



COACTION COLLABORATORSM PRIVATE COMPANY MANAGEMENT LIABILITY DECLARATIONS

THIS POLICY'S LIABILITY COVERAGE SECTIONS, IF PURCHASED, ARE ON A CLAIMS MADE AND REPORTED BASIS AND COVER ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR, IF EXERCISED, THE EXTENDED REPORTING PERIOD. CLAIM EXPENSES SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS AND SHALL ALSO BE APPLIED AGAINST THE APPLICABLE RETENTION.

PLEASE READ THE ENTIRE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

The Insurer (<i>hereafter, Insurer</i>)	Producer
Policy Number:	Renewal of:

ITEM 1. **Named Insured and Address:**

ITEM 2. **Policy Period:**

From: _____ To: _____
(12:01 a.m. local time at the address of the Named Insured stated in ITEM 1)

ITEM 3. **Combined Maximum Aggregate Limit of Liability**

(For all Coverage Sections, other than the Crime Coverage Section): \$

ITEM 4. **Policy Premium:** \$

ITEM 5. **Extended Reporting Period:** One (1) year: _____ % of the Annualized Premium in ITEM 4 Above

ITEM 6. **Run-Off Coverage Period:**

1. One (1) year:	% of the Annualized Premium in ITEM 4 Above
2. Three (3) years:	% of the Annualized Premium in ITEM 4 Above
3. Six (6) years:	% of the Annualized Premium in ITEM 4 Above

ITEM 7. **Notice to Insurer:**

Notice of **Claim** or Potential **Claim**:
By Email: claims@coactionspecialty.com

By Mail:
Attn: Head of Claims Department
Coaction Claims Department
412 Mt. Kemble Avenue Suite 300C
Morristown, NJ 07960

All Other Notices:
New York Marine and General Insurance Company
412 Mt. Kemble Avenue, Suite 300C
Morristown, NJ 07960

ITEM 8: Coverage Section:

DIRECTORS AND OFFICERS

☐ SHARED LIMIT

AGGREGATE LIMIT OF LIABILITY	RETENTION	PENDING OR PRIOR DATE	DEFENSE
\$	\$		
<u>SUBLIMIT</u>			
Derivative Demand Investigation Expenses and Books and Records Expenses	\$		
Asset Protection Expenses	\$		
Publicity Expenses	\$		
Employed Lawyers	\$		

The following Additional Limit shall be in addition to and not part of the respective Aggregate Limits of Liability for each applicable Coverage Section, and in addition to and not part of the COMBINED MAXIMUM AGGREGATE LIMIT OF LIABILITY in ITEM 3:

☐ Additional Excess Side A Only Limit of Liability for Executives: \$

EMPLOYMENT PRACTICES

☐ SHARED LIMIT

AGGREGATE LIMIT OF LIABILITY	RETENTION	PENDING OR PRIOR DATE	DEFENSE
\$	\$		
<u>SUBLIMIT</u>			
Workplace Violence Expenses	\$		
Crisis Expenses	\$		
Immigration Expenses	\$		

The following Additional Limit shall be in addition to and not part of the respective Aggregate Limits of Liability for each applicable Coverage Section, and in addition to and not part of the COMBINED MAXIMUM AGGREGATE LIMIT OF LIABILITY in ITEM 3:

☐ Additional Claim Expenses Limit of Liability: \$

FIDUCIARY

☐ SHARED LIMIT

AGGREGATE LIMIT OF LIABILITY	RETENTION	PENDING OR PRIOR DATE	DEFENSE
\$	\$		
<u>SUBLIMIT</u>			
Voluntary Compliance Loss	\$		
Penalties for Violations of HIPAA Privacy Provisions	\$		
Penalties under Section 502(i) and 502(l) of ERISA	\$		
Penalty under IRC Section 4975	\$		
Penalties under Section 502(c) of ERISA	\$		
Penalties under the Affordable Care Act	\$		
Penalties under the Pension Protection Act of 2006	\$		

The following Additional Limit shall be in addition to and not part of the respective Aggregate Limits of Liability for each applicable Coverage Section, and in addition to and not part of the COMBINED MAXIMUM AGGREGATE LIMIT OF LIABILITY in ITEM 3:

☐ Additional Claim Expenses Limit of Liability: \$

CRIME DECLARATIONS

INSURING AGREEMENT	LIMIT OF LIABILITY PER OCCURRENCE	DEDUCTIBLE PER OCCURRENCE
A. Employee Theft Coverage		
A.1. Theft of Insured's Property	\$	\$
A.2. Theft of Client's Property	\$	\$
B. Premises Coverage	\$	\$
C. In Transit Coverage	\$	\$
D. Forgery or Alteration Coverage	\$	\$
E. Computer Crime Coverage	\$	\$
F. Funds Transfer Fraud Coverage	\$	\$
G. Social Engineering Fraud Coverage	\$	\$
H. Money Orders and Counterfeit Money Coverage	\$	\$
I. Credit Card Fraud Coverage	\$	\$
J. Investigation and Restoration Expenses	\$	N/A

ITEM 9: Forms and Endorsements Applicable To This Policy On The Date This Policy Is Issued:

COACTION COLLABORATORSM

PRIVATE COMPANY MANAGEMENT LIABILITY POLICY

GENERAL TERMS AND CONDITIONS

NOTICE: UNLESS OTHERWISE STATED IN THIS POLICY, **CLAIM EXPENSES** AND OTHER EXPENSES COVERED BY THIS POLICY REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY OR APPLICABLE SUBLIMIT. THE INSURER IS NOT OBLIGATED TO PAY ANY **LOSS** OR DEFEND ANY **CLAIM**, INCLUDING **CLAIM EXPENSES** OR OTHER EXPENSES COVERED BY THIS POLICY, AFTER THE LIMIT OF LIABILITY OR APPLICABLE SUBLIMIT HAS BEEN EXHAUSTED BY PAYMENT OF **LOSS**.

In consideration of payment of the premium charged and in reliance on the **Application**, the **Insurer** and **Insureds** agree as follows:

I. TERMS AND CONDITIONS

The General Terms and Conditions apply to all Coverage Sections of this Policy, other than the Crime Coverage Section. The terms and conditions of each Coverage Section apply only to that Coverage Section. If any provision of the General Terms and Conditions of this Policy is inconsistent or conflicts with a provision of a Coverage Section, the provision in the Coverage Section shall control for purposes of that Coverage Section.

Coverage under this Policy only applies to those Coverage Sections that have been purchased as indicated in Item 8 of the Declarations notwithstanding any references to Coverage Sections in these General Terms and Conditions that have not been purchased.

II. DEFINITIONS

The following Definitions shall have the same meaning throughout this Policy, provided that any term also defined in a Coverage Section shall have the meaning ascribed to that term in the Coverage Section for that Coverage Section:

- A. **Application** means the **Application** for insurance and any written materials and information submitted to the **Insurer** in connection with the underwriting of this Policy. The **Application** is deemed attached to and incorporated in this Policy.
- B. **Change in Control** means:
 - (1) the **Named Insured**:
 - (a) selling all or substantially all of its assets to any other person or entity or group of persons or entities; or
 - (b) merging or consolidating with another entity and the **Named Insured** is not the surviving entity; or
 - (2) any person, entity or group of persons or entities acquiring:
 - (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 corporation, 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** has the meaning ascribed to such term in each Coverage Section.
- D. **Claim Expenses** mean reasonable legal fees and expenses incurred:
 - (1) in the investigation, defense or appeal of any **Claim** (including the cost of an appeal or attachment bond, but the **Insurer** shall not have any obligation to apply for or furnish such a bond); or
 - (2) to assist the **Insurer's** investigation of a **Claim** at the request of the **Insurer**. **Claim Expenses** do not include any salaries, wages, fees, overhead, benefits, or benefit expenses of any **Insured**.
- E. **Clean-Up Costs** means any amount incurred by the **Insured** to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants** in connection with any **Pollutants**.

- F. **Company** means the **Named Insured** and any **Subsidiary**, including in the event of a bankruptcy, any such entity as a debtor in possession as such term is used in Chapter 11 of the United States Bankruptcy Code or equivalent law or rule of a **Foreign Jurisdiction**.
- G. **Domestic Partner** means any natural person who qualifies as a domestic partner under any applicable federal, state, or local law or under the terms of any formal program established by the **Company**.
- H. **Employee** means any:
- (1) natural person whose labor or service was, is or will be engaged by and directed by the **Company**, and
 - (2) any volunteer, intern, part-time, leased, seasonal or temporary individual or an **Independent Contractor** in their capacity as such.
- Leased employees and **Independent Contractors** shall only be insured as **Employees** if the **Company** agrees in writing to indemnify them pursuant to the relevant contract.
- I. **ERISA** means the Employee Retirement Income Security Act of 1974, as amended, and any similar state, local or **Foreign Jurisdiction** law, statute, rule, or regulation.
- J. **Executive** means any natural person who was, is or will become a duly elected or appointed director (including a de facto director and shadow director), trustee (other than a bankruptcy or litigation trustee), governor, **Manager**, officer, in-house general counsel, risk manager, controller, advisory director, board observer, or member of a duly constituted committee or board or the functional or foreign equivalent of any of the foregoing of the **Company**.
- K. **Executive Officer** means any natural person who was, is or will be the chief executive officer, chief financial officer, in-house general counsel of the **Company** or the functional equivalent of any of the foregoing positions. For purposes of the Employment Practices Coverage Section, the head of human resources shall be an **Executive Officer**.
- L. **Extended Reporting Period** means the period set forth in Item 5 of the Declarations for the coverage set forth in Section X of these General Terms and Conditions.
- M. **Extradition** means any formal process through which the **Insured Person** located in any country is surrendered, or sought to be surrendered to any other country to answer for any criminal accusation, including the execution of an arrest warrant where such execution is an element of such process due to a **Wrongful Act**.
- N. **Financial Impairment** means:
- (1) the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**; or
 - (2) the **Company** becoming a debtor in possession as defined under Chapter 11 of the U.S. Bankruptcy Code or equivalent law or rule of a **Foreign Jurisdiction**.
- O. **Foreign Jurisdiction** means any jurisdiction other than the United States of America, its territories, or possessions.
- P. **Government Enforcement Authority** 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).
- Q. **Independent Contractor** means any natural person working for the **Company** in the capacity of an independent contractor pursuant to a written contract which governs the nature of the **Company's** engagement of such person as an independent contractor.
- R. **Inquiry** means:
- (1) a civil, criminal, administrative, or regulatory investigation or inquiry of the **Insured, Company, or Insured Person** by a **Government Enforcement Authority** commenced by the **Insured's** receipt of a subpoena, Wells Notice, target letter (within the meaning of Title 9, §11.151 of the U.S. Attorney's Manual), formal order of investigation, civil investigative demand or other similar document or the functional equivalent of any of the foregoing under the law of a **Foreign Jurisdiction**;

- (2) a written request or demand of an **Insured Person** for an interview, meeting, sworn testimony or documents by a **Government Enforcement Authority** in connection with the business of the **Company** or in connection with such **Insured Person's** capacity as the **Insured Person**; or
- (3) a written request or demand of an **Insured Person** by the **Company** (including its board of directors or any committee of its board of directors) for an interview, meeting, sworn testimony or documents in connection with: (i) a **Derivative Demand** (as defined in the Directors and Officers Coverage Section), or (ii) an investigation of the **Company** by a **Government Enforcement Authority**.

Inquiry shall not include any: (a) routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, industry sweep, including any request for mandatory information from a **Government Enforcement Authority**, conducted in the **Company's** and/or **Government Enforcement Authority's** normal review or compliance process; or (b) any subpoena received by the **Insured Person** as a non-party witness.

- S. **Insured Person** has the meaning ascribed to such term in each Coverage Section.
- T. **Insured(s)** has the meaning ascribed to such term in each Coverage Section.
- U. **Insurer** means the insurance company specified in the Declarations.
- V. **Interrelated Claim** means all **Claims** alleging or in any way involving **Interrelated Wrongful Acts**.
- W. **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.
- X. **Loss** has the meaning ascribed to such term in each Coverage Section.
- Y. **Manager** means any natural person who was, is or will be a manager, managing member, general partner or member of the board of managers or equivalent executive of the **Company** that is a limited liability company or limited partnership.
- Z. **Named Insured** means the entity specified in Item 1 of the Declarations.
- AA. **Non-Indemnifiable Loss** means **Loss** incurred by the **Insured Person** for which the **Company** is not permitted by common or statutory law to indemnify or is not financially able to indemnify by reason of **Financial Impairment**.
- BB. **Plan** has the meaning ascribed to such term in the Fiduciary Coverage Section.
- CC. **Policy Period** means the period specified in Item 2 of the Declarations as set forth in this Policy, subject to prior termination in accordance with Section XVI (Cancellation and Non-Renewal) of these General Terms and Conditions.
- DD. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof including, but not limited to, nuclear material or nuclear waste. Such substances shall include, without limitation, solids, liquids, gaseous, biological, radiological or thermal irritants, contaminants or smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals or waste materials and any other air emission, odor, wastewater, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- EE. **Prior or Pending Date** shall mean the date set forth in Item 8 of the Declarations.
- FF. **Run Off Coverage Period** means the period set forth in Item 6 of the Declarations for the coverage set forth in Section XI.E. of these General Terms and Conditions.
- GG. **Subsidiary** means any entity of which the **Named Insured** has:
 - (1) an ownership interest, either directly or indirectly through one or more Subsidiaries, representing more than fifty percent (50%) of the power to manage or control such entity, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity;
 - (2) the right pursuant to written contract or the by-laws, charter, operating agreement, or similar documents of such entity to elect, appoint or designate a majority of the board of directors or equivalent executives of the entity;
 - (3) 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

entities, if the Named Insured 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 foundation, charitable trust or political action committee controlled or sponsored by the **Company**; or
- (5) any not-for-profit organization sponsored by the **Company**.

In all events, coverage under this Policy for any **Subsidiary** (whether acquired before or during the **Policy Period**) and any **Insured Person** thereof shall only apply while such entity meets the definition of **Subsidiary** above.

HH. **Wage and Hour Law** means any statutory or common law of any federal, state, local jurisdiction or any **Foreign Jurisdiction** (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 the **Company** 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, or for services rendered or time spent in connection with work related activities;
- (2) improper pay deductions taken by the **Company** 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**;
- (4) improper or failure to maintain accurate records by the **Company** or **Insured Person**;
- (5) child labor;
- (6) pay equity or comparable worth;
- (7) failure to provide or enforce any legally required rest or meal breaks; or
- (8) any similar practices, policies, or procedures to any of the foregoing.

II. **Wrongful Act** has the meaning ascribed to such term in each Coverage Section.

III. **LIMITS OF LIABILITY**

- A. The Limit of Liability specified in Item 3 of the Declarations is the maximum aggregate amount the **Insurer** shall be liable to pay for all **Loss** under this Policy. The Limits of Liability for each Coverage Section are part of, and not in addition to, the Limit of Liability specified in Item 3 of the Declarations.
- B. If the Limit(s) of Liability for more than one Coverage Section is indicated to be a Shared Limit with one or more other Coverage Section(s) in Item 8 of the Declarations, the Aggregate Limit of Liability for each shared Coverage Section shall be the maximum liability of the **Insurer** for all **Loss** under such Coverage Sections. The maximum liability of the **Insurer** for all **Loss** under all shared Coverage Sections together shall not exceed the highest Aggregate Limit of Liability applicable to such Coverage Sections. **Loss** paid under one shared Coverage Section shall reduce the Limit of Liability for all other shared Coverage Sections.
- C. If the Limit(s) of Liability of a Coverage Section is not a Shared Limit as indicated in Item 8 of the Declarations, then the Aggregate Limit of Liability for each such Coverage Section shall be the maximum liability of the **Insurer** for all **Loss** under each such Coverage Section.
- D. If a **Claim** (as described in Section V.E. below) or **Interrelated Claim** is covered under more than one Coverage Section and such Coverage Sections are not subject to a Shared Limit, the **Insurer** shall pay covered **Loss** based on the terms of each applicable Coverage Section. In no event will the **Insurer** be liable to pay **Loss** for such **Claim** or **Interrelated Claim** in excess of the largest Limit of Liability available under the applicable Coverage Section(s).
- E. Except as otherwise provided in this Policy, 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. Unless otherwise indicated in this Policy or any endorsements thereto, no Retention shall apply to any **Loss** which is subject to a Sublimit of Liability.
- F. Regardless of the applicable defense option under Section VI of these General Terms and Conditions, **Claim Expenses** shall be part of, and not in addition to, the Limit(s) of Liability of this Policy and shall reduce the

Limit(s) of Liability. If the applicable Limit of Liability is exhausted, the **Insurer** has no further obligation under this Policy, including any obligation to defend any **Claim**.

IV. **RETENTIONS**

- A. The **Insurer** shall pay **Loss** arising from any **Claim** covered under this Policy only to the extent that such **Loss** exceeds any applicable Retention specified in Item 8 of the Declarations. The applicable Retention shall be paid by the **Company**, except the **Insurer** shall recognize payment by any Side A Excess DIC Insurer. In the event more than one Retention applies to a **Claim** or **Interrelated Claim** (as referenced in Section V. E. below), the largest applicable retention shall apply to such **Claim** or **Interrelated Claim**.
- B. If the **Company**:
- (1) refuses or fails to indemnify or advance covered **Loss** within 60 days after the **Insured Person's** request for indemnification or advancement of covered **Loss**; or
 - (2) if the **Company** is unable to indemnify or advance covered **Loss** due to **Financial Impairment**;

the **Insurer** shall pay such covered **Loss** without applying a Retention.

If the **Insurer** pays under this Policy such covered **Loss** incurred by the **Insured Person** for which the **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** shall reimburse the **Insurer** for such amounts up to the maximum Retention and those amounts shall become due and payable as a direct obligation of the **Company** to the **Insurer**.

V. **NOTICE**

A. **Claim**

The **Insureds** shall report in writing to the **Insurer** any **Claim** that is made against the **Insured** during the **Policy Period**. Notice must be given as soon as practicable after an **Executive Officer** or risk manager (or the functional equivalent of any of the foregoing) of the **Company** first learns of the **Claim**, but in no event later than:

- (1) ninety (90) days after the expiration of the **Policy Period**;
- (2) the expiration of the **Extended Reporting Period** if exercised; or
- (3) the expiration of the **Run-Off Coverage Period** if exercised.

The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required in this Section, shall not constitute a coverage defense with respect to such **Claim** unless the **Insurer** establishes it was materially prejudiced by such failure.

B. **Inquiry and Voluntary Compliance Program Notice**

If the **Insured** elects to seek coverage for an **Inquiry** or a Voluntary Compliance Program Notice (as defined in the Fiduciary Coverage Section), first received during the **Policy Period**, the **Insured** shall give notice of such **Inquiry** or Voluntary Compliance Program Notice to the **Insurer** no later than:

- (1) ninety (90) days after the expiration of the **Policy Period**;
- (2) the expiration of the **Extended Reporting Period** if exercised; or
- (3) the expiration of the **Run-Off Coverage Period** if exercised.

C. **Notice of Potential Claims**

If, during the **Policy Period**, any **Extended Reporting Period** if exercised or any **Run-Off Coverage Period** if exercised, the **Insured** first becomes aware of potential claims that could give rise to a **Claim** against the **Insureds** and gives written notice of such potential claims to the **Insurer** during the **Policy Period**, the **Extended Reporting Period** if exercised or any **Run-Off Coverage Period** if exercised, then any **Claim** subsequently arising from such potential claims shall be considered to have been first made during the **Policy Period**, **Extended Reporting Period** or **Run-Off Coverage Period**.

In order to be effective, a notice of potential claim shall include a description of the potential claims, the nature of any potential **Wrongful Act(s)**, the nature of the alleged or potential damage, the names of actual or potential claimants and **Insureds** involved and the manner in which the **Insureds** first became aware of the potential claims.

Except as otherwise provided in Section II.A. of the Directors and Officers Coverage Section, no coverage is afforded for **Loss** incurred in connection with such potential claims prior to the time a **Claim** is actually made and reported to the **Insurer**.

D. How to Provide Notice

Except as otherwise provided in this Policy, all notices under this Policy shall be in writing and submitted by prepaid express courier, certified mail, e-mail, or fax addressed to the **Named Insured** as shown in Item 1 of the Declarations and to the **Insurer** as shown in Item 7 of the Declarations. Notice 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 is earlier, subject to proof of transmittal.

E. Interrelated Claim

An **Interrelated Claim** shall be deemed to have been made at the time the first **Claim** making up the **Interrelated Claim** is deemed to have been first made whether before or after the inception of the **Policy Period**. Notice of a **Claim** which is an **Interrelated Claim** with any matter reported under Section V.A or B. above must be given as soon as practicable after an **Executive Officer** or risk manager (or the functional equivalent of any of the foregoing) of the **Company** first learns of the **Claim**. No coverage is afforded for **Loss** incurred in connection with such subsequent **Claim** prior to the time such subsequent **Claim** is reported to the **Insurer**.

VI. DEFENSE AND SETTLEMENT

A. Defense

The **Insurer's** obligations for the defense of any **Claim** under the applicable Coverage Section shall be determined by the **Named Insured's** selection of the Defense Option in Item 8 of the Declarations.

- (1) **Duty to Defend.** If Duty to Defend is selected, the **Insurer** shall have the right and duty to defend any **Claim** covered under the relevant Coverage Section, even if any of the allegations are groundless, false or fraudulent. The **Insurer** shall have the right to investigate any **Claim**. The **Insured's** duty to defend any **Claim** shall cease upon exhaustion of the Limit of Liability applicable to such **Claim**.
- (2) **Non-Duty to Defend.** If Non-Duty to Defend is selected, it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim** covered under the relevant Coverage Section. However, the **Insurer** shall advance covered **Claim Expenses** within forty-five (45) days after the receipt by the **Insurer** of detailed **Claim Expenses** invoices. Any advancement of covered **Claim Expenses** shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent it is later determined the **Insureds** are not entitled to coverage for such **Claim Expenses**.

The **Insurer** shall have the right and shall be given the opportunity to make any investigation it deems necessary and to effectively associate with the **Insureds** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that is or reasonably could be covered in whole or in part by this Policy.

- (3) **Optional Duty to Defend.** If the Optional Duty to Defend is selected, then the **Insured** shall have the right to tender the defense of a **Claim**, on behalf of all **Insureds** to the **Insurer**. Such tender must be requested in writing by the **Named Insured** to the **Insurer** within thirty (30) days of the **Insured's** first reporting the **Claim** and shall expressly state that the **Insured** is tendering the defense to the **Insurer**. In the event the **Insured** tenders the defense, then the defense shall be subject to Section VI.A.(1) above. If the **Insured** does not tender the defense, then the defense shall be subject to Section VI.A.(2) above.
- (4) If a **Claim** or **Interrelated Claim** is subject to coverage under more than one Coverage Section and the **Named Insured** has not selected the same defense option for each Coverage Section applicable to such **Claim** or **Interrelated Claim**, the **Insured** shall select one of the applicable defense options for the defense of the entire **Claim** or **Interrelated Claim**. The **Insured** shall notify the **Insurer** of its selection within thirty (30) days of the **Insured's** first reporting of the **Claim** to the **Insurer**. If the **Insured** does not notify the **Insurer** of its selection within the thirty (30) day time frame, the defense shall be subject to Section VI.A.(2) above.

B. Settlement

- (1) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Claim Expenses** or otherwise assume any contractual obligation, admit any liability or stipulate to any judgment with respect to any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall

not be liable for or as a result of any offer to settle, settlement, **Claim Expenses**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent. Notwithstanding the foregoing, if the **Insureds** are able to fully and finally settle a **Claim** or **Interrelated Claim** in its entirety for an aggregate amount, including **Claim Expenses**, not exceeding fifty percent (50%) of the applicable Retention, the **Insurer's** consent will not be required.

- (2) The **Insurer** may, with the consent of the **Insured** not to be unreasonably withheld, make any settlement of any **Claim** covered by this Policy which the **Insurer** deems appropriate.

VII. COOPERATION

The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests. In the event of a **Claim**, the **Insureds** shall take no action, or fail to take any action, which prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim** or the **Insurer's** potential or actual rights of recovery. The failure of any **Insured** to comply with this Section shall not be imputed to or create a coverage defense under this Policy with respect to any other **Insured Person**.

VIII. ALLOCATION

- A. If, in any **Claim**, the **Insureds** incur **Loss** that is only partially covered by this Policy because the **Claim** includes both covered and non-covered matters or because the **Claim** is made against both covered and non-covered parties, then the **Insurer** and the **Insureds** shall allocate such **Loss**. The allocation shall be based upon the relative legal exposures of the parties to any covered and non-covered matters or of any covered and non-covered parties and the relative benefit of the parties from the covered and non-covered aspects of such **Claim**.
- B. If the **Insurer** and the **Insureds** cannot agree on the amount of **Claim Expenses** to be advanced under Section VI.A.(2) of this Policy, then the **Insurer** shall advance on a current basis the **Claim Expenses** it believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. In that event, the negotiated, arbitrated or judicially determined allocation shall be applied retroactively to all **Claim Expenses**.
- C. If Duty to Defend coverage is purchased or the defense is tendered to the **Insurer** pursuant to Section VI.A.(3) of these General Terms and Conditions, then one hundred percent (100%) of any **Claim Expenses** shall be allocated to covered **Loss**.
- D. In any arbitration, suit or other proceeding between the **Insurer** and the **Insureds**, no party shall be entitled to any presumption concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.

IX. PRIORITY OF PAYMENT

The **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations. Notwithstanding the foregoing, if the **Loss** due and owing by the **Insurer** under a Coverage Section exceeds the remaining Limit of Liability applicable to such **Loss**, the **Insurer** shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

- A. First, the **Insurer** shall pay such **Loss** which is **Non-Indemnifiable Loss** incurred by **Insured Persons**; and
- B. Second, the **Insurer** shall pay all other **Loss** covered under the Coverage Section.

Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the **Named Insured**, delay any payment of **Loss** due and owing to the **Company** until such time as the **Named Insured** designates, provided the **Insurer's** liability with respect to any such delayed **Loss** payment shall not be increased, including any accruing interest, on account of such delay.

X. EXTENDED REPORTING PERIOD

If the **Insurer** refuses to renew this Policy or the **Company** cancels or non-renews this Policy, the **Company** and **Insured Persons** shall have the right to elect an **Extended Reporting Period** of coverage under this Policy for the time period and subject to the additional premium specified in Item 5 of the Declarations. The Limit(s) of Liability for the **Extended Reporting Period** is part of and not in addition to the applicable Limit(s) of Liability for the **Policy Period**.

Coverage under the **Extended Reporting Period** applies only to a **Claim** first made against the **Insureds** during the **Extended Reporting Period** but only for a **Wrongful Act** committed or occurring prior to the effective time of the cancellation or non-renewal and which is otherwise covered under this Policy.

The right to elect the **Extended Reporting Period** expires within sixty (60) days after the effective date of cancellation or non-renewal unless the **Insurer** has received written notice of election of the **Extended Reporting Period** and the payment of the additional premium specified in Item 5 of the Declarations within that period.

The additional premium for the **Extended Reporting Period** shall be fully earned at the inception of the **Extended Reporting Period**. The **Extended Reporting Period** is not cancelable.

XI. CHANGES TO INSUREDS

A. New Subsidiaries

If during the **Policy Period**, the **Company** acquires or creates a new **Subsidiary**, or acquires a new entity by merger or consolidation, then such **Subsidiary** or entity and its **Insured Persons** shall qualify as **Insureds** only after and only for **Claims** for **Wrongful Acts** taking place after such creation or acquisition. This Section XI.A does not apply to, and no coverage is afforded under, this Policy for any **Subsidiary** acquired during the **Policy Period** and its **Insured Persons** if such entity is a registered issuer of securities pursuant to the Securities Exchange Act of 1934, as amended, unless the **Insurer** agrees by endorsement to this Policy to afford coverage for such **Subsidiary** and its **Insured Persons**.

B. New Plans

If the **Company** acquires or creates a new **Plan** during the **Policy Period**, then such **Plan** and its **Insured Persons** shall qualify as **Insureds** only after and only for **Wrongful Acts** taking place after the creation or acquisition of such **Plan**.

C. Former Subsidiaries

If before or during the **Policy Period** an entity ceases to be a **Subsidiary**, coverage under this Policy for **Claims** made against such entity and its **Insured Persons** shall continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such entity ceased to be a **Subsidiary**.

D. Former Plans

If before or during the **Policy Period** a **Plan** ceases to be a **Plan**, then coverage under this Policy for **Claims** made against such entity and its **Insured Persons** shall continue until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such plan ceased to be a **Plan**.

E. Change in Control of Named Insured

- (1) In the event of a **Change in Control** during the **Policy Period**, coverage under this Policy shall continue until expiration of the **Policy Period** unless terminated earlier by the **Named Insured**, but only for **Wrongful Acts** taking place before the effective date of the **Change in Control**. The entire premium for this Policy shall be deemed fully earned as of the date of the **Change in Control**.
- (2) In the event of a **Change in Control** during the **Policy Period**, the **Named Insured** shall have the right to elect an extension of coverage under this Policy or any Coverage Section for one of the **Run-Off Coverage Periods** and subject to the associated additional premium specified in Item 6 of the Declarations. The **Run-Off Coverage Period** shall commence on the effective date of the **Change in Control**. Coverage under the **Run-Off Coverage Period** applies only to a **Claim** first made against the **Insureds** during the **Run-Off Coverage Period** for a **Wrongful Act** committed or occurring prior to the effective time of the **Change in Control** and which is otherwise covered under this Policy. The Limit(s) of Liability for the **Run-Off Coverage Period** is part of and not in addition to the applicable Limit(s) of Liability for the **Policy Period**. This extension of coverage shall in no way increase the **Insurer's** Aggregate Limit of Liability under any Coverage Section selected or the **Insurer's** Combined Maximum Aggregate Limit of Liability under the Policy.
- (3) The right to elect the **Run-Off Coverage Period** expires within sixty (60) days after the effective date of the **Change of Control** unless the **Insurer** has received written notice of election of the **Run-Off Coverage Period**, and the payment of the additional premium, specified in Item 6 of the Declarations within that period.
- (4) The additional premium for the **Run-Off Coverage Period** shall be fully earned at the inception of the **Run-Off Coverage Period**. If the **Run-Off Coverage Period** is purchased, Section X (**Extended Reporting Period**) and Section XVI (Cancellation and Nonrenewal) shall be deemed deleted from these General Terms and Conditions.

XII. OTHER INSURANCE

Except as otherwise provided in any Coverage Section, if any **Loss** resulting from a **Claim** is insured by any other valid and collectible insurance, then this Policy shall apply only excess of the amount of any deductibles, retentions and limits of liability under such other policy(ies) whether such other policy(ies) 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 as primary against any personal umbrella or other personal liability policy available to the **Insured Person** or any private equity or venture capital liability, general partner liability or other similar management or professional liability insurance policy available to the **Insured Person**.

Coverage for any leased employee shall be specifically excess of any indemnification or insurance otherwise available to such leased employee from the applicable leasing company or any other source. Coverage for any **Independent Contractor** under this policy shall be specifically excess of any indemnification or insurance otherwise available to such **Independent Contractor**.

XIII. REPRESENTATIONS AND SEVERABILITY

- A. The **Insureds** represent and acknowledge that any statement made, and information contained in the **Application** is accurate and true. This Policy is issued in reliance on the truth and accuracy of the statements made and information contained in the **Application**.
- B. The **Insurer** shall not be entitled to rescind or have declared void ab initio this Policy in whole or in part. Nevertheless, if any statement made or information contained in the **Application** was not accurate and complete which materially affects either the acceptance of the risk or the hazard assumed by the **Insurer**, then the **Insurer** shall not be liable 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 **Company** that grants indemnification to the **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; or
 - (3) any **Company** or **Plan** if an **Executive Officer** of such **Company** or **Plan** knew the facts that were not truthfully disclosed in the **Application**;
- whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission.
- C. For purposes of determining the applicability of this Section XIII, the **Application** will be construed as a separate **Application** for coverage by each **Insured** and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**.

XIV. PRESUMPTIVE INDEMNIFICATION

The **Named Insured** and any other **Company** shall indemnify the **Insured Person** and shall advance **Claim Expenses** or other expenses set forth in this Policy on behalf of or incurred by any **Insured Person** to the fullest extent permitted by law, contract, or the certificate or articles of incorporation, charter, by-laws or limited liability company agreement or limited partnership agreement, or the functional or foreign equivalent of any of the foregoing, of the **Named Insured** or the **Company**.

XV. SUBROGATION

In the event of any payment under this Policy, the **Insurer** will become subrogated to all of the **Insureds'** rights of recovery. The **Insureds** agree to do everything reasonably necessary to secure and preserve the **Insurer's** subrogation rights, including but not limited to the execution of documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insurer** shall not subrogate against any **Insured Person**.

Any recoveries by the **Insurer**, less the cost of obtaining the recovery, will be distributed in the following order:

- (1) to the **Insureds** until they are reimbursed for any **Loss** that they sustain that exceeds the sum of this Policy's applicable Limit of Liability and the Limit of Liability of any policies issued specifically as excess of this Policy;
- (2) to any insurer of any other policy specifically excess of this Policy, until they are reimbursed for any **Loss** that they sustain that exceeds the sum of this Policy's applicable Limit of Liability;
- (3) then to the **Insurer**, until the **Insurer** is reimbursed for the payment made under this Policy; and

(4) then to the **Insureds**, until they are reimbursed for their payment of any applicable Retention.

If the **Insurer** recovers amounts paid as covered **Loss** under this Policy, the **Insurer** will reinstate the applicable Limit(s) of Liability to the extent of such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this Policy. The **Insureds** agree to do nothing to prejudice the **Insurer's** position or rights to recovery. The **Insured** shall not subrogate against any **Insured Person**.

The **Insurer** expressly agrees to waive its right of recourse pursuant to **ERISA** Section 410(b)(1), as amended, in the event that this Policy has been purchased by the **Company** or the **Insured Person**.

XVI. CANCELLATION AND NON-RENEWAL

The **Insurer** may cancel this Policy only for non-payment of premium. To cancel for non-payment of premium, the **Insurer** shall deliver written notice to the **Named Insured** at least twenty (20) days before the effective date of such cancellation. The cancellation shall not become effective if the premium is paid in full within such twenty (20) day period.

The **Named Insured** may cancel this Policy at any time by delivering written notice to the **Insurer** stating the effective time of the cancellation. Upon cancellation, the **Insurer** shall refund the pro rata proportion of the premium calculated from the effective date of such cancellation, provided that the cancellation shall be effective even if any premium refund has not yet been received by the **Named Insured**.

If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Named Insured** with no less than sixty (60) days advance written notice of non-renewal. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

XVII. COVERAGE EXTENSION TO OTHER PARTIES

The coverage provided by this Policy applies to a **Claim** made against the **Insured Person's** lawful spouse or **Domestic Partner** (including 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**) and the estate, heirs, legal representatives or assigns in the event of the **Insured Person's** death, incapacity or bankruptcy. This extension of coverage shall only apply to the extent of such person's status as the spouse, **Domestic Partner**, estate, heir, legal representative or assign of the **Insured Person** and for **Claims** arising out of any actual or alleged **Wrongful Acts** of the **Insured Person**.

Coverage for such spouse, **Domestic Partner**, estate, heir, legal representative, or assign shall be on the same terms and conditions as apply to any **Claim** made against the **Insured Person**.

XVIII. TERRITORY

This Policy shall apply on a worldwide basis, provided that coverage under this Policy shall only be made where legally permissible and only in compliance with economic and trade sanction laws or regulations of the European Union and the United States of America, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

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 rendered, the amount of the settlement is agreed upon or the other element of **Loss** is due.

Any **Loss** incurred by the **Company** 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 payment by the **Insurer** to the **Named Insured** pursuant to this paragraph shall fully discharge the **Insurer's** liability under this Policy for such **Loss**. Any **Loss** incurred by the **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by the **Company** 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 **Insurer**.

XIX. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** shall not relieve the **Insurer** of any of its obligations under this Policy. If a bankruptcy or insolvency proceeding is commenced by or against the **Company**, the **Insureds** and **Insurer** shall cooperate to obtain relief from any automatic stay or injunction that might prevent the payment of Policy proceeds for the benefit of the **Insured Persons**. To achieve this result for the **Insured Persons**, the **Insureds** waive and release

any automatic stay or injunction in such proceeding which may apply to this Policy or its proceeds and the **Insureds** agree not to oppose or object to any efforts by the **Insurer** or any **Insureds** to obtain relief from any such stay or injunction.

XX. ENTIRE AGREEMENT, HEADINGS AND ASSIGNMENT

This Policy constitutes the entire agreement between the **Insurer** and the **Insureds** as to the insurance provided. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement issued by the **Insurer**.

The title and headings to, or in sections, of this Policy are only for reference and do not limit, expand or otherwise affect the provisions of this Policy.

This Policy shall not be assigned without the express written consent of the **Insurer**. Such consent shall be in the sole and absolute discretion of the **Insurer**.

XXI. AUTHORIZATION OF THE NAMED INSURED

The **Named Insured** shall act on behalf of all **Insureds** regarding all matters under this Policy, including without limitation, cancellation, non-renewal, election of the **Extended Reporting Period** or **Run-Off Coverage Period**, transmission and receipt of notices, reporting of any **Claim** or circumstance, negotiation and acceptance of endorsements, payment of premiums and receipt of return premiums.

XXII. ACTION AGAINST INSURER

No suit or other proceeding may be commenced against the **Insurer** unless, as a condition precedent, there shall have been full compliance with all the terms and conditions of this Policy.

No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any such **Claim**.

XXIII. 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 **Insurer** shall apply those terms and conditions of either the state amendatory endorsement or this Policy which are more favorable to the **Insured**.

COACTION COLLABORATORSM
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
DIRECTORS AND OFFICERS COVERAGE SECTION

I. INSURING AGREEMENTS

A. Insured Persons

The **Insurer** shall pay on behalf of the **Insured Person**, all **Non-Indemnifiable Loss** resulting from any **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

B. Company Reimbursement

The **Insurer** shall pay on behalf of the **Company**, all **Loss** for which the **Company** has indemnified the **Insured Person** resulting from any **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

C. Company

The **Insurer** shall pay on behalf of the **Company**, all **Loss** resulting from any **Claim** for a **Wrongful Act** first made against the **Company** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

D. Derivative Demand Investigation Expenses and Books and Records Expenses

Subject to the Sublimit of Liability set forth in Item 8 of the Declarations, the **Insurer** shall pay **Derivative Demand Investigation Expenses** and **Books and Records Expenses** of the **Company** resulting from a **Derivative Demand** or a **Books and Records Demand** first made during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy. The Sublimit of Liability shall be part of, and not in addition to, the Aggregate Limit of Liability applicable to the Directors and Officers Coverage Section and the Combined Maximum Aggregate Limit of Liability.

II. COVERAGE ENHANCEMENTS

Subject to the other terms and conditions of this Policy, coverage under this Coverage Section is extended as follows:

A. Pre-Claim Expenses

If the **Named Insured** provides notice of a potential claim to the **Insurer** in accordance with Section V.C. of the General Terms and Conditions and a **Claim** is subsequently made against the **Insured** arising out of such potential claim, then any covered **Pre-Claim Expenses** incurred by the **Insured** up to the lesser of \$25,000 or fifty percent (50%) of the applicable Retention shall qualify as **Loss** against the applicable retention. Such coverage is subject to the following:

- (1) coverage will apply only to **Pre-Claim Expenses** incurred on or after the date the **Named Insured** provides written notice to the **Insurer** of the potential claim and prior to the time such potential claim becomes an actual **Claim**;
- (2) coverage shall not apply to amounts in excess of the Retention;
- (3) coverage shall not be deemed to waive any of the **Insurer's** rights hereunder or limit or affect the **Insureds'** rights to receive coverage for **Loss** incurred following the reporting of a **Claim**; and
- (4) **Loss** eligible for this coverage shall not include **Derivative Demand Investigation Expenses**, **Books and Records Expenses** or **Claim Expenses** incurred in connection with a **Claim** as defined in parts (5) - (8) of this Coverage Section.

B. Pre-Tender Cost Coverage

If the **Insured** provides notice of a **Claim** to the **Insurer** within forty-five (45) days of the date the **Claim** is first made, the **Insurer's** prior written consent shall not be required for any covered **Claim Expenses** up to the lesser of \$25,000 or fifty percent (50%) of the applicable Retention. Such coverage is subject to the following:

- (1) Coverage shall not apply to amounts in excess of the Retention; and

- (2) **Loss** eligible for this coverage shall not include **Derivative Demand Investigation Expenses, Books and Records Expenses** or **Claim Expenses** incurred in connection with a **Claim** as defined in parts (5), (7) and (8) of this Coverage Section.

C. Additional Coverages for Executives

Loss shall include the following expenses incurred by the **Insured Person** subject to the respective Sublimit of Liability set forth in Item 8 of the Declarations. The Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to the Directors and Officers Coverage Section and the Combined Maximum Aggregate Limit of Liability:

- (1) **Asset Protection Expenses**; and
- (2) **Publicity Expenses**.

D. Coverage for Outside Positions

Insuring Agreement A and Insuring Agreement B shall include coverage for **Insured Persons** while serving in an **Outside Position**. Such coverage shall be specifically excess of any indemnification and insurance provided by or available from the **Outside Entity**.

E. Additional Excess Side A only Limit of Liability for Executives

If an Additional Side A Limit of Liability is selected in the Declarations, the **Insurer** shall provide the Additional Side A Limit of Liability for any **Loss** covered under Insuring Agreement A which is incurred by any **Executive**. This Additional Side A Limit of Liability shall apply only after the Limit of Liability applicable to **Loss** covered under this Coverage Section is exhausted by payments by the **Insurer** and all Limits of Liability that are specifically excess of this Coverage Section are exhausted by payments of covered **Loss**. The Additional Side A Limit of Liability is the **Insurer's** Combined Maximum Aggregate Limit of Liability for **Loss** from all **Claims** under this Additional Coverage, regardless of the number of **Executives** involved. The Additional Side A Limit of Liability shall be the amount set forth in Item 8 of the Declarations and is in addition to and not part of the Aggregate Limit of Liability for this Coverage Section and the Combined Maximum Aggregate Limit of Liability for this Policy set forth in Item 3 of the Declarations.

F. Employed Lawyers

Subject to the Sublimit of Liability set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of an **Employed Lawyer Loss** resulting from a **Claim** made against such **Employed Lawyer** in connection with the **Employed Lawyer's** provision of legal services to the **Company**. Coverage for **Employed Lawyers** under this Policy shall be specifically excess of any valid and collectible **Employed Lawyers** Insurance policy or coverage section applicable to such **Loss**. The Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to the Directors and Officers Coverage Section and the Combined Maximum Aggregate Limit of Liability.

G. Request for Coverage Quote as a Public Company

If during the Policy Period the **Named Insured**:

- (1) gives prior written notice to the **Insurer** that the **Company** intends to sell or offer to sell equity securities that are required to be registered under the Securities Act of 1933, as amended; and
- (2) provides to the **Insurer** all information requested by the **Insurer** with respect to the transaction;

then the **Insurer** shall provide to the **Named Insured** a quotation for coverage with respect to such transaction under the **Insurer's** then-standard Directors and Officers Liability Insurance Policy for public companies, provided such coverage shall be subject to such terms, conditions, limits, retentions and premium as the **Insurer** may require in its sole discretion. No coverage will be afforded by the **Insurer** pursuant to any such quotation unless and until the **Named Insured** agrees in writing to the terms, conditions, limits, retentions and pays the premium described in such quotation, and the **Insurer** agrees in writing to bind such coverage. This Section shall not impact the **Insurer's** ability to non-renew this Policy as provided in Section XVI (Cancellation and Nonrenewal) of the General Terms and Conditions.

H. Witness Expenses

The **Insurer** shall pay on behalf of the **Insured Person Witness Expenses** up to \$250.00 each day for each **Insured Person**, subject to a maximum of \$2,500 for each **Policy Period** for all **Insured Persons** regardless of the number of **Claims** or **Insured Persons**. Such payment is in addition to and not part of the Aggregate Limit of

Liability for this Coverage Section and the Combined Maximum Aggregate Limit of Liability for this Policy set forth in Item 3 of the Declarations.

III. DEFINITIONS

The following terms shall have these meanings for this Coverage Section:

- A. **Asset Protection Expenses** means reasonable legal fees and expenses consented to by the **Insurer** incurred by the **Insured Person** to oppose an **Asset Restraint Order** or to seek to discharge or revoke an **Asset Restraint Order** entered against the **Insured Person**.
- B. **Asset Restraint Order** means any order issued by a **Government Enforcement Authority** to seize or enjoin the **Insured Person's** personal assets.
- C. **Books and Records Demand** means any written request pursuant to statute by a shareholder of the **Company** upon its Board of Directors (or equivalent managing body) to inspect the books and records of the **Company**.
- D. **Books and Records Expenses** means reasonable legal fees and expenses consented to by the **Insurer** and incurred by the **Company** in response to a **Books and Records Demand**. **Books and Records Expenses** does not include any salaries, wages, fees, overhead, benefits or benefit expenses of any **Insured**.
- E. **Claim** means:
- (1) a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a demand or request for arbitration, mediation or other alternative dispute resolution or that the **Insured** toll or waive a statute of limitations;
 - (2) a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
 - (3) a criminal proceeding against any **Insured** commenced by the return of an indictment, information or receipt of a notice of charges or similar document;
 - (4) a formal administrative or regulatory proceeding against any **Insured** commenced by the receipt of a notice of charges or similar document;
 - (5) solely with respect to Insuring Agreements A and B, an **Inquiry**, provided that the **Inquiry** shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Inquiry** to the **Insurer** pursuant to Section V.B. of the General Terms and Conditions of this Policy and an **Inquiry** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged;
 - (6) solely with respect to Insuring Agreement D, a **Derivative Demand** or **Books and Records Demand**;
 - (7) the arrest or confinement of any **Insured Person** to:
 - (a) a specified residence; or
 - (b) a secure custodial premises operated by or on behalf of any **Government Enforcement Authority**, if such arrest or confinement is in connection with the business of the **Company**; or
 - (8) an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is part of **Extradition**.

In no event shall any investigation of the **Insured** qualify as a **Claim** under parts (1)-(4) above.

Except as provided in Section V.E of the General Terms and Conditions of this Policy, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

- F. **Clawback Expenses** means reasonable legal fees and expenses (including the premium or origination fee for a loan or bond, without any obligation of the **Insurer** to apply for or furnish such loan or bond) incurred by the **Insured Person** to investigate or defend any **Claim** timely reported to the **Insurer** or facilitate the return of amounts required to be paid by such **Insured Person** under Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Act of 2010, or any rules, regulations or policies thereunder. **Clawback Expenses** do not include the payment, return, reimbursement, disgorgement or restitution of any amounts requested or required to be paid by such **Insured Person**.
- G. **Derivative Demand** means:
- (1) a written demand by a shareholder of the **Company** to the board of directors of the **Company** (or equivalent managing body) to investigate or bring a **Claim** against the **Insured Person** for a **Wrongful Act**; or
 - (2) any lawsuit brought by a shareholder of the **Company** derivatively on behalf of the **Company**.

- H. **Derivative Demand Investigation Expenses** means the reasonable fees and expenses consented to by the **Insurer** that the **Company** or board of directors (or an equivalent managing body or any committee thereof) incurs in connection with:
- (1) the investigation of whether it is in the best interests of the **Company** to pursue an action based on a **Derivative Demand**; or
 - (2) seeking the dismissal of a derivative lawsuit. **Derivative Demand Investigation Expenses** do not include any salaries, wages, fees, overhead, benefits or benefit expenses of any Insured.
- I. **Employed Lawyer** means the **Insured Person** licensed as an attorney who is rendering legal services to the **Company**.
- J. **Insured** means the **Insured Person** and the **Company**.
- K. **Insured Person** means an **Executive** or **Employee**.
- L. **Loss** means the amount the **Insured** is legally obligated to pay on account of a **Claim** made against the **Insured**, including, but not limited to, damages (including punitive, exemplary or multiple damages where insurable), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Claim Expenses**.

Loss shall include:

- (1) **Clawback Expenses**;
- (2) plaintiffs' attorney fees awarded pursuant to a judgement or consented to by the **Insurer** in a settlement in connection with covered **Loss**;
- (3) solely with respect to Section II.C of this Coverage Section, **Asset Protection Expenses** and **Publicity Expenses**;
- (4) taxes imposed on the **Company** for which the **Insured Person** is legally obligated to pay solely by reason of the Financial Impairment of the **Company**;
- (5) where insurable, civil fines or civil penalties assessed against the **Insured Person** for any unintentional and non-willful violation of law, including without limitation pursuant to Section 308 of the Sarbanes-Oxley Act of 2002, Chapter 23 of the United Kingdom's Bribery Act 2010, United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, and Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B); and
- (6) solely with respect to Insuring Agreement D, **Derivative Demand Investigation Expenses** and **Books and Records Expenses**.

The insurability of punitive, exemplary or multiple damages, taxes and civil fines or penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including the jurisdiction in which the **Insured(s)**, the **Insurer** or the **Claim** is physically located. The **Insurer** shall not assert that:

- (a) **Loss** incurred by the **Insured** is uninsurable by reason of the **Insured's** actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended; or
- (b) **Clawback Expenses** are uninsurable.

Loss, other than **Claim Expenses**, shall not include:

- (i) any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- (ii) taxes, fines or penalties imposed by law, other than the taxes or civil fines or civil penalties expressly referenced above;
- (iii) any amount: (a) incurred by the **Company** that represents or is equivalent to an increase in the consideration paid or proposed to be paid in connection with its acquisition of any securities or assets whether by merger or other transaction; or (b) that represents or is equivalent to an increase in the consideration paid or proposed to be paid in connection with the acquisition of any securities or assets of the **Company**, whether by merger or other transaction;
- (iv) any amount incurred by the **Insureds** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;

- (v) matters uninsurable under the law pursuant to which this Policy is construed; or
- (vi) **Clean-Up Costs**.
- M. **Negative Publicity** means any negative statement about the **Insured Person** made during the **Policy Period** in any publication by an individual authorized to speak on behalf of any **Government Enforcement Authority**.
- N. **Outside Entity** means:
- (1) any entity, other than the **Company**, chartered and operated as a not-for-profit organization; and
 - (2) any other entity specifically identified as an **Outside Entity** by endorsement to this Policy.
- O. **Outside Position** means a position as a duly elected or appointed director, officer or **Manager** of an **Outside Entity** held at the direction or request of the **Company** or as part of the regular duties assigned by the **Company**.
- P. **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, 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 the **Company** to any actual or prospective customers of the **Company** 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, the collection, use, safeguarding, storage, retention, destruction, processing, dissemination or any handling of any fingerprints, facial features, biometric identifiers or any other physiological characteristics or information; or any actual or alleged violation of any federal, state, local or foreign law, statute, ordinance or regulation of any kind that addresses, prohibits or limits the collection, use, safeguarding, storage, retention, destruction, processing, dissemination or any handling of any biometric or confidential information or material, including but not limited to the Illinois Biometric Information Privacy Act and the European Union's General Data Protection Regulation.
- Q. **Pre-Claim Expenses** means any reasonable legal fees and expenses incurred by the **Insured** in connection with a potential claim (including attorneys' fees, experts' fees, document production costs and e-discovery costs). **Pre-Claim Expenses** do not include any salaries, wages, overhead, benefits or benefit expenses of any **Insured**.
- R. **Publicity Expenses** means the reasonable fees and expenses of a public relations consultant engaged by or for the **Insured Person** consented to by the **Insurer** to mitigate reputational harm to such **Insured Person** as a result of **Negative Publicity**.
- S. **Securities Claim** means any **Claim**:
- (1) made against any **Insured** for any actual or alleged violation of any federal, state, local or **Foreign Jurisdiction** statute, regulation, or rule or common law regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, securities which is:
 - (a) brought by any person or entity resulting from, the purchase or sale of, or offer to purchase or sell, securities issued by the **Company**; or
 - (b) brought by a holder of securities of the **Company** with respect to such holder's interest in those securities; or
 - (2) brought derivatively on behalf of the **Company** by a holder of securities issued by the **Company**.
- Securities Claim** shall also include any **Claim** arising out of an offering of securities issued by the **Company** pursuant to, or permitted by, Title II, III or Title IV of the Jumpstart Our Business Startups Act ("JOBS Act").
- T. **Witness Expenses** means the reasonable expenses of the **Insured Person** to attend a trial, hearing, deposition, mediation or arbitration at the request of the **Insurer** in connection with a covered **Claim**.
- U. **Wrongful Act** means:
- (1) with respect to **Insured Persons**:
 - (a) any actual or alleged error, misstatement, misleading statement, neglect, breach of duty, omission or act by the **Insured Persons** in their capacity as such or in an **Outside Position** capacity; and
 - (b) any matter claimed against the **Insured Person** solely by reason of their serving in such capacity;
 - (2) with respect to the **Company**, any actual or alleged act, error, misstatement, misleading statement, neglect, breach of duty, omission or act by the **Company**; provided that a derivative lawsuit naming the **Company** as

a nominal defendant shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** of the **Company** is alleged.

IV. **EXCLUSIONS**

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

A. **Conduct**

- (1) based upon, arising out of or attributable to any criminal or fraudulent act or omission, or any intentional or willful violation of law, statute, rule or regulation by such **Insured** if established by any final and non-appealable adjudication adverse to such **Insured** in the underlying action or proceeding; or
- (2) based upon, arising out of or attributable to any remuneration, personal financial profit or other financial advantage to which such **Insured** was not legally entitled if established by any final and non-appealable adjudication adverse to such **Insured** in the underlying action or proceeding;

For the purpose of determining the applicability of Exclusions A(1) and A(2):

- (i) the **Wrongful Act(s)** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- (ii) only the **Wrongful Act(s)** of, facts pertaining to, and knowledge possessed by any **Executive Officer** of the **Company** shall be imputed to the **Company**.

B. **Prior or Pending**

based upon, arising out of or attributable to, as of the **Prior or Pending Date**:

- (1) any prior or pending **Claim** or investigation against any **Insured**;
- (2) any **Wrongful Act** underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**; or
- (3) any **Interrelated Wrongful Act** to any **Wrongful Act** underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**;

C. **Prior Notice**

based upon, arising out of or attributable to any **Wrongful Act(s)** which has been the subject of any written notice given and accepted prior to the inception of this Policy, including any **Interrelated Wrongful Act** to any **Wrongful Act** which has been the subject of such notice under any prior directors and officers, employment practices liability, fiduciary liability or comparable insurance policy or coverage part;

D. **Bodily Injury and Property Damage**

for any:

- (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
- (2) bodily injury, sickness, disease, death, mental anguish, emotional distress or humiliation of any person, provided, however, this exclusion shall not apply to:
 - (i) **Loss** incurred under Insuring Agreement A; or
 - (ii) **Loss** incurred with respect to any allegations of mental anguish, emotional distress or humiliation in a **Claim** against **Insured Persons** for employment-related **Wrongful Acts**, or to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such.

E. **Other Capacity**

based upon, arising out of or attributable to any actual or alleged error, misstatement, misleading statement, neglect, breach of duty, omission or act by the **Insured Person** solely:

- (1) while serving in their capacity as an executive or employee of any entity other than the **Company** or **Outside Entity**; or
- (2) by reason of their status an executive or employee with any entity other than the **Company** or **Outside Entity**.

F. **Certain Laws**

for any actual or alleged violation of:

- (1) **ERISA**;
- (2) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the Occupational Safety and Health Act of 1970, and as amended, and the National Labor Relations Act, as amended, or any similar provisions of any federal, state, local or foreign statutory or common law; or
- (3) any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits, or any similar provisions of any federal, state, local or **Foreign Jurisdiction** statutory or common law;

G. **Wage and Hour**

based upon, arising out of or attributable to an actual or alleged violation of any **Wage and Hour Law** provided that it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim** which is in part excluded from coverage under this Exclusion G; provided further, that this exclusion shall not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

H. **Employment and Third Party**

based upon, arising out of or attributable to the employment of or the prospective employment of any person, any employment related **Wrongful Act** or any Employment Practices Violation or Third Party Violation as defined in the Employment Practices Coverage Section (whether purchased or not);

I. **Insured versus Insured**

brought by or on behalf of any **Company**, the **Insured Person** or **Outside Entity**; provided, however this exclusion shall not apply to:

- (1) any **Claim** brought by the **Insured Person** in the form of a cross claim or third-party claim for contribution or indemnity, if such contribution or indemnity directly results from a **Claim** which is covered under this Policy;
- (2) any **Claim** brought by any past **Executive** who has not served as an **Executive** during the 2 years prior to the **Claim** being first made against any **Insured**, and who maintains such **Claim** without the active assistance or active participation of the **Company** or **Outside Entity**, or any **Insured Person** who is serving or has served as the **Insured Person** of the **Company** or **Outside Entity** within such two-year period;
- (3) any **Derivative Demand** or derivative lawsuit that is not brought by, controlled by, or materially assisted by the **Company**, the **Insured Person** or an **Outside Entity**;
- (4) in connection with a bankruptcy proceeding of the **Company** or **Outside Entity**, any **Claim** brought on behalf of the **Company** or **Outside Entity** by the debtor in possession (or foreign equivalent) or by any trustee, receiver, liquidator, rehabilitator, examiner or creditors committee of such **Company** or **Outside Entity**;
- (5) any **Insured Person** engaging in any whistleblowing activity; or
- (6) any **Claim** brought by an **Executive** of the **Company** formed and operating in a **Foreign Jurisdiction** (other than any other common law country) provided that such **Claim** is brought and maintained outside the U.S and any other common law country;

J. **Pollution**

for the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply to **Loss** incurred under Insuring Agreement A or to **Loss** in connection with a **Securities Claim**;

K. **Public Securities**

based upon, arising out of or attributable to any public offering of securities of the **Company**, or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, this exclusion shall not apply to:

- (1) any purchase or sale of securities exempted pursuant to the Securities Act of 1933, as amended;
- (2) any **Claim** arising out of an offering of securities issued by the **Company** pursuant to, or permitted by, Title II, III or Title IV of the Jumpstart Our Business Startups Act ("JOBS Act"); or

- (3) any **Claim** made by a security holder of the **Company** for the failure of the **Company** to undertake or complete an initial public offering or sale of securities, including any road show disclosures or other activities in connection with such failure.

L. Solely with respect to Insuring Agreement C:

(1) Intellectual Property

based upon, arising out of or attributable to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade secret or any other intellectual property rights; provided however, that this exclusion shall not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

(2) Business Practices

for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade, monopolization activity, business competition, unfair or deceptive trade practices or tortious interference in another's business or contractual relationships; provided however, that this exclusion should not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

(3) Product

based upon, arising out of or attributable to any actual or alleged violation of:

(a) the Federal Trade Commission Act or any Consumer Protection Act or any similar federal, state or local law, rule or regulation; or

(b) any bodily injury, malfunction or performance failure

related to any good or product manufactured, produced, processed, packaged, labeled, sold, marketed, distributed, advertised (including but not limited to falsely advertised, or misrepresented in advertising) or developed by or on behalf of the **Company**; provided however, that this exclusion shall not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

(4) Contract

based upon, arising out of or attributable to any actual or alleged contractual liability of the **Company** under any express contract or agreement; provided, however, this exclusion shall not apply to liability that would attach in the absence of such express contract or agreement;

(5) Professional

for the performance of or failure to perform professional services; provided however, that this exclusion shall not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

(6) Cyber

based upon, arising out of or attributable to any actual or alleged:

(a) unauthorized acquisition of, access to, loss of, or misuse (by any means) of private information or sensitive data;

(b) unauthorized or unlawful processing, sale, or rental of private information or sensitive data;

(c) ransomware, phishing, DDoS or other cyber-attack; or

(d) other act or omission that compromises the security, integrity or confidentiality of private information or sensitive data or computer systems of the **Insured**;

(7) Personal Injury

based upon, arising out of or attributable to any actual or alleged **Personal Injury**.

V. LIMITS OF LIABILITY

Section III, LIMITS OF LIABILITY of the General Terms and Conditions is amended to add the following for purposes of this Coverage Section:

A. **Sublimit of Liability for Derivative Demand Investigation Expenses and Books and Records Expenses**

The **Derivative Demand Investigation Expenses** and **Books and Records Expenses** Sublimit of Liability stated in Item 8 of the Declarations is the maximum aggregate limit of the **Insurer's** liability for all **Derivative Demand Investigation Expenses** and **Books and Records Expenses** arising out of all **Derivative Demands** and **Books and Records Demands** first made during the **Policy Period**, the **Extended Reporting Period** if exercised and the **Run-Off Coverage Period** if exercised, regardless of the time of payment, the number of **Derivative Demands** and **Books and Records Demands** or the number of claimants. The Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to the Directors and Officer Coverage Section and the Combined Maximum Aggregate Limit of Liability.

VI. RETENTIONS

Section VI. RETENTIONS of the General Terms and Conditions, is amended to add the following for purposes of this Coverage Section:

- A. No Retention amount shall apply to **Non-Indemnifiable Loss** and Insuring Agreement D., **Derivative Demand Investigation Expenses**, **Books and Records Expenses** or **Witness Expenses**.
- B. If, before or within sixty (60) days after the commencement of a **Claim** as defined in part (2) of the definition in this Coverage Section, the **Named Insured** and the **Insurer** agree to a mediation and resolve the **Claim** through that process, the Retention applicable to such **Claim** shall be reduced by the lesser of fifty percent (50%) of the applicable Retention or \$10,000.

COACTION COLLABORATORSM
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
EMPLOYMENT PRACTICES COVERAGE SECTION

I. INSURING AGREEMENTS

A. Employment Practices

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay resulting from a **Claim** for an **Employment Practices Violation** first made against the **Insureds** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

B. Third Party

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay resulting from a **Claim** for a **Third Party Violation** first made against the **Insureds** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

II. COVERAGE ENHANCEMENTS

Subject to the other terms and conditions of this Policy, coverage under this Coverage Section is extended as follows:

A. Late Notice from Renewed Policy

If a **Claim** described in Section III.B.(1) or (5) of the definition of **Claim** is first made against the **Insureds** during the policy period of an employment practices policy of which this Policy is a renewal and such **Claim** is not covered under the prior policy solely because notice of the **Claim** was not timely given, then such **Claim** shall be considered first made during the **Policy Period** of this Policy so long as:

- (1) no **Executive Officer** of the **Company** was aware of such prior **Claim** before the expiration of the time to give notice under the prior policy;
- (2) the **Claim** would have been covered under the prior policy but for the expiration of the time to give notice; and
- (3) written notice is given to the **Insurer** under this Policy no later than sixty (60) days after the earlier of: (a) the date that any **Executive Officer** of the **Company** became aware of the **Claim**; or (b) the end of the **Policy Period**.

Coverage under this Coverage Section for any such **Claim** shall only apply to **Loss** incurred after the date of notice to the **Insurer** under this Policy.

The maximum coverage available under this provision shall be the lesser of the coverage remaining under the prior policy or this Coverage Section at the time the **Claim** is reported to the **Insurer**, taking into account all of the terms, conditions and exclusions of the prior employment practices liability policy and this coverage part, including without limitation the applicable retention and available limit of liability under each policy as reduced by payments of **Loss**.

B. Workplace Violence Expenses

Subject to the Sublimit of Liability for all **Workplace Violence Expenses** set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of the **Company** all **Workplace Violence Expenses** incurred by the **Company** as a result of all **Workplace Violence Events** first occurring during the **Policy Period**. The **Insurer** shall not be liable to make any payment under this provision for:

- (1) any **Workplace Violence Expenses** incurred in connection with any **Workplace Violence Event** based upon, arising out of or attributable to:
 - (a) declared or undeclared war, civil war, insurrection, riot, rebellion, revolution, governmental intervention, expropriation or nationalization; or
 - (b) use or threat of force or violence occurring at the **Workplace** in order to demand money, securities or property; or
- (2) any **Workplace Violence Expenses** incurred as a result of any **Claim** against the **Company** based upon, arising out of or attributable to a **Workplace Violence Event**.

The **Company** shall, as a condition precedent to this coverage, give written notice to the **Insurer** of a **Workplace Violence Event** as soon as practicable after an **Executive Officer** first learns of such **Workplace Violence Event** but no later than thirty (30) days after the **Workplace Violence Event** occurs.

C. Crisis Expenses

Subject to the Sublimit of Liability for all **Crisis Expenses** set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of the **Company** all **Crisis Expenses** incurred by the **Company** as a result of all **Crises** first occurring during the **Policy Period**. The **Company** shall, as a condition precedent to this coverage, give written notice to the **Insurer** of a **Crisis** as soon as practicable after an **Executive Officer** first learns of such **Crisis** but no later than thirty (30) days after the **Crisis** begins.

D. Additional Claim Expenses Limit of Liability

If Additional Claim Expenses Limit for Employment Practices Liability is selected in the Declarations, then the **Insurer** shall provide the additional Limit of Liability for **Claim Expenses** covered under this Coverage Section. This Additional Claim Expenses Limit of Liability shall apply only after the Limit of Liability applicable to **Loss** covered under this Coverage Section is exhausted by payments by the **Insurer** and all Limits of Liability that are specifically excess of this Coverage Section are exhausted by payments of covered **Loss** by such insurers. The Additional Claim Expenses Limit of Liability shall be the amount set forth in Item 8 of the Declarations and is in addition to and not part of the Aggregate Limit of Liability for this Coverage Section and the Combined Maximum Aggregate Limit of Liability for this Policy set forth in Item 3 of the Declarations.

E. Immigration Expenses

Subject to the Sublimit of Liability set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of the **Company** all **Immigration Expenses** incurred in connection with an **Immigration Investigation** first made against the **Company** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

III. DEFINITIONS

The following terms shall have these meanings for this Coverage Section:

- A. **Benefits** means fringe benefits, perquisites, deferred compensation payments (including insurance premiums) in connection with an employee benefit plan, stock, stock warrants, stock appreciation rights, phantom stock plans or arrangements, stock options or other similar rights and any other payment to or for the benefit of an **Employee** arising out of the employment relationship, including without limitation retirement benefits, vacation or sick days, medical or insurance benefits other than wages, salary, commissions, cash bonuses, cash incentive compensation or similar non-deferred compensation.
- B. **Claim** means:
- (1) a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a demand or request for arbitration, mediation or other alternative dispute resolution or that the **Insured** toll or waive a statute of limitations;
 - (2) a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
 - (3) a criminal proceeding against any **Insured** commenced by the return of an indictment, information or receipt of a notice of charges or similar document;
 - (4) an administrative or regulatory proceeding against any **Insured**, including:
 - (a) a proceeding before the Equal Employment Opportunity Commission or a similar state or local governmental body commenced by the service of a complaint or filing of a notice of charges or similar document; and
 - (b) an audit by the Office of Federal Contract Compliance Programs commenced by a Notice of Violation or Order to Show cause or any written demand under part (1) of this definition in connection with the audit;
 - (5) any written charge filed against any **Insured** with the Equal Employment Opportunity Commission or any state or local fair employment practices agency, but not including any proceeding or investigation initiated by the Equal Employment Opportunity Commission or any state or local fair employment practices agency;
 - (6) an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is part of **Extradition**; or

(7) solely with respect to Section II.E., an **Immigration Investigation**.

In no event shall any investigation of the **Insured** be a **Claim** under parts (1)-(6) above.

Except as provided in Section V.E of the General Terms and Conditions of this Policy, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

Claim shall not include any labor or grievance proceeding which is subject to a collective bargaining agreement.

C. **Crisis** means:

- (1) a congressional inquiry regarding the **Insured's** actual or alleged violation of any employment laws; or
- (2) receipt by the **Insured** of notice from a civil rights organization or public interest group that it is:
 - (a) investigating the **Insured** for violations of any employment law; or
 - (b) publishing material which accuses the **Insured** of violation of any employment law.

D. **Crisis Expenses** means the reasonable fees and expenses of a public relations consultant engaged by the **Company** and consented to by the **Insurer** to mitigate reputational harm to such **Company** as a result of a **Crisis**.

E. **Employment Practices Violation** means any actual or alleged:

- (1) discrimination based upon age, gender, race, national origin, religion, sexual orientation or preference, gender identity or expression, pregnancy, disability, medical leave, genetic information, marital status or military status;
- (2) workplace harassment of any kind, including sexual harassment and harassment or bullying of a non-sexual nature that is offensive, intimidating, coercive or unwelcome;
- (3) wrongful dismissal, discharge or termination (either actual or constructive) of employment;
- (4) **Retaliation**;
- (5) breach of an express or implied employment contract;
- (6) employment-related libel, slander, humiliation, defamation, invasion of privacy or misrepresentation, including any negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
- (7) wrongful failure to employ, grant tenure or promote, wrongful deprivation of a career opportunity with the **Company**, wrongful discipline or wrongful demotion; or
- (8) with respect to any of the foregoing:
 - (a) negligent hiring, retention, training or supervision;
 - (b) wrongful infliction of emotional distress or mental anguish; or
 - (c) failure to provide or enforce adequate or consistent corporate policies and procedures;

but only if the **Employment Practices Violation** relates to an **Employee** or applicant for employment with the **Company**.

F. **Immigration Expenses** means the reasonable legal fees and expenses incurred by the **Company** in connection with an **Immigration Investigation**. **Immigration Expenses** do not include any salaries, wages, fees, overhead, benefits or benefit expenses of any **Insured**.

G. **Immigration Investigation** means an investigation of the **Company** by a **Governmental Enforcement Authority** regarding one or more **Employees'** ability to work legally in the United States, commenced by the **Company's** receipt of a subpoena, formal order of investigation, civil investigative demand or other similar document.

H. **Insured** means the **Insured Person** and **Company**.

I. **Insured Person** means an **Executive** or **Employee**.

J. **Loss** means the amount the **Insured** is legally obligated to pay on account of a **Claim** made against the **Insured**, including, but not limited to, damages (including back pay, front pay, and, where insurable, punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Claim Expenses**.

Loss shall include:

- (1) liquidated damages awarded under the Age Discrimination in Employment Act, the Family Medical Leave Act or the Equal Pay Act;
- (2) plaintiffs' attorney fees awarded in connection with covered **Loss**;
- (3) the cost to comply with a judgment, arbitration award or settlement of a covered **Claim** that requires the **Insured** to have any educational, sensitivity or other corporate training program, policy or seminar related to discrimination;
- (4) solely with respect to Section II.C. of this Coverage Section, **Crisis Expenses**;
- (5) solely with respect to Section II.B. of this Coverage Section, **Workplace Violence Expenses**; and
- (6) solely with respect to Section II.E. of this Coverage Section, **Immigration Expenses**.

Loss, other than **Claim Expenses**, shall not include:

- (i) any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- (ii) taxes, fines or penalties imposed by law;
- (iii) future salary, wages, commissions, **Benefits** or any other employment related benefits of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a judgment, settlement or other resolution of any **Claim**;
- (iv) any amount which constitutes severance or payment pursuant to a notice period, other than a settlement covered by this Policy and consented to by the **Insurer**;
- (v) **Benefits**, any other employment related benefits or any amount equivalent to **Benefits** or other employment related benefits;
- (vi) the cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including injunctive relief, except as provided in (3) above;
- (vii) any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person or any liability or costs associated with providing any accommodation for disabled persons under any applicable federal, state, or statutory law or common law anywhere in the world, including the Americans with Disabilities Act, the Civil Rights Act of 1964, or any amendments to or rules or regulations promulgated thereunder;
- (viii) **Clean-Up Costs**; and
- (ix) matters uninsurable under the law pursuant to which this Policy is construed.

The insurability of punitive, exemplary liquidated or multiple damages, taxes, fines and penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including the jurisdiction in which the **Insured(s)**, the **Insurer** or the **Claim** is physically located.

K. **Retaliation** means a retaliatory act against an **Employee** due to such **Employee's** assertion of a legal right, including:

- (1) disclosing or threatening to disclose to a supervisor or to any governmental agency any act by the **Insured** which allegedly violates any federal, state, local or **Foreign Jurisdiction** statutory or common law, or any rule or regulation;
- (2) refusing to violate any law or opposing any unlawful practice; or
- (3) assisting, testifying in or cooperating with a proceeding or investigation regarding alleged violations of law by the **Insured**.

L. **Third Party** means any natural person who is a customer, vendor, service provider, client or other business invitee of the **Company**.

M. **Third Party Violation** means any of the following against a **Third Party**:

- (1) discrimination based upon age, gender, race, national origin, religion, sexual orientation or preference, gender identity or expression, pregnancy, disability, medical leave, genetic information, marital status or military status, or
- (2) harassment of any kind, including sexual harassment and harassment or bullying of a non-sexual nature that is offensive, intimidating, coercive or unwelcome.

N. **Workplace** means the property occupied by the **Company** for the conduct of its business.

O. **Workplace Violence Event** means any unlawful and intentional actual or threatened use of deadly force involving a lethal weapon which occurs at a **Workplace** and which did or could reasonably result in the death or bodily injury of any **Insured Person**.

P. **Workplace Violence Expenses** means reasonable fees and expenses incurred by the **Company** immediately following a **Workplace Violence Event** with the **Insurer's** prior written consent to hire an independent:

- (1) public relations or security consultant or forensic analyst for ninety (90) days;
- (2) consultant to provide counseling for **Employees**; or
- (3) security guard to provide security services for fifteen (15) days.

Q. **Wrongful Act** means any **Employment Practices Violation** or **Third Party Violation**.

IV. **EXCLUSIONS**

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

A. **Prior or Pending**

based upon, arising out of or attributable to, as of the **Prior or Pending Date**:

- (1) any prior or pending **Claim** or investigation against any **Insured**;
- (2) any **Wrongful Act** underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**;
or
- (3) any **Interrelated Wrongful Act** to any **Wrongful Act** underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**;

B. **Prior Notice**

based upon, arising out of or attributable to any **Wrongful Act(s)** which has been the subject of any written notice given and accepted prior to the inception of this **Policy**, including any **Interrelated Wrongful Act** to any **Wrongful Act** which has been the subject of such notice under any prior directors and officers, employment practices liability, fiduciary liability or comparable insurance policy or coverage part;

C. **Bodily Injury and Property Damage**

for any:

- (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
- (2) bodily injury, sickness, disease, and death of any person, provided this exclusion shall not apply to any employment related emotional distress or humiliation;

D. **Contract**

based upon, arising out of or attributable to any breach under any express contract or agreement, provided that this exclusion shall not apply to:

- (1) **Loss** to the extent the **Insured** would have been liable for such **Loss** in the absence of such written employment contract; or
- (2) **Claim Expenses**;

E. Certain Laws

for any actual or alleged violation of:

- (1) **ERISA** (except Section 510);
- (2) any **Wage and Hour Law**; or
- (3) any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, disability benefits or any similar provisions of any federal, state, local or **Foreign Jurisdiction** statutory or common law;

provided that this exclusion shall not apply to **Loss** as a result of any **Claim** for **Retaliation**.

V. OTHER INSURANCE

The coverage afforded under this Coverage Section for **Claims** alleging **Employment Practices Violations** shall be primary except as provided in Section XII of the General Terms and Conditions regarding coverage for **Claims** against leased employees and **Independent Contractors**.

COACTION COLLABORATORSM
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
FIDUCIARY COVERAGE SECTION

I. INSURING AGREEMENT

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay resulting from a **Claim** for a **Wrongful Act** first made against the **Insured** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy.

II. COVERAGE ENHANCEMENTS

Subject to the other terms and conditions of this Policy, coverage under this Coverage Section is extended as follows:

A. Additional Claim Expenses Limit of Liability

If Additional Claim Expenses Limit for Fiduciary is selected in the Declarations, then the **Insurer** shall provide an additional Limit of Liability for **Claim Expenses** covered under this Coverage Section. This Additional Claim Expenses Limit of Liability shall apply only after the Limit of Liability applicable to **Loss** covered under this Coverage Section is exhausted by payments by the **Insurer** and all Limits of Liability that are specifically excess of this Coverage Section are exhausted by payments of covered **Loss** by such insurers. The Additional Claim Expenses Limit of Liability shall be the amount set forth in Item 8 of the Declarations and is in addition to and not part of the Aggregate Limit of Liability for this Coverage Section and the Combined Maximum Aggregate Limit of Liability for this Policy set forth in Item 3 of the Declarations.

B. Voluntary Compliance Loss

Subject to the Sublimit of Liability for all **Voluntary Compliance Loss** set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of the **Insureds** any **Voluntary Compliance Loss** for which the **Insureds** become legally obligated to pay resulting from a notice of a **Voluntary Compliance Program** first reported to the **Insurer** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised.

C. Fiduciary Penalties

Subject to the Sublimits of Liability set forth in Item 8 of the Declarations, the **Insurer** shall pay on behalf of the **Insureds** the following penalties resulting from a **Claim** for a **Wrongful Act** first made against the **Insured** during the **Policy Period**, the **Extended Reporting Period** or the **Run-Off Coverage Period**, if exercised, and reported to the **Insurer** pursuant to the terms of this Policy:

- (1) civil penalties imposed upon the **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended;
- (2) the five percent (5%) or less or the twenty percent (20%) or less civil penalties imposed under §502(i) or (l) of **ERISA**;
- (3) the fifteen percent (15%) or less tax penalty imposed upon the **Insured** under Section 4975 of the Internal Revenue Code of 1986;
- (4) civil penalties imposed upon the **Insured** as a fiduciary under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act;
- (5) civil penalties imposed upon the **Insured** under the **Affordable Care Act**; and
- (6) civil penalties imposed upon the **Insured** under the Pension Protection Act of 2006.

III. DEFINITIONS

The following terms shall have these meanings for this Coverage Section:

- A. Administration** means solely with respect to a **Plan**: (1) counseling or providing interpretations to **Employees**, participants, or beneficiaries; (2) preparing, distributing, or filing required notices; (3) handling records; or (4) effecting enrollments, terminations or cancellations of **Employees**, participants or beneficiaries.
- B. Affordable Care Act** means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and any amendments thereto.

C. **Claim** means:

- (1) a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a demand or request for arbitration, mediation or other alternative dispute resolution or that the **Insured** toll or waive a statute of limitations;
- (2) a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding against any **Insured** commenced by the return of an indictment, information or receipt of a notice of charges or similar document;
- (4) a formal administrative or regulatory proceeding against any **Insured** commenced by the receipt of a notice of charges or similar document;
- (5) an **Inquiry**, including a fact-finding investigation by the U.S. Department of Labor, U.S. Pension Benefit Guaranty Corporation or any similar government authority, provided that the **Inquiry** shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Inquiry** to the **Insurer** pursuant to Section V.B. of the General Terms and Conditions of this Policy and an **Inquiry** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged;
- (6) an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is part of **Extradition**; or
- (7) solely with respect to Section II.B., a notice of a **Voluntary Compliance Program**, provided that such notice shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Voluntary Compliance Program** to the **Insurer** pursuant to Section V.B. of the General Terms and Conditions of this Policy.

In no event shall any investigation of the **Insured** be a **Claim** under parts (1)-(4) above.

Except as provided in Section V.E of the General Terms and Conditions of this Policy, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

D. **Insured** mean any **Insured Person, Company** or **Plan**.

E. **Insured Person** means an **Executive** or **Employee**.

F. **Loss** means the amount the **Insured** is legally obligated to pay on account of a **Claim** made against the **Insured**, including, but not limited to, damages (including punitive, exemplary or multiple damages where insurable), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Claim Expenses**.

Loss shall include:

- (1) solely with respect to Section II.B of this Coverage Section, **Voluntary Compliance Loss**;
- (2) reasonable fees of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim** and reasonable fees and costs of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement; and
- (3) solely with respect to Section II.C of this Coverage Section, the penalties listed therein.

The insurability of punitive, exemplary or multiple damages and such **Voluntary Compliance Loss** and penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including the jurisdiction in which the **Insured(s)**, the **Insurer** or the **Claim** is physically located.

Loss, other than **Claim Expenses**, shall not include:

- (i) any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- (ii) taxes, fines or penalties imposed by law, other than the penalties set forth in Section II.C of this Coverage Section;
- (iii) any amount incurred by the **Insureds** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
- (iv) matters uninsurable under the law pursuant to which this Policy is construed;
- (v) **Clean-Up Costs**;

- (vi) (a) under any **Plan**, any benefits due, to become due or which would be due if such **Plan** complied with all applicable law; or
- (b) the portion of any settlement or judgment which constitutes or is substantially equivalent to such benefits except to the extent that:
 - (i) recovery for such benefits is based upon a covered **Wrongful Act** by the **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**; or
 - (ii) **Loss** is that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly caused or contributed to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan** regardless of whether the amounts could be characterized as benefits; or
- (vii) contributions owed by the **Company** to a **Plan** which any of the **Insureds** failed to collect from the **Company** unless the failure is because of the negligence of the **Insured**.

G. **Managed Care Services** means the management or administration, by any entity that is not the **Insured**, of any **Plan** that is a health care, pharmaceutical, vision or dental plan, utilizing cost control mechanisms.

H. **Plan** means:

- (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as defined in **ERISA**, sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of **Employees**;
- (2) any other employee benefit plan or program not subject to **ERISA** sponsored solely by the **Company** for the benefit of **Employees**, including any fringe benefit, or excess benefit plan;
- (3) any employee benefit plan or program otherwise described in parts (1) or (2) above while such plan or program is being actively developed, formed or proposed by any **Company** prior to the formal creation of such plan or program;
- (4) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for **Employees**; and
- (5) any Voluntary Employee's Beneficiary Association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, for which the purpose is to provide life, sickness, accident or other benefits for voluntary members who are **Employees** (including their dependents or designated beneficiaries).

Plan shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by **ERISA** unless specifically included as a **Plan** by endorsement to this Policy.

In all events, coverage for any **Plan** and any **Insured Person** thereof shall only apply while such plan meets the definition of **Plan** above.

- I. **Voluntary Compliance Loss** means **Voluntary Compliance Settlements** and **Claim Expenses** incurred in connection with a **Voluntary Compliance Program**, in each case incurred after notice of the **Voluntary Compliance Program** is provided by the **Insured** to the **Insurer** in accordance with Section V.B. of the General Terms and Conditions of this Policy.
- J. **Voluntary Compliance Settlement** means fines, penalties, sanctions or fees paid by the **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** for any inadvertent non-compliance by a **Plan** with any statute, rule or regulation.
- K. **Voluntary Compliance Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar Governmental Enforcement Authority, including but not limited to: the Employee Plans Compliance Resolution System, the Delinquent Filer **Voluntary Compliance Program**, the Voluntary Fiduciary Correction Program, the Premium Compliance Evaluation Program, and the Participant Notice Voluntary Correction Program.
- L. **Wrongful Act** means:
 - (1) any actual or alleged act, error or omission of the **Insured** in the discharge of their duties as, or by reason of their status as, fiduciaries of any **Plan**;
 - (2) any actual or alleged act, error or omission committed or attempted by the **Insureds** in the **Administration** of a **Plan**;

- (3) any actual or alleged act, error or omission by the **Insured** in the **Insured's** settlor capacity with respect to any **Plan**;
- (4) any actual or alleged act, error or omission by the **Insured** in connection with insurance actually or attempted to be purchased through any public, private or government-sponsored or controlled entity established to facilitate the purchase of health insurance in accordance with the **Affordable Care Act**; or
- (5) solely as respects a multiemployer plan, any negligent act, error or omission by the **Insured** in facilitating such "multiemployer plan's" administration by a third party, including but not limited to transmitting data concerning **Employees** who are participants in such multiemployer plan;

provided, however, that an **Inquiry** of the **Insured Person** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged.

IV. EXCLUSIONS

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

A. Conduct

based upon, arising out of or attributable to any criminal or fraudulent act or intentional or knowing violation of law by any **Insured** if established by any final and non-appealable adjudication in any action or proceeding;

For the purpose of determining the applicability of this exclusion:

- (1) the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- (2) only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Executive** of the **Company** shall be imputed to the **Company**.

B. Prior and Pending

based upon, arising out of or attributable to, as of the **Prior or Pending Date**:

- (1) any prior or pending **Claim** or investigation against any **Insured**;
- (2) any **Wrongful Act** underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**; or
- (3) any Interrelated **Wrongful Act** to any **Wrongful Act**, underlying or alleged in such prior or pending **Claim** or investigation against any **Insured**;

C. Prior Notice

based upon, arising out of or attributable to any **Wrongful Act(s)** which has been the subject of any written notice given and accepted prior to the inception of this **Policy**, including any **Interrelated Wrongful Act** to any **Wrongful Act** which has been the subject of such notice, and which has been accepted under any prior directors and officers, employment practices liability, fiduciary liability or comparable insurance policy or coverage part;

D. Bodily Injury and Property Damage

for any:

- (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
- (2) bodily injury, sickness, disease, death, mental anguish, emotional distress or humiliation of any person;

provided however, this exclusion shall not apply to a **Claim** for actual or alleged negligent or improper selection of a **Managed Care Services** provider or improper delay or denial of benefits under a **Plan** by a **Managed Care Services** provider;

E. Certain Laws

for any actual or alleged violation of any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits, or any similar provisions of any federal, state, local or **Foreign Jurisdiction** statutory or common law;

F. Wage and Hour

based upon, arising out of or attributable to an actual or alleged violation of any **Wage and Hour Law**; provided that it shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim** which is in part excluded from coverage under this Exclusion F; provided further, that this exclusion shall not apply to a **Claim** brought by one or more shareholders of the **Company** in their capacity as such;

G. Contract

based upon, arising out of or attributable to any actual or alleged contractual liability of the **Company** under any express contract or agreement; provided that this exclusion shall not apply to liability that would attach in the absence of such express contract or agreement.

COACTION COLLABORATORSM
PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
COMMERCIAL CRIME COVERAGE SECTION

SUBJECT TO ITS TERMS AND CONDITIONS, THIS INSURANCE ONLY APPLIES TO LOSSES FIRST DISCOVERED DURING THE POLICY PERIOD AND THAT ARE REPORTED TO THE INSURER IN THE TIME AND MANNER REQUIRED BY THIS POLICY.

PLEASE READ THIS ENTIRE POLICY CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THE POLICY.

In consideration of the payment of the premium, and in reliance upon the statements made in the **Application**, which is incorporated into this Policy and forms a part hereof, the **Insurer** and **Insured** agree as follows:

I. INSURING AGREEMENTS

A. Employee Theft Coverage

(1) Theft of Insured's Property

- (a) The **Insurer** shall pay the **Insured** for the direct loss of **Money, Securities or Property** sustained by the **Insured** resulting from **Theft or Forgery** by an **Employee**, whether identified or not, acting alone or in collusion with others.
- (b) The **Insurer** shall pay the **Insured** for direct loss of **Money, Securities or Other Property** sustained by a **Sponsored Plan** and resulting directly from **Theft or Forgery** by an identified **Employee**, acting alone or in collusion with others.

(2) Theft of Client's Property

- (a) The **Insurer** shall pay the **Insured** for direct loss of **Money, Securities or Other Property** sustained by a **Client** resulting from **Theft or Forgery** by an identified **Employee**, acting alone or in collusion with others.

B. Premises Coverage

- (1) The **Insurer** shall pay the **Insured** for the direct loss of **Money or Securities** sustained by the **Insured** while such **Money or Securities** is or are located upon the **Insured's Premises or Banking Premises** resulting from:

- (a) **Robbery or Safe Burglary**, or
- (b) theft, false pretenses, common-law or statutory larceny committed by a person present on the **Insured's Premises**.

- (2) The **Insurer** shall pay the **Insured** for loss or damage:

- (a) To any of the **Insured's** offices, or to any furnishings, fixtures, equipment, stationery, supplies or safes and vaults located therein, directly caused by burglary, robbery, holdup or larceny, or any attempt thereat, or by vandalism or malicious mischief occurring within the **Insured's Premises**, or
- (b) Of or to any other property directly caused by **Robbery or Safe Burglary**, or attempt thereat, within the **Insured's Premises**.

C. In Transit Coverage

- (1) The **Insurer** shall pay the **Insured** for the direct loss of **Money or Securities** sustained by the **Insured** outside the **Insured's Premises** while in custody of a **Messenger** or an armored motor vehicle company resulting from **Theft** or destruction.
- (2) The **Insurer** shall pay the **Insured** for the direct loss of **Money or Securities** sustained by the **Insured** outside the **Insured's Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting from an actual or attempted **Robbery**.

D. Forgery or Alteration Coverage

- (1) The **Insurer** shall pay the **Insured** for the direct loss of **Money** sustained by the **Insured** resulting from **Forgery or Alteration** of a **Financial Instrument**.

- (2) The **Insurer** shall pay the **Insured** for reasonable and necessary legal expenses incurred by the **Insured** with the **Insurer's** prior written consent in the event the **Insured** is sued for refusing to pay any instrument covered in paragraph I.D.(1) above, on the basis that it has been **Forged** or **Altered**.

E. Computer Crime Coverage

The **Insurer** shall pay the **Insured** for the direct loss of **Money**, **Securities** or **Property** sustained by the **Insured** resulting from a **Computer Crime** directly causing the fraudulent transfer of that property from inside the **Insured's Premises** or **Banking Premises** to either a person (other than a **Messenger**) or a place outside those Premises.

F. Funds Transfer Fraud Coverage

The **Insurer** shall pay the **Insured** for the direct loss of **Money** or **Securities** sustained by an **Insured** resulting from **Funds Transfer Fraud**.

G. Social Engineering Fraud Coverage

The **Insurer** shall pay the **Insured** for direct loss sustained by the **Insured** resulting from the **Insured** having transferred, paid or delivered any **Money** or **Securities** as the direct result of **Social Engineering Fraud** committed by a person purporting to be a **Vendor**, **Client** or **Employee** who was authorized by the **Insured** to instruct other **Employees** to transfer **Money** or **Securities**.

H. Money Orders and Counterfeit Money Coverage

The **Insurer** shall pay the **Insured** for direct loss sustained by the **Insured** resulting from the **Insured** having:

- (1) accepted in good faith, in exchange for merchandise, **Money** or services, any post office or express money order issued or purported to have been issued by any post office or express company, if such money order is not paid upon presentation; and
- (2) accepted in good faith, in the regular course of business, counterfeit currency.

I. Credit Card Fraud Coverage

The **Insurer** shall pay the **Insured** for direct loss sustained by the **Insured** resulting from **Credit Card Fraud**.

J. Investigation and Restoration Expenses

The **Insurer** shall pay the **Insured** for **Investigation Expense** and **Restoration Expenses** incurred by the **Insured** with respect to a covered loss under Insuring Agreements A through I, to the extent the covered loss is in excess of the Deductible applicable to such coverage.

II. DEFINITIONS

For the purposes of this insurance:

- A. **Alteration** means the material modification of a written document that is done with the intent to deceive by a person other than the person who prepared the document.
- B. **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 Insurer in connection with the underwriting of this Policy.
- C. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- D. **Client** means an entity or person for whom the **Insured** provides goods or services under written contract.
- E. **Computer Crime** means the intentional, unauthorized, and fraudulent entry of **Electronic Data** into the **Insured's Computer System**, by Internet access or otherwise, or an intentional, unauthorized, and fraudulent change to **Electronic Data** found within the **Insured's Computer System**, including a **Computer Virus**.
- F. **Computer System** means a computer and all input, output, processing storage and communication facilities which are connected to such a device, including an off-line media storage library.
- G. **Computer Virus** means a set of unauthorized instructions, programmatic or otherwise, that are maliciously introduced by a natural person into the **Insured's Computer System** that are directed solely against the **Insured** and which propagate themselves through the **Insured's Computer Systems** or network.

- H. **Credit Card Fraud** means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card, debit card, or charge card issued to the **Insured** or at the request of the **Insured**, to any partner, officer or **Employee** of the **Insured**.
- I. **Electronic Data** means facts or information converted to a form usable in a **Computer System** that does not provide instructions or directions to a **Computer System**, and which is stored on electronic data processing media for use by computer programs.
- J. **Employee** means:
- (1) A natural person while in the regular service of the **Insured** (and for 30 days after termination), who the **Insured** has the right to direct and control while performing services for the **Insured** and who the **Insured** compensates directly by salary, wages or commissions, including a part-time, seasonal or temporary employee;
 - (2) A duly designated student intern while performing services for the **Insured**; and
 - (3) A director or trustee, but only while performing acts coming within the scope of the usual duties of any employee.
- K. **Financial Instrument** means checks, drafts or similar written promises, orders or directions to pay a sum certain in money, that are made, drawn by or drawn upon the **Insured** or by anyone acting as the **Insured's** agent, or that are purported to have been so made or drawn.
- L. **Forgery** means the physical signing on a written document of the name of another person or organization 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. Mechanically or electronically produced or reproduced signatures shall be treated the same as hand-written signatures for the purpose of this definition.
- M. **Funds Transfer Fraud** means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions (other than **Forgery**), purportedly issued by the **Insured**, and issued to a financial institution directing such institution to transfer, pay or delivery **Money** or **Securities** from any account maintained by the **Insured** at such institution, without the **Insured's** knowledge or consent.
- N. **Investigation Expenses** means reasonable expenses and costs up to the sum total as set forth in the Declarations, incurred by the **Insured** with the prior written consent of the Insurer, which shall not be unreasonably withheld, to investigate the existence and/or amount of a loss established as covered under Insuring Agreements A through I, excluding Agreement E listed above, and excluding any internal costs incurred by the **Insured** and all costs incurred by a **Client**.
- O. **Messenger** means any partner or **Employee** of the **Insured**, duly authorized, while having care and custody of the property outside the **Premises**.
- P. **Money** means:
- (1) Currency, coins and bank notes in current use and having a face value; and
 - (2) Travelers checks, register checks and money orders held for sale to the public.
- Q. **Property** means any tangible property other than **Money** and **Securities** that has intrinsic value, and which is not otherwise excluded under this Policy.
- R. **Policy Period** means that period of time specified in Item 2 of the Declarations, or if this Policy is terminated or cancelled at an earlier date, then it shall mean such shorter period of time.
- S. **Premises** means the interior of that portion of any building occupied by the **Insured** in conducting its business.
- T. **Robbery** means the unlawful taking of **Money**, **Securities** or **Property** from the custody of an **Employee** or other person duly authorized by an **Insured** to have custody of such **Money**, **Securities** or **Property** by violence or threat of violence, committed in the presence and cognizance of such **Employee** or other person.
- U. **Restoration Expenses** means reasonable expenses and costs incurred by the **Insured** resulting from an incident covered under paragraph I.E. above, not to exceed the sum total as set forth in the Declarations incurred by the **Insured** with the prior written consent of the **Insurer** in order to restore **Computer Systems** and/or **Electronic Data** to their original condition where such **Data** or **Programs** have been intentionally damaged or destroyed as a result of a **Computer Crime**.

V. **Safe Burglary** means 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.

W. **Securities** means a share, participation or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer which is represented by a written physical instrument issued in bearer or registered form; of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and either one of a class or series or by its terms divisible into a class or series of shares.

X. **Single Loss** means all covered loss resulting from:

- (1) any act or omission, or series of acts or omissions, caused by, or involving one or more persons (whether an **Employee(s)** or not) whether acting alone or in collusion with others, or
- (2) anyone act or series of related acts of theft, **Forgery**, **Computer Crime**, burglary, robbery, or other fraudulent, dishonest or criminal acts, or attempt thereat, in which no **Employee** is implicated, or
- (3) any act or event, or series of related acts or events, not specified in (1), or (2) preceding.

Y. **Social Engineering Fraud** means the intentional misleading of an **Employee**, through an instruction to pay certain monies which is relied upon by an **Employee**, believing it be genuine.

Z. **Sponsored Plan** means:

- (1) any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as defined in ERISA, sponsored solely by the Insured Company, or sponsored jointly by the Insured Company and a labor organization, solely for the benefit of Employees;
- (2) any other employee benefit plan or program not subject to ERISA sponsored solely by the Insured Company for the benefit Employees, including any fringe benefit, or excess benefit plan;
- (3) any employee benefit plan or program otherwise described in paragraphs (1) or (2) above while such plan or program is being actively developed, formed or proposed by any Insured Company prior to the formal creation of such plan or program;
- (4) any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for Employees; and
- (5) any Voluntary Employee's Beneficiary Association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, for which the purpose is to provide life, sickness, accident or other benefits for voluntary members who are Employees (including their dependents or designated beneficiaries).

Plan shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by ERISA unless specifically included as a Plan by endorsement to this Policy.

AA. **Subsidiary** means an entity in which the **Insured**, on the inception date of the Policy, owns more than a 50% financial interest.

BB. **Theft** means the intentional unlawful taking of **Money**, **Securities** or **Property** to the deprivation:

- (1) For the purposes of Insuring Agreement (A) only, of a **Client**;
- (2) For the purposes of Insuring Agreement (A) only, of a **Sponsored Plan**; or
- (3) For the purpose of all other Insuring Agreements, the intentional unlawful taking of **Money**, **Securities** or **Property** to the deprivation of the **Insured**.

CC. **Vendor** means any entity or natural person that has provided goods or services to the Insured under a legitimate preexisting arrangement or written agreement. The term Vendor does not include any financial institution, asset manager, broker-dealer, armored vehicle company or similar entity.

III. **EXCLUSIONS**

This Policy does not cover:

- A. Loss resulting directly or indirectly from any fraudulent, dishonest or criminal act committed by an owner or partner of the **Insured** whether acting alone or in collusion with other persons.

- B. Loss resulting directly or indirectly from any fraudulent, dishonest or criminal act committed by any **Employee**, manager, director, trustee or authorized representative of the **Insured**, whether acting alone or in collusion with other persons, except when covered under Insuring Agreement A.
- C. Loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities or Property**, whether or not in the name of the **Insured** and whether or not in a genuine or fictitious account, provided that this exclusion shall not apply to direct losses caused by **Theft or Forgery** which result in improper financial gain to an **Employee** (direct losses as used herein shall mean only the amount of improper financial gain to such **Employee**, which shall not include **Salary**, commissions, fees or other compensation, including promotions and raises associated with employment, paid by the **Insured** to such **Employee**).
- D. Loss resulting directly or indirectly from seizure or destruction of property by order of governmental authority.
- E. Indirect or consequential loss of any nature.
- F. Costs and expenses incurred by the **Insured** in establishing the existence or the amount of any loss covered under this Policy, unless covered under Insuring Agreement J.
- G. Loss of income or potential income, including but not limited to interest or dividends, not realized by the **Insured** as a result of any incident covered under this Policy.
- H. Damages of any type, including, but not limited to, punitive, exemplary, and the multiplied portion of multiplied damages, for which the **Insured** is legally liable, except compensatory damages, but not multiples thereof, arising directly from an incident covered under this Policy.
- I. Loss resulting directly or indirectly from the accessing or taking of any confidential information, including, but not limited to, trade secret information, customer lists or other information, computer programs, confidential processing methods or other confidential information of any kind.
- J. Loss of any intangible property, including intellectual property.
- K. Expenses related to any legal action, unless covered under Insuring Agreement D(2) and J.
- L. Loss resulting directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.
- M. Loss resulting directly or indirectly from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.
- N. Loss, or that part of any loss, the proof of which as to its existence or amount is dependent solely upon:
 - (1) an inventory computation or comparison; or
 - (2) a profit and loss computation or comparison; Except, however, that where the **Insured** establishes wholly part from such computations that it has sustained a loss that is covered under one of the Insuring Agreements of this Policy, then it may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.
- O. Loss resulting directly or indirectly from fraudulent or dishonest signing, issuing, canceling or failing to cancel, a warehouse receipt or any papers connected with it.
- P. Loss resulting directly or indirectly from the giving or surrendering of **Money, Securities or Property** in any exchange or purchase, unless covered under Insuring Agreement D(1).
- Q. Loss resulting directly or indirectly from fire, except for loss from damage to a safe or vault, or loss of or damage to **Money and Securities covered** under Agreement B.
- R. Loss of or damage to **Money, Securities or Property**, after it has been transferred or surrendered to a person or place outside the **Premises** or **Banking Premises** on the basis of unauthorized instructions; as a result of a threat to do bodily harm to any person; or as a result of a threat to do damage to any property,
 Except, however, this Exclusion does not apply under Insuring Agreement C to loss of **Money, Securities or Property** while outside the **Premises** in the care and custody of a **Messenger** if the **Insured** had no knowledge of any threat at the time the conveyance began or had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.
- S. Loss from damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or property by vandalism or malicious mischief, unless covered under Insuring Agreement B(2).
- T. Loss caused by the fraudulent or dishonest misuse of any computer or electronic communication system, except as specifically covered by Insuring Agreement E.

U. Loss resulting directly or indirectly from the making of a loan or a transaction in the nature of a loan.

IV. **CONDITIONS**

A. **Duties In The Event Of Loss**

After the **Insured** discovers loss or a situation that may result in loss of **Money, Securities or Property** that may be covered under this insurance, the **Insured** must:

- (1) Notify the **Insurer** in writing as soon as possible, but no later than 30 days;
- (2) Submit to examination under oath at the **Insurer's** request;
- (3) Submit a detailed, sworn proof of loss within 120 days of discovery of the loss or incident; and
- (4) Cooperate with the **Insurer** in the investigation and settlement of any claim.

B. **Single Loss Limit and Deductible**

The total amount recoverable by the **Insured** for each **Single Loss** shall not exceed the applicable Limit shown in Item 8 of the Declarations, regardless of the total amount of such loss or losses. If a **Single Loss** is covered under more than one Insuring Agreement, the maximum amount payable with respect to such loss shall not exceed the largest amount available under anyone applicable Insuring Agreement.

The Insurer shall be liable only for the amount by which any **Single Loss** exceeds the Deductible shown in Item 8 of the Declarations.

C. **Termination of Coverage**

- (1) Coverage under this Policy shall terminate as to any **Employee** immediately upon discovery by the **Insured** or any of its partners, members, managers, officers, directors, trustees not in collusion with such **Employee**, of any dishonest, fraudulent or criminal act by the **Employee** whether before or after becoming employed by the **Insured**.
- (2) Coverage under this Policy shall terminate in its entirety immediately upon the expiration of the **Policy Period**.
- (3) Coverage under this Policy shall terminate in its entirety immediately upon the bankruptcy, liquidation or dissolution of the **Insured**.
- (4) Coverage under this Policy shall terminate as to any **Subsidiary** immediately upon the acquisition of a 50% or more interest in such **Subsidiary** by any other person or entity other than the **Insured** or another **Subsidiary** of the **Insured**.

D. **Consolidation - Merger**

If through consolidation or merger with, or purchase or acquisition of assets or liability of, some other entity, any additional persons become **Employees** or the **Insured** acquires the use and control of any additional premises, then the **Insured** must give the **Insurer** written notice and obtain written consent to extend this Policy to such additional **Employees** or **Premises**. The Insurer may condition its consent upon payment of additional premium.

E. **Discovery/Loss Sustained**

- (1) The **Insurer** will pay for loss under this Policy where such loss is sustained by the **Insured** through acts committed or events occurring prior to the termination of coverage and that are discovered by the **Insured** during the Policy Period, or during the period of time provided in Condition G, "Extended Period to Discover Loss,"
- (2) Discovery of loss occurs when the **Insured** first becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Policy 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 against the **Insured** alleging facts that if true would constitute a covered loss under this Policy.

F. **Non-Accumulation**

Regardless of the number of years this Policy may be in force, the number of times this Policy may be renewed or the number of premiums which may be paid or payable, the Limit of Liability shall not be cumulative in amount from Policy Period to Policy Period. The Insurer is not liable for any losses sustained by the **Insured** during the **Policy Period** which are not discovered during the **Policy Period** or any extended discovery period, regardless of whether not the Policy is renewed.

G. **Extended Period To Discover Loss**

This Policy shall pay for loss that the **Insured** sustained prior to the effective date of termination or cancellation of this insurance, which is discovered by the **Insured**:

- (1) No later than 60 days from the date of that termination or cancellation; and
- (2) As respects any **Employee Benefit Plan(s)**, no later than 1 year from the date of that termination or cancellation.

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 hereunder, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

H. **Loss Covered Under More Than One Coverage Of This Insurance**

Except for loss under Agreement A, if two or more coverages of this insurance apply to the same loss, the Insurer is obligated to pay only the lesser of the actual amount of loss or the lesser of the Policy Limits applicable to those coverages.

I. **Loss Sustained During Prior Insurance**

- (1) If the **Insured**, or any predecessor in interest, sustained loss during the period of any prior insurance that the **Insured** or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, the Insurer will pay for such loss under this Policy, provided:
 - (a) This Policy became effective at the time of cancellation or termination of the prior Insurance; and
 - (b) The loss would have been covered by this Policy had it been in effect when the acts or events causing the loss were committed or occurred.
- (2) The insurance under this Condition is part of, not in addition to, the Limits of Insurance applying to this insurance and limited to the lesser of the amount recoverable under:
 - (a) This insurance as of its effective date; or
 - (b) the prior insurance had it remained in effect.

J. **Loss Covered Under This and Prior Insurance Issued by the Insurer or Any Affiliate**

If any loss is covered:

- (1) Partly by this insurance; and
- (2) Partly by any prior canceled or terminated insurance that the Insurer or any affiliate had issued to the **Insured**, then the most the Insurer will pay is the larger of the amount recoverable under this insurance or the prior insurance.

K. **Legal Action Against Insurer**

No **Insured** shall institute legal proceedings against the Insurer:

- (1) After two (2) years immediately following any **Discovery**; or
- (2) To recover a judgment or settlement against it or its bank resulting from any covered loss, or related legal expenses as set forth in Section 1, after two (2) years immediately following the date upon which such judgment shall become final or settlement was entered.

L. **Other Insurance**

This insurance does not apply to any loss that is recoverable or recovered under any other insurance or indemnity, until the limits of all such other insurances and indemnities available to the **Insured** have been exhausted. If the limit of the other 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 part of the loss falling within any Deductible Amount, not recoverable or recovered under the other insurance or indemnity.

M. **Ownership Of Property; Interests Covered**

The property covered under this insurance is limited to property;

- (1) That the **Insured** owns or leases;
- (2) That the **Insured** holds for others; or

(3) For which the **Insured** is legally liable, except for property inside the premises of a **Client** of the **Insured**.

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

N. Records

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

O. Subrogation

- (1) Any recoveries, less the cost of obtaining them, made after payment to the **Insured** of loss covered by this insurance will be distributed as follows:
 - (a) To the **Insured**, until the **Insured** is reimbursed for any covered loss that it sustained that exceeds the aggregate amount of the Limit and the Deductible Amount applicable to this Policy;
 - (b) Then to the **Insurer**, until it is reimbursed for amounts paid to the **Insured**; and
 - (c) Then to the **Insured** until it is reimbursed for that part of the loss equal to the Deductible Amount, if any.
- (2) Recoveries do not include any recovery:
 - (a) From insurance, suretyship, reinsurance, security or indemnity taken for the Insurer's benefit; or
 - (b) Of original "securities" after duplicates of them have been issued.
- (3) The **Insured** must transfer to Insurer all of its rights of recovery against any person or organization for any loss it has sustained and for which Insurer has paid or settled. The **Insured** must also do everything necessary to secure those rights and do nothing after loss to impair them.

P. Valuation -Settlement

Subject to the applicable Limit of Liability, the **Insurer** will pay for:

- (1) 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 at face value in the **Money** issued by that country or in the United of America dollar equivalent determined by the rate of exchange on the date the loss was discovered.
- (2) 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 of 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 value of the **Securities** at the close of business on the date the loss was discovered or the limit of this insurance.
- (3) In the case of loss of, damage to, any books of account or other records used by the **Insured** its business, the Insurer shall be liable under this Policy only if such books or records are actually reproduced and then for not more than the cost of the blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the **Insured** in order to reproduce such books and other records.
- (4) In case of loss of, or damage to, any property other than money, securities, books of account or other records, the Insurer shall not be liable for more than the actual cash value of such property. The Insurer may, at its election, pay the actual cash value of, replace or repair such property.

In case of loss of, or damage to, electronic data processing media, the Insurer shall be liable under this Policy only if such items are actually reproduced by other electronic data processing media of the same kind or quality and then for not more than the cost of the blank media plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the **Insured** in order to reproduce such electronic data processing media.

In case of loss of electronic data, the Insurer shall be liable under this Policy only if such data is actually reproduced by other electronic data of the same kind or quality and then for not more than the cost of labor

for the actual transcription or copying of data which shall have been furnished by the **Insured** in order to reproduce such electronic data.

- (5) The Insurer may, at its option, pay for loss of or damage to property other than **Money**, in the **Money** of the country in which the loss occurred, or in the United States of American 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.
- (6) Any property that the Insurer pays for or replaces, becomes the Insurer's property.

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