreign or domestic.

**B.** any of the following:

- (1) any amounts incurred by any **Insured** prior to the date a **Data Compromise** is reported to the **Insurer** pursuant to Section IV.D. of this Coverage Part;

- (2) any of the **Company's** overhead expenses (including but not limited to compensation or benefits); provided, however, this exclusion III.B.(2) shall not apply to **Business Income Loss** otherwise covered pursuant to Insuring Agreement I.A.(3);
- (3) any expenses to improve, restore, replace or update the **Computer System** and/or **Data Asset(s)** to a level beyond that which existed prior to any **Data Compromise**, or to identify, correct or remediate any software errors, vulnerabilities, or deficiencies;
- (4) any expense incurred to research and develop **Data Assets**;
- (5) the economic or market value of a **Data Asset**, including trade secrets; or
- (6) any **Business Income Loss** arising in whole or in part from any **Vendor Error Related Outage** first discovered:
  - (a) prior to the **Policy Period**; or
  - (b) within ninety (90) days of the Policy's effective date.

#### Section IV. Conditions

##### A. Limits of Liability

- (1) The Aggregate Limit of Liability indicated in Coverage Schedule Part F. in Item 4. of the Declarations shall be the **Insurer's** maximum liability under Insuring Agreements A. and B. combined, regardless of the number of **Data Compromises** or **Insureds**, other than the Fees identified in Section IV.C.(1) below. The **Insurer's** obligations under all Insuring Agreements of this Coverage Part shall be deemed completely fulfilled and extinguished if the Aggregate Limit of Liability is exhausted by payments regardless of the time of payment or the number of **Data Compromises**.
- (2) Costs charged by an **Incident Response Expert** appointed pursuant to Section IV.C.(1) below shall be in addition to, and not part of the applicable Limit of Liability, but fees charged by an **Incident Response Expert** appointed pursuant to Section IV.C.(2) below shall be part of, and not in addition to, the applicable Limit of Liability and shall serve to reduce the applicable Limit of Liability. Regardless of whether an **Incident Response Expert** is appointed pursuant to Section IV.C.(1) or (2), once the applicable Limit of Liability has been exhausted, the **Insurer's** obligations hereunder shall cease.
- (3) The following Coverage Sub-Limits of Liability (if included, respective amounts are set forth in Coverage Schedule Part F. in Item 4 of the Declarations) shall be the **Insurer's** maximum aggregate liability for each coverage and, pursuant to Section III.B. 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:
  - (a) all **Assessments** from all **PCI Compliance Violations** and all legal fees, costs and expenses charged by an **Incident Response Expert** in coordinating the investigation and response efforts related to all **PCI Compliance Violations**;
  - (b) all loss of **Money** and/or **Securities** from all **Cyber Crimes**;
  - (c) all charges for unauthorized calls from all **Telecommunications Hacking**; and
  - (d) all reward moneys paid under Insuring Agreement A.(5)(a)(iii) of this Coverage Part in connection with all **Ransom Demands**.

## B. Retentions

- (1) Only one Retention shall be applicable to any **Data Compromise** (or **Related Events**). The **Insurer** shall only be obligated to pay costs or amounts covered under this Coverage Part in excess of the applicable Retention, which shall be borne by the **Insured** and cannot be insured or transferred to another party.
- (2) If more than one Insuring Agreement under this Coverage Part applies to any **Data Compromise** (or **Related Events**), the highest Retention shall apply.
- (3) Notwithstanding (1) and (2) above, the **Waiting Period Retention** shall apply to a **Network Disruption**.
- (4) Notwithstanding (1) and (2) above, the Retention, other than any **Waiting Period Retention**, shall not apply:
  - (a) to fees charged by an **Incident Response Expert** appointed pursuant to Section VI.A.;
  - (b) in the event of the **Financial Insolvency**; or
  - (c) to costs of notification.

## C. Data Compromise Response

- (1) With respect to a **Data Compromise**, unless the **Insured** makes an election pursuant to (2) below the **Insurer** shall have the right to select the **Incident Response Expert** and any other experts (including but not limited to forensic examiners) or providers (including mail houses and call centers) to conduct the **Data Compromise** investigation and response.
- (2) With respect to a **Data Compromise**, the **Insured** shall have the right to select the **Incident Response Expert** and other experts (including but not limited to forensic examiners) or providers (including mail houses and call centers) to conduct the **Data Compromise** investigation and response, provided:
  - (a) the **Insureds** satisfy their reporting obligations pursuant to Section IV.D. below;
  - (b) the **Insured** shall not incur any fees connection with any **Data Compromise** without the express prior written consent of the **Insurer**, which shall not be unreasonably withheld;
  - (c) the **Insured** shall only select vendors with the express prior written consent of the **Insurer**, which shall not be unreasonably withheld;
  - (d) the **Insured** provides the **Insurer** with a written incident response plan that was created and tested prior to the discovery of the **Data Compromise**; and
  - (e) the **Insurer** shall at all times have the right, but not the duty, to associate with the **Insureds** in the investigation, defense, response, or settlement of any **Data Compromise** to which coverage under this Policy may apply.
- (3) In the event the **Insured** selects the **Incident Response Expert** or other providers or experts pursuant to (2) above, the **Insurer** shall advance payment of such **Incident Response Expert's**, provider's or expert's fees within ninety (90) days after receipt of written evidence such fees have been incurred. Any advancement shall be based on the following conditions:
  - (a) the appropriate Retention has been satisfied; and

- (b) the **Insureds** and the **Insurer** have agreed such related services are both reasonable and necessary elements of the management and response related to the **Data Compromise**.

#### **D. Other Insurance**

If any covered **Data Compromise** is insured by any other valid and collectable policy with a sublimit applicable to such **Data Compromise** that is lower than the available limit of liability under this Coverage Part, then this Coverage Part shall apply as the primary policy.

If any covered **Data Compromise** is insured by any other valid and collectable policy with an available limit of liability that is greater than or equal to the available limit of liability under this Coverage Part, then this Coverage Part shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Coverage Part, except as provided under Section VII. of the General Terms and Conditions of this Policy.

When this Coverage Part is primary, the **Insurer** shall be subrogated to all of the **Insureds** rights under any other policy.

#### **Section V. Notice of Data Compromise**

As a condition precedent to coverage, the **Insured** shall:

- (a) notify the **Insurer** at the Hotline Number set forth in Item 7. of the Declarations of any **Data Compromise** as soon as practicable but in no event more than five (5) business days after such **Data Compromise** is first discovered;
- (b) not take any measures with respect to such **Data Compromise**, except for measures directed or authorized by the **Incident Response Expert** or that are minimally and reasonably necessary to stop such **Data Compromise** or avoid further loss or harm from such **Data Compromise**;
- (c) give the **Insurer**, upon request, a detailed proof of the damage caused by any **Data Compromise**. With respect to a **Network Disruption, Reputational Harm, and Cyber Crime**, the **Insured** must furnish the **Insurer** with written proof of the **Company's** claimed **Business Income Loss, Reputational Damage Loss, or Fraud Loss** duly sworn to, with full particulars, within six (6) months after such **Data Compromise** is first discovered;
- (d) submit, upon request, to examination under oath at the request of the **Insurer** and give the **Insurer** a signed statement of the **Insured's** answers; and
- (e) cooperate with the **Insurer** in the investigation and resolution of any matter submitted under the Policy and provide the **Insurer** with access to all relevant sources of information, including the **Company's** financial records, tax returns, accounting procedures, bills, invoices, vouchers, deeds, liens and contracts.

A **Data Compromise** will be deemed first discovered under this Policy on the date an **Executive** first becomes aware of facts that would cause a reasonable person to assume a **Data Compromise** has occurred or might have occurred, even though the exact details of the **Data Compromise** may not then be known.



**Management Liability Solution 2.0**

**Coverage Part G  
Commercial Crime Coverage**

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SPECIMEN

**COVERAGE PART G  
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 G only for those Insuring Agreements designated as "Insuring Agreement Included" in Coverage Schedule G. 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 G (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 G (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 G (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;
  - (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 employee welfare or pension benefit plan, as defined by the Employee Retirement Income Securities Act of 1974 and any amendments thereto, 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 government-mandated insurance program for workers' compensation, unemployment, social security, or disability benefits for employees of the **Company**, voluntary employee benefits association, multiple employer welfare arrangement, multiple employer plan, or multiemployer plan.

**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; or



- (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 G (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 G 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 G 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 plans
- that 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 V.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.

C. This Coverage Part G is offered with either a Single Limit of Liability applicable in the aggregate to all Insuring Agreements under this Coverage Part or a Separate Limit of Liability applicable to each Insuring Agreement under this Coverage Part designated as “Insuring Agreement Included” as set forth in Coverage Schedule G. in Item 4. of the Declarations, but never with both.

(1) If a Single Limit of Liability is designated in Coverage Schedule G. 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 G. 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 G. 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 G. 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 G. 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 G. in Item 4. of the Declarations up to the applicable Separate Limit of Liability set forth in Item 4. of the Declarations.
- D.** 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. The Retention does not apply to loss sustained by any **Employee Benefit Plan**.
- E.** If through consolidation or merger with, or purchase or acquisition of assets or liabilities of, some other entity, the **Insured** acquires the use and the control of any additional **Premises** or the number of additional persons who become **Employees** as a result of such consolidation, merger, purchase or acquisition exceeds ten percent (10%) of the total number of **Employees** at the inception of the Policy, then:
- (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 IV. Notice**

- A.** 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 G.
- B.** 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:
- (1) notify the **Insurer**, as soon as possible, not to exceed sixty (60) days after the date of discovery;
  - (2) give the **Insurer** a detailed, sworn proof of loss within one hundred twenty (120) days after the date of discovery;
  - (3) submit to examination under oath at the request of the **Insurer** and give the **Insurer** a signed statement of the **Insured's** answers; and
  - (4) cooperate with the **Insurer** in the investigation and settlement of any loss under Coverage Part G.
- C.** For loss covered under Insuring Agreement A, the **Insured** must:
- (1) give the **Insurer** notice as soon as possible even if the loss falls entirely within the Retention; and
  - (2) upon the **Insurer's** request, give the **Insurer** a statement describing the loss.