

## PRIVATE COMPANY MANAGEMENT LIABILITY POLICY GENERAL TERMS AND CONDITIONS SECTION

In consideration of payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to the Declarations and all of the terms, conditions and limitations of this Policy, the Underwriter and the Insureds agree as follows:

### I. TERMS AND CONDITIONS

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Section or endorsement of this Policy, the terms and conditions of each Coverage Section of this Policy apply only to that Coverage Section and shall not apply to any other Coverage Section of this Policy. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms, conditions and limitations of any Coverage Section, the terms, conditions and limitations of such Coverage Section shall control for purposes of that Coverage Section. Any defined term referenced in these General Terms and Conditions but defined in a Coverage Section shall, for purposes of coverage under that Coverage Section, have the meaning set forth in that Coverage Section.

### II. DEFINITIONS

- A. **Application** means all written materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insureds** to the Underwriter in connection with the underwriting of this Policy; provided, that any such statements or filings submitted in connection with the application(s) were made within twelve (12) months of the Inception Date of this Policy. The **Application** is deemed attached to and incorporated into this Policy.
- B. **Change in Control** means the occurrence of either of the following during the **Policy Period**:
1. the **Named Insured**: (i) sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities, or (ii) merges or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
  2. any person, entity or affiliated group of persons or entities acquires:
    - a. an ownership interest of the **Named Insured** representing more than fifty percent (50%) of the power to manage or control the **Named Insured**, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or
    - b. the right pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Named Insured** (including a limited liability company or joint venture) to elect, appoint or designate a majority of the board of directors or equivalent executives of the **Named Insured**.
- C. **Claim** means, with respect to any **Liability Coverage Section**, those matters defined as a **Claim** in such Coverage Section.
- D. **Clean-Up Costs** means any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

- E. **Coverage Event** means, with respect to the Crime Coverage Section, the event or loss which must occur or be discovered in order to invoke coverage under such Coverage Section.
- F. **Defense Expenses** means that Section of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses incurred in defending any **Claim**, including the cost of **E-Discovery Consultant Services**, and the premium for appeal, attachment or similar bonds. **Defense Expenses** does not include any remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured**.
- G. **Domestic Partner** means any natural person qualifying as a domestic Partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.
- H. **E-Discovery Consultant Firm** means any e-discovery consulting firm selected by the Underwriter to perform **E-Discovery Consultant Services** in connection with a **Claim**.
- I. **E-Discovery Consultant Services** means the following services performed by an **E-Discovery Consultant Firm**:
1. assisting the **Insured** with managing and minimizing the internal and external costs associated with the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information ("E-Discovery");
  2. assisting the **Insured** in developing or formulating an E-Discovery strategy which shall include interviewing qualified and cost effective E-Discovery vendors; serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the Underwriter in executing and monitoring the E-Discovery strategy; and
- J. **Employee** means the following:
1. any natural persons who were, now are or shall be in the regular service of the **Organization** in the ordinary course of the **Organization's** business, regardless of whether such natural person is in a supervisory, co-worker or subordinate position or otherwise, and including any such natural persons who are leased, temporary, part-time or seasonal employees of the **Organization**;
  2. any independent contractor working for the **Organization**, and
  3. any volunteers or interns working for the **Organization**;
- in their capacity as such;
- provided (i) any independent contractor or person who is leased to the **Organization** shall qualify as an **Employee** only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization's** employees.
- K. **Enforcement Unit** means any federal, state, local or foreign law Enforcement Unit or other investigative, administrative, regulatory or governmental authority (including but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission or any attorney general), or the enforcement unit of any securities or commodities exchange or similar self-regulatory organization (including, but not limited to, the New York Stock Exchange, NASDAQ and the American Stock Exchange).

- L. **ERISA** means the Employee Retirement Income Security Act of 1974, and as amended, and any similar foreign, state or local law, statute, rule or regulation.
- M. **Executive** means with respect to any **Organization** the natural persons who were, now are or shall become a duly elected or appointed director (including a de facto director or shadow director), officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee member, member of an advisory board, in-house general counsel or risk manager or the functional equivalent of any of the foregoing positions.
- N. **Extended Reporting Period** means the period set forth in ITEM 4.B of the Declarations for the extended coverage under the **Liability Coverage Sections**, as described in Section XII of these General Terms and Conditions.
- O. **Extradition** means any formal process by which an **Insured Person** located in any foreign or domestic jurisdiction is or is sought to be surrendered to any other foreign or domestic jurisdiction for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- P. **Financial Impairment** means the status of the **Organization** resulting from:
1. the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Organization**, or
  2. the **Organization** becoming a debtor in possession, as defined under U.S. Bankruptcy law or equivalent foreign law.
- Q. **Foreign Jurisdiction** means any jurisdiction, other than the United States or any of its territories or possessions.
- R. **Foreign Policy** means the standard insurance policy (including all mandatory endorsements, if any) approved by the Underwriter for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded by the applicable Coverage Section under this Policy, but shall not include any commercial general liability, property or similar insurance policy.
- S. **Insured Persons** means with respect to each Coverage Section the natural persons defined as **Insured Persons** in such **Coverage Section**.
- T. **Insureds** means with respect to each Coverage Section the entities, plans and natural persons defined as **Insureds** in such Coverage Section.
- U. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of related facts, circumstances, situations, events, transactions or causes.
- V. **Liability Coverage Section** means any of the following: Directors and Officers Liability Coverage Section, Employment Practices Liability Coverage Section, Fiduciary Liability Coverage Section, Cyber Coverage Section, Employed Lawyers Liability Coverage Section, or Miscellaneous Professional Liability Coverage Section, if purchased as set forth in the Coverage Schedule in ITEM 8 of the Declarations.

- W. **Loss** means:
1. with respect to any **Liability Coverage Section**, the amounts defined as **Loss** in such Coverage Section; and
  2. with respect to the Crime Coverage Section, the amounts covered under such Coverage Section.
- X. **Manager** means any natural person who is a former, present or future manager, managing member, general partner, member of the board of managers or equivalent executive of an **Organization** that is a limited liability company or a limited partnership.
- Y. **Non-Indemnifiable Loss** means **Loss** incurred by an **Insured Person** for which the **Organization** is not permitted by common or statutory law to indemnify or is not financially able to indemnify by reason of **Financial Impairment**.
- Z. **Named Insured** means the organization designated in ITEM 1 of the Declarations.
- AA. **Organization** means, collectively, the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- BB. **Personal Injury** means libel, slander, disparagement, defamation, invasion of privacy, invasion of right of publicity, wrongful entry, wrongful detention, wrongful eviction, false imprisonment, false arrest, malicious prosecution, malicious use or abuse of process, assault, battery, loss of consortium, or any violation of a federal, state or local statutory or common law, rule or regulation involving the unsolicited electronic dissemination of faxes, emails, texts, or other communications by or on behalf of an **Organization** to any actual or prospective customers of an **Organization** or any other third party, including but not limited to the Telephone Consumer Protection Act, the United States of America CAN-SPAM Act of 2003, the Junk Fax Prevention Act of 2005, and any amendments thereto, or any similar federal, state or local statutory or common law, rule or regulation.
- CC. **Plans** mean the plans and programs defined as **Plans** in the Fiduciary Liability Coverage Section, if purchased.
- DD. **Policy Period** means the period set forth in ITEM 3 of the Declarations, subject to prior termination in accordance with Section XIX (Cancellation and Nonrenewal) of these General Terms and Conditions.
- EE. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** also means any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.

FF. **Subsidiary** means:

1. any organization in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent position is owned, in any combination, by one or more **Organizations**;
2. any organization in which one or more **Organizations**, in any combination, have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors or equivalent position of such organization;
3. any organization in which exactly fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent positions is owned, in any combination, by one or more **Organizations**, if one or more **Organizations** solely controls the management and operation of such organization pursuant to a written contract with the owners of the remaining fifty percent (50%) of such securities or voting rights;
4. any not-for-profit organization controlled or exclusively sponsored by one or more **Organizations**.

GG. **Wage and Hour Law** means any state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act or Wage Payment and Collection Act), or any amendments thereto, or rule or regulations promulgated thereunder governing wage, hour and payroll policies and practices (except the Equal Pay Act) including, but not limited to:

1. the refusal, inability or failure of an **Organization** or **Insured Person** to pay wages or overtime pay, off-the-clock work, on-call time compensation, compensation for waiting time and dressing time, minimum wage compensation, reimbursement of expenses or any amounts representing such wages or pay or expenses, for services rendered or time spent in connection with work related activities;
2. improper pay deductions taken by an **Organization** or **Insured Person** from any employee or purported employee, including but not limited to garnishments and withholdings;
3. improper classification of any employee or purported employee or improper or failure to maintain accurate records;
4. child labor;
5. pay equity or comparable worth;
6. failure to provide or enforce any legally required rest or meal breaks; or
7. any similar practices, policies, or procedures.

HH. **Wrongful Acts** means, with respect to any **Liability Coverage Section**, the acts, errors, omissions and other matters defined as **Wrongful Acts** in such Coverage Section.

### III. NOTICE

- A. Any notice to the Underwriter with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section so designated.
- B. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in ITEM 1 of the Declarations. Notice to the Underwriter shall be given to the respective address shown in ITEM 6 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or in the case of courier, email or fax, one day following the date such notice is sent, whichever earlier, subject to proof of transmittal.

### IV. LIMITS OF LIABILITY

#### A. POLICY AGGREGATE LIMIT OF LIABILITY

The amount set forth in ITEM 2 of the Declarations shall be the Underwriter's maximum limit for all **Loss** covered under all **Liability Coverage Sections**, combined.

The Underwriter's maximum liability under the Crime Coverage Section shall be the respective Limits of Liability as set forth in the Crime Declarations, if any. Such Limits of Liability will be applied as described in the Crime Coverage Section.

#### B. EACH LIABILITY COVERAGE SECTION LIMIT OF LIABILITY

The respective Aggregate Limit of Liability for each **Liability Coverage Section**, as set forth in the Coverage Schedule in ITEM 8 of the Declarations, shall be the Underwriter's maximum aggregate liability for all **Loss** on account of all **Claims** under each such **Liability Coverage Section**.

The Limit of Liability for each **Liability Coverage Section** shall be part of and not in addition to, the Policy Aggregate Limit of Liability as set forth in ITEM 2 of the Declarations.

#### C. SHARED LIABILITY COVERAGE SECTION LIMIT OF LIABILITY

If the Aggregate Limit(s) of Liability for more than one Coverage Section is selected to be a Shared Limit in ITEM 8 of the Declarations, then: (i) the Aggregate Limit of Liability for each shared Coverage Section shall be the maximum liability of the Underwriter for all **Loss** arising from all **Claims** under such shared Coverage Sections, (ii) any **Loss** paid under one shared Coverage Section shall reduce the Aggregate Limit of Liability for all other shared Coverage Sections, and (iii) in no event shall the maximum liability of the Underwriter for all **Loss** arising from all **Claims** under all Shared Coverage Sections, collectively, exceed the highest Aggregate Limit of Liability applicable to such Coverage Sections that have a Shared Limit. Such Shared Limit of Liability shall be part of and not in addition to the Policy Aggregate Limit of Liability as set forth in ITEM 2 of the Declarations. This paragraph further limits the Underwriter's maximum liability under each such **Liability Coverage Section** and does not increase the respective separate Aggregate Limit of Liability for each **Liability Coverage Section**.

#### D. **LIABILITY UNDER MULTIPLE COVERAGE SECTIONS**

In the event that a single **Claim** is covered in whole or in part under more than one **Liability Coverage Section**, then the Underwriter's maximum aggregate limit of liability for all **Loss** resulting from such **Claim** shall not exceed the largest single applicable Limit of Liability available under any such **Liability Coverage Section**.

#### E. **POLICY AGGREGATE SUBLIMIT FOR E-DISCOVERY CONSULTANT SERVICES**

The Policy Aggregate Sublimit for E-Discovery Consultant Services stated in Item 8 of the Declarations shall mean the maximum limit of the Underwriter's liability for all **E-Discovery Consultant Services** resulting from all Claims or Related Claims under all Liability Coverage Sections combined. Such Policy Aggregate Sublimit for E-Discovery Consultant Services shall be part of, and not in addition to, the Policy Aggregate Limit of Liability and the any applicable Aggregate Limit of Liability for any **Liability Coverage Section**.

#### F. **COORDINATION OF COVERAGE**

Any **Loss** covered under more than one **Liability Coverage Section** including the Cyber Coverage Section, shall first be covered under the Cyber Coverage Section, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** which is not paid under the Cyber Coverage Section shall then be covered under the Employment Practices Liability Coverage Section, if applicable, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** otherwise covered under any other applicable **Liability Coverage Section** which is not paid under the Cyber Coverage Section or Employment Practices Liability Coverage Section shall be covered under such other **Liability Coverage Section**, subject to the terms, conditions and limitations of such **Liability Coverage Section**.

#### G. **SUBLIMITS OF LIABILITY**

Except as otherwise indicated, any Sublimit of Liability set forth in any Coverage Section shall be part of and not in addition to, the respective Aggregate Limit of Liability for that Coverage Section. No retention shall apply to any **Loss** which is subject to a Sublimit of Liability unless otherwise specifically indicated in the Declarations, the Policy and/or any endorsements thereto.

#### H. **DEFENSE EXPENSES WITHIN LIMIT OF LIABILITY**

Except as otherwise provided, **Defense Expenses** are part of and not in addition to the Limits of Liability applicable to the **Liability Coverage Sections**, and the payment by the Underwriter of **Defense Expenses** reduces such Limits of Liability.

#### I. **LIMIT OF LIABILITY EXHAUSTION AND PAYMENT**

If the applicable Limit of Liability under this Policy is exhausted by payment of **Loss**, the Underwriter's obligations, including without limitation any duty to defend, shall be completely fulfilled and extinguished. Except with respect to Section XVIII of these General Terms and Conditions (Payment of Loss), the Underwriter is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

### V. **RETENTION**

#### A. **RETENTIONS FOR LIABILITY COVERAGE SECTIONS**

1. The Underwriter's liability under the **Liability Coverage Sections** with respect to **Loss** on account of each **Claim** shall apply only to that Section of **Loss** which is excess of the applicable Retention set forth in the Coverage Schedule in ITEM 8 of the Declarations. If more than one Retention applies to a single **Claim**, the largest applicable Retention shall apply to such **Claim**. The retention shall be uninsured under this Policy. The Underwriter shall recognize payment of any applicable retention by the **Insured**, any Side A Excess DIC Underwriter and/or by any other source.
2. If an **Organization** refuses or fails within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if the **Organization** is unable to indemnify or advance covered **Loss** due to its **Financial Impairment**, the Underwriter shall pay such covered **Loss** without applying the applicable Retention. If the Underwriter pays under this Policy any **Loss** incurred by an **Insured Person** for which the **Organization** is legally permitted or required and is financially able to advance or indemnify, then the **Organization** shall reimburse the Underwriter for such amounts up to the applicable Retention, and such amounts shall become due and payable as a direct obligation of the **Organization** to the Underwriter.
3. No Retention shall apply to the first \$10,000 of **E-Discovery Consultant Services** incurred by the **Insured** in connection with a **Claim**.

#### B. DEDUCTIBLES FOR CRIME COVERAGE SECTION

The Underwriter's maximum liability and the applicable Deductible under the Crime Coverage shall be the respective Limits of Liability and Deductible amounts as set forth in the Crime Declarations, if any. Such Limits of Liability and Deductible amounts will be applied as described in the Crime Coverage Section.

#### VI. SINGLE CLAIMS

All **Claims** under the **Liability Coverage Sections** which arise out of the same **Wrongful Act** or **Interrelated Wrongful Act** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim**.

If a single **Claim** is covered in whole or in Part under more than one **Liability Coverage Section**, the applicable Retention under each such **Liability Coverage Section** shall be applied with respect to coverage for such **Claim** under such **Liability Coverage Section**, provided the sum of all applicable Retentions under all such **Liability Coverage Sections** shall not exceed the largest of such applicable Retentions.

#### VII. ALLOCATION

Subject to this Section VIII, if in any **Claim** under a **Liability Coverage Section** the **Insureds** incur both **Loss** covered by this Policy and loss not covered by this Policy either because the **Claim** against the **Insureds** includes both covered and uncovered matters or because the **Claim** is made against both **Insureds** who are afforded coverage for such **Claim** and others, including **Insureds**, who are not afforded coverage for such **Claim**, then:

- A. one hundred percent (100%) of any **Defense Expenses** shall be allocated to covered **Loss** under such **Liability Coverage Section**; and



- B. loss, other than **Defense Expenses**, incurred by the **Insureds** in connection with such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insured Persons**, the **Organization** and others. In making such a determination, the **Organization**, the **Insured Persons** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the Underwriter and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## VIII. COOPERATION

With respect to all Coverage Sections, the **Insureds** agree to provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and agree that in the event of a **Claim** or **Coverage Event**, the **Insureds** will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery. The failure of any **Insured** to comply with this Section VIII shall not be imputed to or create a coverage defense under this Policy with respect to any other **Insured Person**.

## IX. CHANGES IN EXPOSURE

### A. NEW ORGANIZATIONS OR PLANS

If before or during the **Policy Period** the **Organization** acquires or creates a new **Subsidiary** or a new **Plan** or acquires an entity by merger or consolidation, coverage under this Policy shall automatically apply to the new organization or **Plan** and its **Insureds**, provided such coverage shall apply only:

1. with respect to any **Liability Coverage Section**, solely for **Claims** for **Wrongful Acts** taking place after such acquisition or creation;
2. with respect to the Crime Coverage Section, solely after the effective date of such acquisition subject to Section X - Liability For Prior Losses of the Crime Coverage Section;

This Section IX.A does not apply to, and no coverage is afforded under, this Policy for any **Subsidiary** acquired during the **Policy Period** and its **Insureds** if such **Subsidiary** is a registered issuer of securities pursuant to the Securities Exchange Act of 1934, as amended, unless the Underwriter agrees by endorsement to this Policy to afford coverage for such **Subsidiary** and its **Insureds**.

### B. ACQUISITION OF NAMED INSURED

In the event of a **Change in Control** coverage under this Policy shall continue until the termination of this Policy, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** (under a **Liability Coverage Section**) or a **Coverage Event** (under the Crime Coverage Section) taking place prior to such **Change in Control**. The entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**.

### C. RUN-OFF PURCHASE OPTION

1. In the event of a **Change in Control** during the **Policy Period**, the **Named Insured** shall have the right, upon payment of the additional premium set forth in ITEM 5 of the Declarations, to an extension of coverage granted by the **Liability Coverage Sections** for the Run-Off Coverage Period set forth in ITEM 5 of the Declarations (Run Off Coverage Periods), which shall commenced as of the effective date of the **Change in Control** ("Run-Off Period").
2. This extension of coverage shall apply: (i) to any **Claim** deemed first made during the Run-Off Period but only for **Wrongful Acts** taking place prior to the effective date of the Run-Off Period, and (ii) only to coverage provided under the **Liability Coverage Sections** selected in ITEM 8 of the Declarations. The **Named Insured** shall have the right to elect only one of the Run-Off Coverage Periods referenced in ITEM 5 of the Declarations.
3. If the **Named Insured** elects to purchase a Run-off Period, they shall submit to the Underwriter: (i) a written request to purchase the Run-Off Period, and (ii) payment of the additional premium for such Run-Off Period, no later than sixty (60) days following the effective date of such **Change in Control**. The premium paid for the Run-Off Period shall be deemed fully earned at the inception of the Run-Off Period.
4. This extension of coverage shall in no way increase the Policy Aggregate Limit of Liability under the **Liability Coverage Section(s)** selected or the Policy Aggregate Limit of Liability under the Policy. If a Run-Off Period is purchased, Sections XII (Extended Reporting Period) and XIX (Cancellation and Nonrenewal) shall be deleted.

### D. CESSATION OF SUBSIDIARIES

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this Policy, provided such coverage shall apply (i) with respect to any **Liability Coverage Sections**, only with respect to **Claims for Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**, and (ii) with respect to the Crime Coverage Section, only with respect to **Coverage Events** taking place prior to the date such organization ceased to be a **Subsidiary**.

### E. CESSATION OF PLANS

If before or during the **Policy Period** a **Plan** is terminated, coverage for such **Plan** and its **Insureds** under the Fiduciary Liability Coverage Section, if purchased, shall continue until termination of such Coverage Section with respect to **Wrongful Acts** taking place prior to the termination of such **Plan**.

## X. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

### A. REPRESENTATIONS

The **Insureds** represent and acknowledge that the particulars and statements contained in the **Application** are true and accurate and are the basis of this Policy and are to be considered incorporated into and constituting a Part of this Policy. This Policy is issued in reliance upon the truth and accuracy of such representations.

## B. SEVERABILITY

The **Application** shall be construed as a separate application for coverage by each of the **Insureds**. If with respect to any Coverage Section the **Application** contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Underwriter under such Coverage Section, then the Underwriter shall not be liable under such Coverage Section to pay any **Loss** on account of, and shall not be obligated to defend, any **Claim** based upon, arising out of or attributable to the facts that were not truthfully and accurately disclosed in the **Application** to the extent such **Loss** is incurred by:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. any **Organization** that grants indemnification to an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; and
3. any **Organization** or **Plans** if the chief executive officer or chief financial officer of such **Organization** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Executive** or **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons**. The knowledge of any past or present chief executive officer or chief financial officer (or equivalent position thereof) of the **Organization** shall be imputed to such **Organization**.

## C. NON-RESCINDABLE POLICY

The Underwriter shall not have the right to rescind or void this Policy or any Coverage Section, in whole or in Part, for any reason.

## XI. OTHER INSURANCE

Solely with respect to any **Liability Coverage Section**, if any **Loss** resulting from any **Claim** is insured by any other valid and collectible insurance issued to any **Insured**, then this Policy shall apply only excess of the amount of any deductibles, retentions and limits of liability 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 Policy. However, this Policy shall apply on a primary basis with respect to (i) any personal umbrella or other personal liability policy available to an **Insured Person**, or (ii) any private equity or venture capital liability, general partnership liability or other similar management or professional liability insurance policy available to an **Insured Person**.

## XII. EXTENDED REPORTING PERIOD

If the Underwriter or the **Named Insured** terminates or refuses to renew this Policy other than for nonpayment of premium, the **Insureds** shall have the right, upon payment of the additional premium set forth in ITEM 4.A of the Declarations, to an extension of the coverage granted by the **Liability Coverage Sections** for the **Extended Reporting Period** set forth in ITEM 4.B of the Declarations following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Underwriter within sixty (60) days following the effective date of termination or nonrenewal.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

The entire additional premium for the **Extended Reporting Period** shall be deemed fully earned at the inception of the **Extended Reporting Period**.

The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the applicable Limits of Liability for the **Policy Period**.

### **XIII. ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS**

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under the **Liability Coverage Sections** but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partners**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All provisions in these General Terms and Conditions and the respective **Liability Coverage Section** applicable to **Loss** incurred by the **Insured Person** shall also apply to covered loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

### **XIV. TERRITORY AND VALUATION**

Coverage under any **Liability Coverage Section** shall extend to **Claims** made and **Wrongful Acts** anywhere in the world.

All premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Any **Loss** incurred by an **Organization** in a **Foreign Jurisdiction** shall be deemed, at the written direction of the **Named Insured**, a **Loss** of the **Named Insured** payable to the **Named Insured** at the address shown on the Declarations. Any such payment by the Underwriter to the **Named Insured** pursuant to this paragraph shall fully discharge the Underwriter's liability under this Policy for such **Loss**. Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by an **Organization** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the Underwriter.

### **XV. SUBROGATION**

Solely with respect to any **Liability Coverage Section**, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** shall do everything reasonably necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the Underwriter to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the Underwriter's position or

any rights of recovery. In no event, however, shall the Underwriter seek subrogation against any Insured under this Policy unless:

- A. such **Insured** has been convicted of a criminal act;
- B. it has been determined by a final and non-appealable adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** committed a deliberately fraudulent or dishonest act or omission, or wilfully violated any statute, rule or law; or
- C. it has been determined by a final and non-appealable adjudication in any judicial or administrative proceeding, other than an action or proceeding commenced by the Underwriter to determine coverage under this Policy, that such **Insured** gained any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.

#### **XVI. ALTERATION, ASSIGNMENT AND HEADINGS**

By acceptance of this Policy, all **Insureds** and the Underwriter agree that this Policy (including the Declarations, **Application**, all purchased Coverage Sections and any written endorsements attached to this Policy) constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement hereto. This Policy and any and all rights hereunder are not assignable without the prior written consent of the Underwriter, which consent shall be in the sole and absolute discretion of the Underwriter.

The titles and headings to the various sections, subsections and endorsements of this Policy and schedule of endorsements attached to this Policy, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

#### **XVII. RISK MANAGEMENT**

The Underwriter directly or indirectly may make available risk management services in connection with this Policy for the purpose of managing and reducing the risks covered under this Policy. Such risk management services may cease or change in the Underwriter's sole discretion at any time.

#### **XVIII. PAYMENT OF LOSS**

In the event payment of **Loss** is due and owing by the Underwriter under a **Liability Coverage Section** exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Underwriter shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

- A. First, the Underwriter shall pay such **Loss** which is non indemnifiable incurred by **Insured Persons**;
- B. Second, the Underwriter shall pay all other **Loss** covered under the **Liability Coverage Section**.
- C. Except as otherwise provided in this Section XVII, the Underwriter may pay covered Loss as it becomes due under the Liability Coverage Section without regard to the potential for other future payment obligations under the Liability Coverage Section.

## **XIX. CANCELLATION AND NONRENEWAL**

The **Named Insured** may cancel this Policy or any Coverage Section by mailing or delivering to the Underwriter advance written notice of cancellation. The Underwriter may not cancel this Policy or any Coverage Section, except for the **Named Insured's** failure to pay a premium when due. In such event, the Underwriter shall mail or deliver to the **Named Insured** written notice of cancellation at least twenty (20) days before the effective date of such cancellation, but such cancellation shall not become effective if the **Insureds** pay such premium in full during such twenty (20) day period. Any notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date. If this Policy is cancelled, the Underwriter will send to the **Named Insured** the premium refund, computed pro rata. The cancellation will be effective even if the Underwriter has not made or offered a premium refund.

The Underwriter will not be required to renew this Policy upon expiration. The Underwriter will provide the **Named Insured** with sixty (60) days' notice of any non-renewal.

## **XX. AUTHORIZATION CLAUSE**

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices, paying premiums and receiving any return premiums that may become due under this Policy, and agreeing to endorsements, and the **Insureds** agree that the **Named Insured** may act on their behalf with respect to such matters.

## **XXI. BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the Underwriter of its obligations nor deprive the **Insured** of its rights or defenses under this Policy.

In the event a liquidation or reorganization proceeding is commenced by or against an **Organization** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Insureds** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Underwriter, the **Organization** or any **Insured** to obtain relief from any such stay or injunction.

## **XXII. ACTION AGAINST UNDERWRITER**

No action may be taken against the Underwriter unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy. No person or entity shall have the right under this Policy to join the Underwriter as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the Underwriter be impleaded by such **Insured** or legal representative of such **Insured**.

## **XXIII. COMPLIANCE WITH APPLICABLE TRADE AND ECONOMIC SANCTION LAWS**

This Policy does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall be made only if such payment is in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

#### **XXIV. STATE AMENDATORY ENDORSEMENTS**

In the event there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, then, where permitted by law, the Underwriter shall apply those terms and conditions of either the state amendatory endorsement or this Policy which are more favorable to the **Insured**.