



NAMED INSURED AND ADDRESS		PRODUCER
Item 1.		
Attn:		
CUSTOMER NUMBER		INSURER
POLICY NUMBER		

Item 2. **Policy Period:**

Item 3. **Policy Premium:**

Lines of Business	Policy Year Premium	Policy Period Premium
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Management Liability  
Professional Liability  
Crime

**Surcharges/Taxes:**

**Amount:**

Item 4. **Coverage Parts and Endorsements:**

Epac Extra - Directors & Officers Liability Coverage Part	GSL12039XX	03/2010
Epac Extra - Employment Practices Liability Coverage Part	GSL12040XX	03/2010
Epac Extra - Fiduciary Liability Coverage Part	GSL12041XX	03/2010
Epac Extra - Miscellaneous Professional Liability Coverage Part	GSL12042XX	03/2010
Epac Extra - Technology & Telecommunications Liability Coverage Part	GSL12044XX	03/2010
Epac Extra - Media Liability Claims Made Coverage Part	GSL16478XX	03/2010
Epac Extra - Crime Coverage Part	GSL12038XX	03/2010
Epac Extra - Network Security and Privacy Injury Liability Coverage Part	GSL13700XX	03/2010



**Item 5. Notices of Claims to Insurer:**

CNA Global Specialty Lines C/O: Claim Intake Manager  
40 Wall Street  
7th Floor  
New York, NY 10005  
Fax: 866-773-7504  
Phone: 212-440-7998  
Email: CAIntake@cna.com

These Declarations, along with the completed and signed Application, the Policy, and any written endorsements attached shall constitute the contract between the Insureds and the Insurer.

Authorized Representative :

Date:





**NOTICE**

**MANY OF THE PROFESSIONAL LIABILITY COVERAGE PARTS ARE WRITTEN ON A CLAIMS MADE BASIS, AND AS SUCH, TO ALL PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE DURING THE POLICY PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES. DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

**Named Insured:**

**Policy Number:**

**Policy Period:**

Item 1. **Policy Year Limits of Liability and Retentions** (inclusive of **Defense Costs**). Regardless of the Option selected, as indicated by a checked box, please refer to the Coverage Schedule below for applicable Coverage Parts.

The **Coverage Parts** designated below are issued with the Limits of Liability and Retention Option selected below:

- Single Limit of Liability and Scheduled Retentions:**  
 Single Limit of Liability\*  
 Scheduled Retentions Refer to Column 3 below
  
- Scheduled Limits of Liability and Scheduled Retentions:**  
 Scheduled Limits of Liability Refer to Column 2 below  
 Scheduled Retentions Refer to Column 3 below

① Coverage Part	② Scheduled Limits of Liability Per Claim or Privacy Event/Aggregate Limit	③ Scheduled Retentions Per Claim	Retroactive Date	Policy Year Premium	Policy Period Premium
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- Miscellaneous Professional Liability
- Media Liability - Claims Made
- Technology and Telecommunications Liability
- Network Security Liability
- Basic Privacy Injury Liability
- Basic Privacy Injury Liability
- Sub Limits
  - Privacy Event Expenses
  - Privacy Regulatory Proceeding
  - Network Extortion Expenses

\* Single Limit applies to claims made coverage parts only. If an occurrence coverage part is selected the limit for that coverage part is a separate scheduled limit.

NOTE: The premium shown on this Declarations page does not include Surcharges or Taxes, if applicable.



Authorized Representative :

*John S. Brand*

Date:



**Named Insured:**

**Policy Number:**

**Policy Period:**

Item 1. **Policy Year Limits of Insurance and Deductibles**

Coverage	Per Loss Limit	Policy Year Aggregate Limit	Deductible
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Employee Theft (A)

**Coverage Premium:**

Policy Year Premium:

Policy Period Premium:

NOTE: The premium shown on this Declarations page does not include Surcharges or Taxes, if applicable.

Authorized Representative :

Date:



The Insurer and the **Insureds**, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Policy Declarations, a stock insurance corporation, hereafter called the "Insurer," agree as follows. Terms in bold face type have special meaning. See the Glossary of Defined Terms or the applicable Coverage Parts of this Policy.

## I. TERMS AND CONDITIONS

The terms and conditions of each **Coverage Part** apply only to that **Coverage Part** and shall not apply to any other **Coverage Part**. If any provision in the General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any **Coverage Part**, the terms and conditions of such **Coverage Part** shall control for purposes of that **Coverage Part**.

## II. CANCELLATION

### A. Insurer's Right to Cancel

The Insurer shall not cancel this Policy except for non-payment of any premium when due. The Insurer shall provide to the **Named Insured** written notice of such cancellation stating when, not less than twenty (20) days thereafter, such cancellation shall be effective, except that non-payment of premium due at inception of this Policy will result in the policy being cancelled effective as of the effective date.

### B. Named Insured's Right to Cancel

The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed on a pro-rata basis and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

## III. NON-RENEWAL

If the Insurer decides not to offer any renewal terms for this Policy, the Insurer shall provide written notice to the **Named Insured** at least sixty (60) days prior to the Policy expiration date. The notice shall include the reason for such non-renewal.

## IV. NAMED INSURED AUTHORIZATION AND NOTICES TO THE NAMED INSURED

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notices to the Insurer (except pursuant to Section **XXII**, Paragraph **A. Notice of Claim or Privacy Event** or **B. Notice of Circumstance**), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the acceptance of endorsements.

Any notices required under Section **II. CANCELLATION**, and Section **III. NON-RENEWAL** shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

## V. APPLICATION

A. The **Insureds** represent and acknowledge that the statements contained in the **Application** (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth of such representations.



- B. In the event the **Application** contains any misrepresentation or omission made with the intent to deceive, or which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under the Policy then this Policy shall be voided as to:
1. the **Insured Entity**, if the Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position), or the signer of the **Application** knew of such misrepresentation or omission and,
  2. any **Insured Persons** who knew of such misrepresentation or omission. Such knowledge shall not be imputed to any other **Insured Persons**.

Notwithstanding anything to the contrary in this Policy and solely to the extent there is a **Non-Indemnifiable Loss**, the Insurer shall not seek to rescind the Policy with respect to any **Insured Person** for any reason.

**VI. CHANGES**

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

**VII. NO ACTION AGAINST INSURER**

- A. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy or until the amount of the **Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.
- B. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

**VIII. ASSIGNMENT OF INTEREST**

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

**IX. TERRITORY**

Coverage shall apply worldwide.

**X. ENTIRE AGREEMENT**

The **Insureds** agree that this Policy constitutes the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

**XI. COORDINATION AMONG COVERAGE PARTS**

Subject always to the applicable Limit of Liability, should two or more **Coverage Parts** apply to the same **Claim**; the Insurer will not pay more than the actual **Loss** incurred by the **Insureds**.

**XII. COVERAGE FOR NEW SUBSIDIARIES AND PLANS**

- A. If, after the effective date of this Policy:
1. an **Insured Entity** creates or acquires a privately held entity or plan, or



2. an **Insured Entity** or any **Plan** merges with another privately held entity or plan such that an **Insured Entity** or any **Plan** is the surviving entity or plan,

then such entity or plan, and any subsidiaries, plans, directors, officers, trustees or employees of such entity or plan who otherwise would thereby become an **Insured**, shall be automatically covered under this Policy, subject to its terms and conditions.

Notwithstanding the above, solely with respect to the coverage provided under the Crime **Coverage Part**, Section **V, CONDITIONS**, Paragraph **A. 2 New Employee Benefit Plans**, of the Crime **Coverage Part** controls whether or not such newly created, acquired, or merged plan is an **Insured** as set forth above.

- B. Solely with respect to any liability **Coverage Part**, there shall be no coverage for any **Wrongful Act** by such created, acquired or merged entity or **Plan**, or by any persons or entities considered to be **Insureds** pursuant to paragraph A of this Section, where such **Wrongful Act** occurred in whole or in part before the effective date of such acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, would be considered **Interrelated Wrongful Acts**.

### **XIII. CHANGE OF STATUS OF INSUREDS**

#### **A. Takeover of the Named Insured**

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy expires or is otherwise terminated, but only with respect to **Wrongful Acts** or **Crime Loss** that takes place before the effective date of the **Takeover**, unless:

1. the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and
2. the **Named Insured** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

#### **B. Cessation of Subsidiary**

If any **Insured Entity** ceases to be a **Subsidiary**, coverage under this Policy shall continue for such **Subsidiary** but only for **Wrongful Acts** by such **Subsidiary** or any **Insured Person** or **Plan** of such **Subsidiary** occurring prior to the date such **Insured Entity** ceased to be a **Subsidiary**.

#### **C. Transfer or Termination of a Plan**

If the sponsorship of a **Plan** is transferred so that an **Insured Entity** is no longer the sole employer sponsor of such **Plan** or if a **Plan** is terminated, coverage under this Policy shall continue for any **Wrongful Act** by or with respect to such **Plan** occurring prior to the date of such transfer or termination.

### **XIV. TRADE AND ECONOMIC SANCTIONS**

This Policy does not provide coverage for **Insureds**, transactions or that part of **Loss** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

### **XV. VALUATION**

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Loss** is expressed or calculated in any other currency, payment of such **Loss** due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Loss** is established, or, if not published on that date, on the date of next publication.

### **XVI. HEADINGS**



The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

**XVII. BANKRUPTCY**

Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations hereunder.

**THOSE LIABILITY COVERAGE PARTS DESIGNATED AS "CLAIMS MADE" APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MADE UNDER ANY CLAIMS MADE LIABILITY COVERAGE PARTS MUST BE REPORTED IN ACCORDANCE WITH THE SECTION XXII., NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES. DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTION. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER. THE FOLLOWING TERMS AND CONDITIONS APPLY ONLY TO LIABILITY COVERAGE PARTS:**

**XVIII. EXTENDED REPORTING PERIOD**

Solely with respect to those Liability **Coverage Parts** written on a claims made basis, the following applies:

**A. Optional Extended Reporting Period**

If the **Named Insured** cancels or non-renews this Policy or if the Insurer decides not to offer any renewal terms for this Policy, the **Named Insured** shall have the right to purchase, upon payment of an additional premium an extension of this Policy immediately following the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**. The additional premium for such extension is a percentage of the total **Policy Premium** attributable to the **Policy Year** in effect upon such cancellation or non-renewal. For a one year extension, the premium equals seventy-five percent (75%) of such total **Policy Premium**; for a two year extension, the additional premium equals one hundred and twenty-five percent (125%) of such total **Policy Premium**; and for a three year extension, the additional premium equals one hundred and fifty percent (150%) of such total **Policy Premium**.

This period shall be referred to as the Extended Reporting Period.

**B. Payment of Extended Reporting Period Premium**

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase the Extended Reporting Period ends sixty (60) days after termination or expiration of the **Policy Period** unless the Insurer receives written notice and full payment of the premium for such Extended Reporting Period within sixty (60) days after such termination or expiration

**C. Non-Cancelable/Premium Fully Earned**

If the Extended Reporting Period is purchased, the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

**D. No Separate Limit**

There is no separate or additional limit of liability for the Extended Reporting Period. The remainder of the Limit of Liability applicable to the **Policy Year** in effect at the end of the **Policy Period** is the limit of liability for all **Claims** reported during the Extended Reporting Period.

**XIX. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES**

Solely with respect to Liability **Coverage Parts**, the estates, heirs, legal representatives, assigns, spouses and any **Domestic Partners** of the **Insured Persons** shall be considered **Insureds** under this Policy; provided, however,



coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for **Claims** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the retention, applicable to **Loss** incurred by the **Insured Person**, shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

**XX. LIMITS OF LIABILITY/RETENTIONS**

Solely with respect to Liability **Coverage Parts**:

**A. Options**

This Policy is offered with one of the following options as set forth in the respective Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations:

1. a Single per **Policy Year** Limit of Liability and Scheduled Retentions; or,
2. Scheduled per **Policy Year** Limits of Liability and Scheduled Retentions.

The **Policy Year** Limits of Liability may not be aggregated or transferred, in whole or in part, so as to provide any additional coverage with respect to **Claims** first made or deemed made during any other **Policy Year**. If the applicable Limits of Liability of for any **Policy Year** are exhausted, the Insurer's obligation for that **Policy Year** shall be deemed completely fulfilled and extinguished.

**B. Single Limit of Liability Option**

Where the Single Limit of Liability Option has been selected, as set forth in the respective Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations, the limits apply as follows:

1. the limit of liability set forth in the Management Liability **Coverage Part** Declarations shall be the maximum per **Policy Year** aggregate limit of liability of the Insurer for all **Loss** under this Policy from all Management Liability **Coverage Parts** shown on the Management Liability **Coverage Part** Declarations, regardless of the number of such **Coverage Parts**.
2. the limit of liability set forth in the Professional Liability **Coverage Part** Declarations shall be the maximum per **Policy Year** aggregate limit of liability of the Insurer for all **Loss**, all **Privacy Event Expenses**, and all **Network Extortion Expenses** under this Policy from all Professional Liability **Coverage Parts** shown on the Professional Liability **Coverage Part** Declarations, regardless of the number of such **Coverage Parts**.

**C. Scheduled Limits of Liability Option**

Where the Scheduled Limits of Liability Option as set forth in the respective Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations, the Scheduled Limits of Liability for each **Coverage Part** shall apply as separate Limits of Liability for each such **Coverage Part** and shall be the maximum per **Policy Year** aggregate limit of liability of the Insurer for all **Loss**, all **Privacy Event Expenses** and all **Network Extortion Expenses** under the respective **Coverage Part** for each **Policy Year**.

**D. Each Claim Limits of Liability**

Subject to the applicable Limit of Liability provided in Paragraph B. or C., above, the amounts set forth in the Professional Liability **Coverage Part** Declarations as the each **Claim** Limit of Liability shall be the per **Policy Year** limit of liability of the Insurer for all **Loss** for each such **Claim**.

**E. Privacy Event Expenses/Network Extortion Expenses Sub-Limit of Liability**

Subject to the applicable Limits of Liability provided in Paragraph B., C. or D., above:

1. the amount set forth in the Professional Liability **Coverage Part** Declarations, if any, as the **Privacy Regulation Proceedings** in the Aggregate Limit shall be the per **Policy Year** limit of liability of the Insurer for all **Loss** for all **Privacy Regulation Proceedings**;
2. the amounts set forth in the Professional Liability **Coverage Part** Declarations, if any, as the **Privacy Event Expenses** in the Aggregate Limit and as the **Network Extortion Expenses** in the Aggregate Limit are the per **Policy Year** limits of liability of the Insurer for all such **Privacy Event Expenses** and all such **Network Extortion Expenses**.

Such amounts as set forth in paragraphs E. 1 and 2 above are sublimits of liability which further reduce, and in no way increase, the applicable each **Claim** and Aggregate Limits of Insurance as set forth on the Professional Liability **Coverage Part** Declarations.

**F. Additional Limit of Liability for Non-Indemnifiable Loss**

Solely with respect to Section I, INSURING AGREEMENT A. of the Directors & Officers Liability **Coverage Part**, there is an additional Limit of Liability which shall not exceed \$1,000,000 (the "non-indemnifiable **Loss** limit") per **Policy Year**. This non-indemnifiable **Loss** limit is available only after the applicable Limits of Liability as set forth in the Management Liability **Coverage Part** Declarations has been exhausted.

**G. Retentions**

1. Retentions set forth in the respective Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations shall apply under each **Coverage Part** as set forth in such Declarations. The Insurer shall pay **Loss** in excess of any retention as it becomes due and payable to the **Insureds**.
2. Subject to paragraph 3. below, the Insurer's obligation to pay **Loss** is in excess of any applicable retentions. The Insurer will have no obligation to pay all or any portion of any applicable retention. Should the Insurer, in its sole discretion, pay any retention, then the **Named Insured** shall have the obligation to reimburse the Insurer for such amounts.
3. Solely with respect to the Directors & Officers Liability **Coverage Part** and the Fiduciary Liability **Coverage Part**, no retention applies to any **Insured Person** with respect to any **Claim** against such **Insured Persons** if:
  - a. the **Insured Entity** and/or any **Plan** are not permitted to advance **Defense Costs** or to indemnify such **Insured Person** for **Loss** by reason of:
    - i. **Financial Insolvency**; or
    - ii. a good faith determination by the **Insured Entity** and/or any **Plan** that such payment is not permitted under the broadest construction of applicable law; or,
  - b. there is a determination of **No Liability** of such **Insured Person** with respect to such **Claim**, or if such **Claim** is dismissed, or, there is a stipulation to dismiss such **Claim**, with prejudice and without the payment of any consideration.
4. Subject to Section **XI. Coordination Among Coverage Parts**, if a **Single Loss** is covered under more than one **Coverage Part** and if more than one retention applies to such **Single Loss**, the maximum total retention amount applicable to such **Single Loss** shall be the highest of such applicable retentions.

**H. Supplementary Payment - Defendant Reimbursement**

If the Insurer requests an **Insured Person's** presence at a trial, hearing, deposition, mediation or arbitration, the Insurer will pay up to \$250.00 a day per person for reimbursement of costs and expenses incurred in connection with such presence, subject to a maximum amount of \$2,500 per **Claim** per **Policy Year**. Such payments are in addition to the limits of liability and do not erode any retention.

**I. Multiple Insureds, Claims and Claimants**

The applicable limit of liability shown in the respective Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations, and subject to the provisions of this Policy, is the amount the



Insurer will pay for **Loss**, **Privacy Event Expenses** (as applicable) or **Network Extortion Expenses** (as applicable) per **Policy Year** regardless of the number of **Insureds**, **Claims** (including **Privacy Regulation Proceedings**), **Privacy Events**, **Network Extortions**, or persons or entities making **Claims**.

**XXI. DEFENSE/SETTLEMENT/MEDIATION/PRE-CLAIM ASSISTANCE**

Solely with respect to Liability **Coverage Parts**, and solely with respect to those **Claims** that are not **Privacy Regulation Proceedings**:

**A. Defense of Claims**

The Insurer has the right and duty to defend all **Claims** even if the allegations are groundless, false or fraudulent. The Insurer shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as it deems necessary. Alternatively the Insurer may at its option, give its written consent to the defense of any such **Claim** by the **Insureds**. The Insurer's obligation to defend any **Claim** or pay any **Loss**, including **Defense Costs**, shall be completely fulfilled and extinguished if the applicable limit of liability has been exhausted by payment of **Loss**.

**B. Settlement**

1. Consent

The Insurer shall not settle a **Claim** without the written consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement or compromise recommended by the Insurer, and acceptable to the claimant, then the limit of liability applicable to such **Claim** for all **Loss** including **Defense Costs** under this Policy shall be reduced to:

- a. the amount of the proposed settlement plus **Defense Costs** incurred up to the date of the **Named Insured's** refusal to consent to proposed settlement of such **Claim**;

plus, solely with respect to the Directors & Officers Liability **Coverage Part**, the Employment Practices Liability **Coverage Part**; and the Fiduciary Liability **Coverage Part**:

- b. eighty percent (80%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a. above, incurred in connection with such **Claim**. The remaining twenty percent (20%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph a. above will be borne uninsured and at the **Insured's** own risk;

which amount shall not exceed the remainder of the applicable limit of liability specified in the Management Liability **Coverage Part** Declarations or the Professional Liability **Coverage Part** Declarations.

2. Mediation

If, prior to institution of arbitration proceedings or service of suit or within sixty (60) days of the institution of such proceedings or service of suit, the Insurer and the **Named Insured** agree to use a process of non binding intervention by a neutral third party to resolve any **Claim** reported to the Insurer, and if such **Claim** is resolved through such process, the Insurer will reduce the retention applicable to such **Claim** by fifty percent or ten thousand dollars (\$10,000.00), whichever is less.

3. Admission

The **Insureds** shall not admit liability, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** to which it has not consented. The **Insureds** agree that they shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy.

4. Payment of **Loss** in Excess of Retentions

The Insurer is liable to pay only that amount of a covered **Single Loss** in excess of the applicable retention, if any, up to the applicable limit of liability. The retention shall be uninsured.

5. Cooperation/Assistance of **Insureds**

The **Insureds** shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request.

**C. Pre-Claim Assistance**

Until the date a **Claim** is made, the Insurer may pay for all costs or expenses it incurs, at its sole discretion, as a result of investigating a circumstance that an **Insured** reports in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**. Should a circumstance be investigated pursuant to this Section, and that circumstance later becomes a covered **Claim** under this Policy, then the limits of liability and the retention applicable to such **Claim** shall apply to such **Claim**.

**D. Defense of Privacy Regulation Proceedings**

Solely with respect to those **Claims** that are **Privacy Regulation Proceedings**, the **Insureds** and not the Insurer have the duty to defend any **Privacy Regulation Proceedings**. The Insurer shall be entitled to effectively associate in the defense and the negotiation of any **Privacy Regulation Proceeding** that involves or appears reasonably likely to involve the Insurer.

<b>XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE</b>
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Paragraphs A. and B. apply only to those Liability **Coverage Parts** written on a claims made basis.

**A. Notice of Claim or Privacy Event**

The **Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give prior written notice to the Insurer of a **Claim** or a **Privacy Event** as soon as practicable after the **Named Insured's** Chief Executive Officer, Chairperson, Chief Financial Officer, President, Risk Manager, In-House General Counsel or Plan Fiduciary (or any equivalent position) learns of such **Claim** or **Privacy Event** but in no event later than ninety (90) days after termination or expiration of the **Policy Period** or any subsequent renewal **Policy Period** in an uninterrupted series of renewals, or prior to the expiration of the Extended Reporting Period, if applicable.

**B. Notice of Circumstance**

If, during the **Policy Period** or the Extended Reporting Period, if applicable, the **Insureds** first become aware of a **Wrongful Act** that occurred during the **Policy Period** which may reasonably give rise to a future **Claim** (a "circumstance") and during such period give written notice to the Insurer of:

1. the names of any potential claimants and a description of the **Wrongful Act** which forms the basis of their potential **Claim**;
2. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Act**;
3. the consequences which have resulted or may result from such specific **Wrongful Act**;
4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**; and,
5. the circumstances by which **Insureds** first became aware of such specific **Wrongful Act**;

then any **Claim** otherwise covered pursuant to a **Coverage Part** which is subsequently made and which arises out of such circumstance shall be deemed to have been first made and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

**C. Notice of Occurrence for the Media Liability Coverage Part (Occurrence)**

Solely with respect to the Media Liability **Coverage Part (Occurrence)**, the **Insureds**, as a condition precedent to the obligations of the Insurer under Media Liability **Coverage Part**, shall give written notice to the Insurer as set forth in such Occurrence form.

**D. Interrelated Claims**

1. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed made on the earlier of:
  - a. the date on which the earliest such **Claim** was first made, or
  - b. the first date valid notice was given by the **Insureds** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.
2. More than one **Privacy Event** involving the same **Wrongful Act** or **Related Wrongful Acts** shall be considered as one **Privacy Event** which shall be subject to the **Privacy Event** limit applicable to the earliest such **Privacy Event** reported to the Insurer under this Policy or under any prior policy.

**E. To Whom Notice of Claim or Circumstance is Sent**

The Insureds shall give written notice of Claims or circumstances to the Insurer under this Policy as specified in the Policy Declarations, which notice shall be effective upon receipt.

**XXIII. OTHER INSURANCE**

Solely with respect to Liability **Coverage Parts**:

- A. If any **Loss** resulting from any **Claim** is insured under any other valid and collectible insurance, this Policy shall apply only as excess over such other insurance unless such other insurance is written only as specific excess insurance over the limit of liability provided by this Policy.
- B. Any coverage under this Policy for **Claims** against any **Insured Person** while acting as an **Outside Entity Executive** shall be specifically excess of any valid and collectible insurance and/or indemnification available to such **Outside Entity Executive** from the **Outside Entity**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** while acting as an **Outside Entity Executive** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

**XXIV. SUBROGATION AND RECOVERY**

Solely with respect to Liability **Coverage Parts**:

- A. To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **Insureds'** rights of recovery therefore, including without limitation an **Insured Person's** right to indemnification or advancement from an **Insured Entity**. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.
- B. If a **Single Loss** is in part insured and in part uninsured under this Policy or is in an amount in excess of the applicable limit of liability, the **Insureds** and the Insurer shall attempt to agree upon an equitable allocation of any recoveries made, whether before or after payment of the **Loss** by the Insurer, from any person or source responsible for causing the **Loss**. Reasonable expenses incurred in making a recovery shall always have priority of payment from all such recoveries. If, after exerting their best efforts, the **Insureds** and the Insurer are unable to agree upon such an allocation after taking into account due consideration for the respective parties' willingness to pay the expenses of making any recovery, the Insurer, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators.
- C. In no event shall the **Insureds** be entitled to recoup from recoveries any amount to satisfy any retention until after all amounts which the Insurer is required to pay or pays under any applicable **Coverage Part** are reimbursed to the Insurer.



- D. No person or **Insured Entity** shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.
- E. Solely with respect to coverage under the Fiduciary Liability **Coverage Part**, the Insurer shall have the right to full recourse against **Insured Persons** who actually commit a **Wrongful Act**, provided however, that if the **Insured Persons** or the **Insured Entity** shall have paid the premium set forth in the Policy Declarations and no part of such premium has been paid, directly or indirectly, from any assets of the **Plan**, then the Insurer shall have no such rights of recourse.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.

Chairman

Secretary



For purposes of this Policy, words in bold, whether expressed in the singular or the plural, have the meaning set forth below.

#### **ADMINISTRATOR**

**Administrator** means an **Insured** who renders **Administration Services** in connection with the **Plan**.

#### **ADMINISTRATION SERVICES**

**Administration Services** means any of the following services in connection with the **Plan**:

1. communicating with or providing information to **Employees** or **Plan** participants or beneficiaries regarding any **Plan**;
2. determining vesting and eligibility for **Plan** participation or benefits;
3. calculating benefits provided under the **Plan**;
4. processing applications and related forms required for the payment of benefits;
5. performing any record-keeping and data processing functions required by **ERISA** or any **Similar Act** or the **Plan**;
6. preparing and filing any necessary reports or returns required under **ERISA** or any **Similar Act** or the Internal Revenue Code, and the regulations thereunder;
7. effecting the payment of benefits or authorized administrative expenses; or,
8. enrolling, terminating or canceling **Employees** or **Plan** participants or beneficiaries.

#### **APPLICATION**

**Application** means all signed applications for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any affiliate of the Insurer of which this Policy is a renewal or replacement. **Application** includes any materials submitted or required to be submitted therewith. An "affiliate of the Insurer" means an insurer controlling, controlled by, or under common control with, the Insurer.

#### **ASSUMED UNDER CONTRACT**

**Assumed Under Contract** means liability of others, for **Material** furnished by the **Insured**, that the **Insured** agrees to assume under a hold harmless or indemnity agreement but only to the extent such liability arises out of any **Media Activity**.

#### **CLAIM**

**Claim** means:

1. a written demand for monetary damages or non-monetary relief (including demands for injunctive or declaratory relief) against an **Insured** alleging a **Wrongful Act**, which **Claim** shall be deemed made on the date of the **Insureds'** receipt of such written demand; or
2. a written request received by the **Insured** to toll or waive a statute of limitations in connection with a **Claim** as defined in paragraph **I.** through **V.** below, which **Claim** shall be deemed made on the date of the **Insureds'** receipt of such written request; or

When used in the:

**I. Directors & Officers Liability Coverage Part, Claim** also means:

- A. solely with respect to the Insuring Agreements A., B. and C.1., a proceeding which is
  - i. a civil or criminal proceeding in a court of law or equity or any alternative dispute resolution proceeding; or,
  - ii. a formal civil or criminal administrative or regulatory proceeding;

against an **Insured** alleging a **Wrongful Act**, including any appeal therefrom. Such **Claim** shall be deemed made on the earliest of the date of service upon, or other receipt by, any **Insured** of a complaint, subpoena, indictment, notice of charge or similar document in such proceeding or arbitration;

- B. solely with respect to Insuring Agreements A. and B., a formal civil, criminal, administrative or regulatory investigation of an **Insured Person** alleging a **Wrongful Act**, which **Claim** shall be deemed made upon such **Insured Person** being identified by name in a formal order of investigation, Wells Notice, target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual), or similar document, as someone against whom a formal civil, criminal, administrative or regulatory investigation may be brought; or,
- C. solely when used with respect to Insuring Agreement C.2., a **Shareholder Demand** which **Claim** shall be deemed made on the date of any **Insured's** receipt of such written demand;

**II. Employment Practices Liability Coverage Part, Claim** also means:

- A. a civil proceeding in a court of law or equity or any alternative dispute resolution proceeding; or,
- B. a formal civil administrative or regulatory proceeding or formal civil, administrative or regulatory investigation (including an **EEOC Proceeding**);

against an **Insured**, alleging a **Wrongful Employment Practice**, including any appeal therefrom. Such **Claim** shall be deemed made on the earliest of the date of service upon, or other receipt by, any **Insured** of a complaint, subpoena, formal order of investigation, target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual), or similar document in such proceeding, arbitration or investigation.

However, **Claim** does not include any criminal proceeding, criminal administrative or criminal regulatory proceeding or criminal investigation. Nor does **Claim** include an audit conducted by the Office of Federal Contract Compliance Programs unless a Notice of Violation, Order to Show Cause or written demand for monetary relief or injunctive relief has been issued;

**III. Fiduciary Liability Coverage Part, Claim** also means a proceeding which is a:

- A. civil or criminal proceeding in a court of law or equity or any alternative dispute resolution proceeding; or
- B. a formal civil or criminal administrative or regulatory proceeding or formal civil, administrative or regulatory investigation;

against an **Insured** alleging a **Wrongful Act**, including any appeal therefrom. Such **Claim** shall be deemed made on the earliest of service upon, or other receipt by, any **Insured** of a complaint, subpoena, indictment, notice of charge, formal order of investigation, target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual), or similar document in such proceeding, arbitration or investigation.

**IV. Miscellaneous Professional Liability Coverage Part, the Media Liability Coverage Part and the Technology & Telecommunications Liability Coverage Part. Claim** also means a proceeding which is a:

- A. civil proceeding in a court of law or equity or any alternative dispute resolution proceeding;
- B. a formal civil administrative or regulatory proceeding or formal civil, administrative or regulatory investigation,

against an **Insured**, alleging a **Wrongful Act** including any appeal therefrom. Such **Claim** shall be deemed made on the earliest of the date of service upon, or other receipt by, any **Insured** of a complaint, subpoena, formal order of investigation, target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual), or similar document in such proceeding, arbitration or investigation.

However, a **Claim** does not include any criminal proceeding, criminal administrative or criminal regulatory proceeding or criminal investigation or informal civil investigation; and,

**V. Network Security & Privacy Injury Liability Coverage Part, Claim** also means:

A civil proceeding in a court of law or equity or any alternative dispute resolution proceeding, or **Privacy Regulation Proceeding**, against an **Insured**, alleging a **Wrongful Act** including any appeal therefrom. Such **Claim** shall be deemed made on the earliest of the date of service upon, or other receipt by, any **Insured** of a complaint, or similar document in such proceeding or arbitration.

However, a **Claim** does not include any criminal proceeding or criminal or civil investigation. Nor does **Claim** include any regulatory proceeding except if the regulatory proceeding is a **Privacy Regulation Proceeding**.

#### COMPLIANCE COSTS

**Compliance Costs** means:

1. **Consulting Fees** incurred in connection with, or
2. any fines, penalties or sanctions paid by an **Insured** to a governmental authority pursuant to,

a **Voluntary Compliance Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Compliance Costs** shall not include: (i) any costs to correct the non-compliance, or (ii) any **Consulting Fees**, fines, penalties or sanctions relating to a **Plan** which, as of the earlier of inception of this **Policy** or inception of the first policy in an uninterrupted series of policies issued by the **Insurer** of which this **Policy** is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.

#### CONSULTING FEES

**Consulting Fees** means reasonable and necessary fees, costs and expenses incurred by the **Insureds** with the prior written consent of the Insurer, including the fees charged by a third party actuary, benefits consultant, accountant or legal counsel, resulting solely from the correction of an actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation. However, **Consulting Fees** shall not include fees, costs or expenses relating to a **Plan** audit or relating to finding, assessing or identifying such violation.

#### COVERAGE PART

**Coverage Part** means only those coverage parts designated as included in the Declarations.

#### DEFENSE COSTS

**Defense Costs** with respect to all Liability **Coverage Parts** (except Insuring Agreement C.2. of the Directors & Officers Liability **Coverage Part**), means:

1. all fees charged by attorneys designated by the Insurer, and all reasonable fees charged by attorneys designated by the **Named Insured** with the Insurer's prior written consent;
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** incurred by the Insurer or by the **Insureds** with the prior written consent of the Insurer; and,
3. the costs of appeal, attachment or similar bonds. The Insurer has no obligation to provide such bonds.

**Defense Costs** do not include any fees, costs or expenses incurred by an **Insured** to the extent the **Defense Costs** are without the Insurer's prior written consent.

Solely with respect to Insuring Agreement C.2. of the Directors & Officers Liability **Coverage Part**, **Defense Costs** means **Investigative Costs**.

All fees, costs and expenses incurred in the investigation, adjustment, defense and appeal of a **Claim** must be reasonable and necessary to the defense of the **Claim**.

However, **Defense Costs** does not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, **Employees** of the **Insured Entity**.

#### DENIAL OF SERVICE ATTACK

**Denial of Service Attack** means an attack executed over one or more networks or the Internet, which attack is specifically designed and intended to disrupt the operation of a network and render a network inaccessible to authorized users.

**DIRECT AND CONTINUOUS PHYSICAL CONTROL**

**Direct and Continuous Physical Control** means at all times:

1. located within a facility occupied by the **Insured Entity** where the **Insured Entity** physically limits access to the facility to only **Insureds** who are authorized by the **Insured Entity** to access information on the laptop, and where the **Insured Entity** does not permit access by third parties unless they are escorted at all times by an **Insured Person**;
2. within an **Insured Person's** physical reach and unobstructed view while such **Insured Person** is awake; or,
3. within a locked container, vehicle or premise which:
  - a. can only be unlocked by an **Insured Person**;
  - b. where the **Insured** has not entrusted the keys or combination (if secured by a combination lock) to a third party other than a **Third Party Custodian**; and,
  - c. where any such locked container is physically affixed to the structure of a building or premise in a manner that precludes its removal.

**DOMESTIC PARTNER**

**Domestic Partner** means any person qualifying as a "domestic partner" under any federal, state or local laws or under the **Insured Entity's** employee benefit plans.

**EEOC PROCEEDING**

**EEOC Proceeding** means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address **Wrongful Employment Practices**.

**EMPLOYEE**

**Employee** means all past, present or future full-time or part-time employees of the **Insured Entity** or **Plan**, including seasonal and temporary employees and employees leased or loaned to the **Insured Entity**. **Employee** does not include any volunteers or independent contractors except when used in connection with the Employment Practices Liability **Coverage Part**.

When used in connection with the Crime **Coverage Part**, **Employee** has the meaning set forth therein.

**EMPLOYMENT RELATED BENEFITS**

**Employment Related Benefits** means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan, **Stock Benefits** and any other payment to or for the benefit of an **Employee** arising out of the employment relationship. **Employment Related Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

**ERISA OR ANY SIMILAR ACT**

**ERISA or any Similar Act** means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

**EXECUTIVE**

**Executive** means any past, present or future:

1. duly elected or appointed director, officer, trustee, governor or **Manager** of the **Insured Entity** or **Plan**;
2. management committee member if the **Insured Entity** is a joint venture; or,
3. official in the **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in 1. or 2. above.

When used in the Employment Practices Liability **Coverage Part**, **Executive** also includes the director of human resources or functional equivalent position of any **Insured Entity**.

#### FIDUCIARY

**Fiduciary** means any **Insured Person** who is described as a fiduciary with respect to the **Plan** in Section 3(21)(A) of Employee Retirement Income Security Act of 1974, as amended.

#### FINANCIAL INSOLVENCY

**Financial Insolvency** means:

1. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured Entity** or **Plan**; or such **Insured Entity** or **Plan** becoming a debtor in possession; or
2. the inability of such **Insured Entity** or **Plan** financially or under applicable law to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**.

#### FOREIGN JURISDICTION

**Foreign Jurisdiction** means any jurisdiction, other than the United States or any of its territories or possessions.

#### INJURY

**Injury** means:

1. any form of libel, slander or defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including product disparagement, or trade libel;
2. any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
3. false arrest, detention or imprisonment or malicious prosecution;
4. wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
5. infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark or service name;
6. plagiarism, piracy, misappropriation of ideas, including ideas under implied contract, or other misappropriation of intellectual property rights or information;
7. unfair competition or unfair trade practices alleged in conjunction with 5. and 6. above, including but not limited to dilution, confusion, deceptive trade practices or unfair trade practices, civil actions for consumer fraud, false, disruptive or misleading advertising or misrepresentation in advertising;
8. negligent supervision of an **Employee** alleged in conjunction with 1. through 7. above; or
9. negligent or intentional infliction of emotional distress, outrage or outrageous conduct.

#### INSURED

**Insured** means the **Insured Person** and the **Insured Entity**.

When used in the Fiduciary Liability **Coverage Part**, **Insured** also means any **Plan**.

#### INSURED ENTITY

**Insured Entity** means the **Named Insured** and any **Subsidiary** including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

When used in connection with the Crime **Coverage Part**, **Insured** has the meaning set forth therein.

#### INSURED PERSON

**Insured Person** means **Executives** and **Employees** of the **Insured Entity**.

When used in the:

- I. Directors & Officers Liability **Coverage Part**, **Insured Person** also includes any **Outside Entity Executive**;
- II. Fiduciary Liability Coverage Part, **Insured Person** also includes Executives or Employees of any Plan;
- III. Miscellaneous Professional Liability **Coverage Part**, Media Liability **Coverage Part**, Technology & Telecommunications Liability **Coverage Part** or the Network Security and Privacy Injury Liability **Coverage Part**, **Insured Person** also includes an independent contractor of the **Insured Entity**; or
- IV. Media Liability **Coverage Part**, **Insured Person** also includes any agent or non-compensated author of the **Insured Entity**.

#### INTERNET SERVICES

**Internet Services** means services to obtain, maintain or use Internet connectivity, including:

1. services as an Internet access provider, application service provider, domain name registrar, domain name register, search engine, web browser;
2. web hosting, e-commerce transaction services, electronic exchange and auction services, Internet media services, managed and network security services, public key infrastructure services and web portal services; or
3. development, design and maintenance of chat rooms, websites, e-mail services, bulletin boards.

#### INTERRELATED WRONGFUL ACTS

**Interrelated Wrongful Acts** means **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.

#### INVESTIGATIVE COSTS

**Investigative Costs** means reasonable and necessary fees and expenses (other than regular or overtime wages or salaries) incurred by the **Insured Entity**, with the prior written consent of the Insurer, in connection with the investigation or evaluation of a **Shareholder Demand**.

#### LAPTOP COMPUTER BREACH

**Laptop Computer Breach** means the loss or theft of a laptop computer or a removable storage device that is:

1. in the **Insured's Direct and Continuous Physical Control**; and,
2. used by an **Insured** for a business purpose;

whether or not such laptop is lost or stolen from the **Insured's** premises or from any third party's premises.

#### LOSS

**Loss** means:

1. damages, settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment) and **Defense Costs** for which the **Insured** is legally obligated to pay on account of a covered **Claim**; and
2. punitive and exemplary damages and the multiplied portion of multiplied awards (subject to this Policy's other terms, conditions and limitations). Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiplied amounts. As used herein, "applicable law" means the law of any of the following jurisdictions:
  - a. where the **Claim** seeking such **Loss** is brought or where such **Loss** is awarded or imposed; or
  - b. where the **Wrongful Act** giving rise to the **Claim** occurred; or
  - c. where the **Insureds** subject to such **Loss** are incorporated, have their principal place of business or reside; or
  - d. where the Insurer is incorporated or has its principal place of business.

Solely with respect to the:

1. Directors & Officers Liability **Coverage Part**, Insuring Agreement C.2, **Loss** also includes **Investigative Costs**;
2. Employment Practices Liability **Coverage Part**, **Loss** also includes back pay and front pay, and liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act.

However, **Loss** does not include:

1. any amount for which an **Insured Person** is absolved from payment by reason of any covenant, agreement or court order;
2. any matters which are uninsurable (other than punitive, exemplary and the multiplied portion of multiplied awards as set forth above) under the law pursuant to which this Policy shall be construed.

In addition to the above, and solely with respect to the:

- I. Directors & Officers Liability **Coverage Part**, **Loss** does not include:
  1. civil or criminal fines, penalties, taxes, sanctions or forfeitures imposed on an **Insured** whether pursuant to law, statute, regulation or court rule, other than those civil fines or penalties imposed under 42 USC 1320d-5(a) of the Health Insurance Portability and Accountability Act of 1996, provided however that the maximum limit of the Insurer's liability for all such fines and penalties shall be \$100,000 per **Claim**. This sublimit of Liability is part of and not in addition to the applicable Limits of Liability;
  2. any amount (other than **Defense Costs**) attributable to the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature;
  3. any amounts for which an **Insured** is liable due to an act or omission in knowing violation of any written contract or agreement or due to its assumption of the liability of others under any contract or agreement; or
  4. compensation earned by the claimant in the course of employment but unpaid by the **Insured**, including salary, wages, commissions, severance, bonus or incentive compensation.
- II. Employment Practices Liability **Coverage Part**, **Loss** does not include:
  1. civil or criminal fines, penalties, taxes, sanctions or forfeitures imposed on an **Insured** whether pursuant to law, statute, regulation or court rule;
  2. compensation earned by the claimant in the course of employment but unpaid by the **Insured**, including salary, wages, commissions, severance, bonus or incentive compensation; or
  3. any amounts for which an **Insured** is liable due to an act or omission in knowing violation of any written contract of employment;
  4. amounts, other than **Defense Costs**, representing medical or insurance premiums or benefit claim payments;
  5. future salary, wages or commissions of a claimant who is hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**; or

6. **Employment Related Benefits.**

III. Fiduciary Liability **Coverage Part, Loss** does not include civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on an **Insured** whether pursuant to law, statute, regulation or court rule other than:

1. **Compliance Costs;**
2. the five percent or less or the twenty percent or less penalty imposed upon an **Insured** as a **Fiduciary** under Section 502(i) or 502(l) of ERISA; or,
3. those civil fines or penalties imposed under 42 USC 1320d-5(a) of the Health Insurance Portability and Accountability Act of 1996, provided however that the maximum limit of the Insurer's liability for all such fines and penalties shall be \$100,000 per **Claim**. This sublimit of Liability is part of and not in addition to the applicable Limits of Liability.

IV. Miscellaneous Professional Liability **Coverage Part, Media Liability Coverage Part, Technology & Telecommunications Liability Coverage Part, or the Network Security and Privacy Injury Liability Coverage Part, Loss** does not include:

1. civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on an **Insured** whether pursuant to law, statute, regulation or court rule, except that solely with respect to the Network Security and Privacy Injury Liability **Coverage Part** this shall not include **Privacy Regulation Fines;**
2. fees, costs and expenses paid or incurred or charged by any **Insured**, no matter whether claimed as restitution of specific funds, financial loss, set-off or paid in the form of service credits or coupons or other non-cash consideration by the **Insured;**
3. liquidated damages pursuant to a written contract or agreement in excess of the **Insured's** liability caused by the **Wrongful Act;**
4. any amounts for which an **Insured** is liable due to an act or omission in knowing violation of any written contract or agreement or due to its assumption of the liability of others under any contract or agreement;
5. solely with respect to the Media Liability **Coverage Part, the Insured's** production costs, or the **Insured's** cost of reprinting, recalling, recovering, shipping, mailing, correcting, reprocessing, restoring, repairing, replacing, or reproducing erroneous, damaged or lost tangible property or **Material;** or
6. funds, monies, or securities that an **Insured** transferred or failed to transfer.

When used in connection with the Crime **Coverage Part, Loss** has the meaning set forth therein.

**MANAGEMENT CONTROL**

**Management Control** means:

1. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
2. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Insured Entity**, to elect, appoint or designate a majority of the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

**MANAGER**

**Manager** means any natural person manager, member of the management board or equivalent executive of an **Insured Entity** that is a limited liability company.

**MATERIAL**

**Material** means media content, in any format, and all software used to distribute or display such media content; provided however, that **Material** does not include:

1. the goods or products based on or derived from such content; or,
2. the **Insured Entity's** trade name.

#### MEDIA ACTIVITY

**Media Activity** means:

1. gathering, acquiring, obtaining, researching, developing, editing, preparing, filming, videotaping and recording **Material**; or
2. the dissemination or utterance of **Material**, by any means, including:
  - a. publishing, producing, printing, advertising, marketing, promoting and exhibiting;
  - b. broadcasting, telecasting, webcasting, cable casting; or,
  - c. syndicating, selling, leasing, licensing, distributing, serializing or releasing **Material**;through any medium, including but not limited to wireless or electronic medium.

#### MERCHANDISING ACTIVITY

**Merchandising Activity** means the manufacture, production or distribution of goods (other than media) which contain intellectual property.

#### NAMED INSURED

**Named Insured** means the person or entity named in Item 1 of the Policy Declarations.

#### NETWORK

**Network** means a party's local or wide area network owned or operated by or on behalf of or for the benefit of that party; provided, however, **Network** shall not include the internet, telephone company networks, or other public infrastructure network (collectively "public infrastructure network") unless such public infrastructure network is operated and controlled exclusively by the **Insured Entity**.

#### NETWORK DAMAGE

**Network Damage** means:

1. the unscheduled and unplanned inability of an authorized user to gain access to the **Network**;
2. the unauthorized destruction or alteration of any third-party's information residing on the **Network**; or
3. the suspension or interruption of the **Network**.

#### NETWORK EXTORTION

**Network Extortion** means a third party demand to the **Insured Entity** for money or securities in exchange for:

1. the return of, or refraining from disclosing, the **Insured Entity's** confidential information or the confidential information of others in the **Insured Entity's** care, custody or control;
2. not publicizing that the **Insured Entity's Network** will be or has been impaired, compromised or destroyed; or
3. not impairing, altering or destroying the **Insured Entity's Network** or website;

provided that the **Insured Entity's Executives** reasonably believe that the third party's demand is credible and that there is imminent and probable danger that the extortionist can execute on its demand.

**NETWORK EXTORTION EXPENSE**

**Network Extortion Expense** means all reasonable and necessary expenses incurred by the **Insured Entity** in order to directly respond to a **Network Extortion**, including the payment of money or securities demanded by an extortionist, provided, however that the payment of money or securities demanded by an extortionist must be made in conjunction with, and at the direct direction of, any law enforcement agency conducting an investigation of the **Network Extortion**. **Network Extortion Expenses** shall not include the repeated payment of money or securities demanded by any single extortionist or group of extortionists acting in collusion, or in response to multiple extortion demands connected by common facts or circumstances.

**NO LIABILITY**

**No Liability** means a final judgment of no liability obtained in favor of an **Insured Person** after the exhaustion of all appeals.

**NON-INDEMNIFIABLE LOSS**

**Non-Indemnifiable Loss** means **Loss** which the **Insured Entity** fails or refuses to indemnify an **Insured Person**:

1. because of **Financial Insolvency**; or,
2. because it is not permitted to indemnify pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of the **Insured Entity** or **Plan**.

**NONPUBLIC CORPORATE INFORMATION**

**Nonpublic Corporate Information** means proprietary trade secret information owned by a third-party that is in the care, custody or control of the **Insured Entity** by operation of law or pursuant to a contractual obligation that requires the **Insured Entity** to maintain the confidentiality of such proprietary trade secret information.

**NONPUBLIC PERSONAL INFORMATION**

**Nonpublic Personal Information** means two or more elements of information not available to the general public from which an individual may be identified, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, and account histories.

**NOT-FOR-PROFIT OUTSIDE ENTITY**

**Not-For-Profit Outside Entity** means any organization exempt from federal income taxation pursuant to 26 U.S.C. §501(c)(3), (4), (6), (7), and (10), as amended.

**OCCURRENCE**

**Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**OUTSIDE ENTITY**

**Outside Entity** means any **Not-For-Profit Outside Entity**.

**OUTSIDE ENTITY EXECUTIVE**

**Outside Entity Executive** means an **Executive** of the **Insured Entity** who is or was acting as a member of the board of directors, board of trustees, board of managers, or functional equivalent thereof, in any **Not-For-Profit Outside Entity**, provided and so long as such service is at the specific request, consent or direction of the **Insured Entity**.

**PENSION PLAN**

**Pension Plan** means any employee pension benefit plan, as defined in 29 U.S.C. §1002, subject to regulation under **ERISA or any Similar Act**. However, **Pension Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002 or an employee stock ownership plan as defined in 26 U.S.C. §4975.

**PERSONAL/PROPRIETARY INJURY**

**Personal/Proprietary Injury** means injury arising out of one or more of the following:

1. false arrest, detention or imprisonment, or malicious prosecution;
2. wrongful entry or eviction, or other invasion of the right of private occupancy;
3. libel, slander, or other forms of defamation;
4. plagiarism, misappropriation of ideas (including advertising ideas), or breach of confidentiality;
5. invasion, infringement or interference with the rights of privacy or publicity; or
6. infringement of copyright, title, slogan, logo, trademark, trade name, trade dress, service mark, or service name. Infringement of copyright does not include infringement of software, computer code and computer firmware except with respect to the Technology & Telecommunications Liability **Coverage Part**,

**PLAN**

**Plan** means:

1. any **Welfare Plan** or **Pension Plan** which was, on or prior to the effective date of this Policy, sponsored solely by the **Insured Entity**, or sponsored jointly by the **Insured Entity** and a labor organization, solely for the benefit of the **Employees** of the **Insured Entity**;
2. any **Welfare Plan** or **Pension Plan** which, after the effective date of this Policy, becomes sponsored solely by the **Insured Entity**, or jointly by the **Insured Entity** and a labor organization, solely for the benefit of the **Employees** of the **Insured Entity**, if and to the extent coverage with respect to such **Plan** is afforded pursuant to paragraph A of Section XII. **COVERAGE FOR NEW SUBSIDIARIES AND PLANS** of the General Terms and Conditions of this Policy;
3. any other plan or program otherwise described in paragraphs 1. and 2. above while such plan or program is being actively developed, formed or proposed by the **Insured Entity** prior to the formal creation of such plan or program; or,
4. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for **Employees** of the **Insured Entity**.

**Plan** does not include any multi-employer plan as defined in **ERISA or any Similar Act**.

**POLICY PERIOD**

**Policy Period** means the period of time from the effective date and time of this Policy to the date and time of termination as shown in the Policy Declarations, or its earlier cancellation date. If the length of the **Policy Period** is the same as the **Policy Year**, the terms **Policy Period** and **Policy Year** are used interchangeably herein.

**POLICY PREMIUM**

**Policy Premium** means the original premium and the fully annualized amount of any additional premiums, other than the Extended Reporting Period premium, charged by the Insurer before or during the **Policy Period**.

**POLICY YEAR**

**Policy Year** means the period of one year following the effective date of the **Policy Period** or any subsequent one-year anniversary thereof. As permitted by individual state law, a **Policy Year** may be extended or reduced by endorsement or by termination of the Policy.

#### POLLUTANTS

**Pollutants** means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** includes, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

#### PRIVACY EVENT

**Privacy Event** means an act, error or omission by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone who the **Insured** has engaged to provide services pursuant to a written contract and for whom the **Insured Entity** is legally responsible which, in the reasonable opinion of an **Executive**, caused, or is reasonably likely to cause, the unauthorized disclosure of **Nonpublic Personal Information** or **Nonpublic Corporate Information**.

#### PRIVACY EVENT EXPENSES

**Privacy Event Expenses** means all reasonable and necessary fees, costs and expenses incurred by the **Insured Entity** to directly respond to a **Privacy Event**.

#### PRIVACY INJURY

**Privacy Injury** means:

1. any unauthorized disclosure of, inability to access, inaccuracy in, or the **Insured's** failure to prevent unauthorized access to, **Nonpublic Personal Information**;
2. the **Insured's** failure to implement and maintain procedures designed to protect **Nonpublic Personal Information** from unauthorized use or disclosure, in violation of:
  - a. the **Named Insured's Privacy Policy**; or,
  - b. any federal, state, foreign or other law, statute or regulation governing the confidentiality, integrity, or accessibility of non-public personal information, including but not limited to the Health Insurance Portability and Accountability Act of 1996, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, the EU Data Protection Act, or the Fair and Accurate Credit Transactions Act; or
3. any unauthorized disclosure of, inability to access, inaccuracy in or an **Insured's** failure to prevent unauthorized access to **Nonpublic Corporate Information**.

#### PRIVACY POLICY

**Privacy Policy** means the **Insured Entity's** policies in written or electronic form that:

1. govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **Nonpublic Personal Information**; and,
2. the **Insured Entity** provides to those customers, **Employees** or others who provide it with **Nonpublic Personal Information**.

#### PRIVACY REGULATION FINES

**Privacy Regulation Fines** means civil fines, sanctions or penalties imposed under any **Privacy Regulation Proceeding** for a violation of any **Security Breach Notice Law** or any law, statute or regulation referenced under the definition of **Privacy Injury**.

#### PRIVACY REGULATION PROCEEDING

**Privacy Regulation Proceeding** means a civil, administrative or regulatory proceeding against an **Insured** by a federal, state or foreign governmental authority alleging a violation of any **Security Breach Notice Law** or any law, statute or regulation referenced under the definition of **Privacy Injury**.

#### PROFESSIONAL SERVICES

**Professional Services** means those services performed by the **Insured Entity** or by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** for others and that are specified in the attached "Professional Services Endorsement."

#### PROPERTY DAMAGE

**Property Damage** means:

1. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or,
2. loss of use of tangible property that is not physically damaged except that with respect to the Technology & Telecommunications Liability **Coverage Part** such loss of use must be caused by an **Occurrence**.

When used in the Technology & Telecommunications Liability **Coverage Part** or the Network Security & Privacy Injury **Coverage Part**, **Property Damage** does not include electronic data. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

#### RELATED CLAIMS

**Related Claims** means all **Claims** arising out of a single **Wrongful Act** or arising out of **Interrelated Wrongful Acts**.

#### RETROACTIVE DATE

**Retroactive Date** means the date set forth in the Professional Liability **Coverage Part** Declarations.

#### ROGUE EMPLOYEE

**Rogue Employee** means an **Employee** of the **Insured Entity** who acts outside of his or her scope of employment authority to deliberately cause an event that gives rise to a **Claim**.

#### SECURITY BREACH

**Security Breach** means the failure of the **Insured Entity's Network** hardware, software, or firmware, the function or purpose of which is to:

1. identify and authenticate parties prior to accessing the **Insured Entity's Network**;
2. control access to the **Insured Entity's Network** or monitor and audit such access;
3. protect against malicious code;
4. defend against **Denial of Service Attacks** or co-option of the **Insured Entity's Network** to perpetrate a **Denial of Service Attack** against others; or,

5. ensure confidentiality, integrity and authenticity of information on the **Insured Entity's Network**.

#### SECURITY BREACH NOTICE LAW

**Security Breach Notice Law** means any statute or regulation that requires an entity storing **Nonpublic Personal Information** on its **Network** to provide notice to specified individuals of any actual or potential **Security Breach** with respect to such **Nonpublic Personal Information**.

#### SHAREHOLDER DEMAND

**Shareholder Demand** means any written demand by one or more shareholders of the **Insured Entity** upon the board of directors of any **Insured Entity** to bring a civil proceeding in a court of law against any **Insured Person** for a **Wrongful Act** provided such demand is brought without the assistance, participation or solicitation of any **Executive**.

#### SINGLE LOSS

**Single Loss** means all **Loss** arising from each **Claim**.

#### STOCK BENEFITS

**Stock Benefits** means:

1. any offering, plan or agreement between the **Named Insured** and any **Employee** which grants stock, stock warrants or stock options of the **Named Insured** to any such Employee, including but not limited to grants of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive granted in the form of securities of the **Named Insured**; or
2. any payment or instrument in the amount or value of which is derived from the value of securities of the **Named Insured**, including but not limited to stock appreciation rights or phantom stock plans or arrangements.

However, **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.

#### SUBSIDIARY

**Subsidiary** means:

1. any entity (other than a partnership) in which the **Named Insured** has **Management Control** directly or indirectly through one or more other **Subsidiaries**:
  - a. on or before the effective date of this Policy; or
  - b. after the effective date of this Policy by reason of being created or acquired by the **Named Insured** and any **Subsidiary** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to the General Terms and Conditions, Section **XII., COVERAGE FOR NEW SUBSIDIARIES AND PLANS**; or
2. any not-for-profit entity under section 26 U.S.C. §501(c)(3), (4), (6), (7), and (10), as amended, sponsored exclusively by any **Insured Entity** or any Political Action Committee formed by any **Insured Entity**.

When used in connection with the Crime **Coverage Part**, **Subsidiary** has the meaning set forth therein.

#### TAKEOVER

**Takeover** means:

1. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
  - a. the **Management Control** of the **Named Insured**; or,

- b. assets of the **Named Insured** resulting in the ownership of more than 50% of the total consolidated assets of **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;
2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or,
3. the consolidation of the **Named Insured** with another entity.

#### TECHNOLOGY PRODUCTS

**Technology Products** means:

1. computer hardware products, components and peripherals;
2. computer software, computer firmware and all related machine, object or source code; or,
3. electronic, telecommunications and wireless equipment,

created, designed, manufactured, sold, or distributed by or on behalf of the **Insured Entity** or licensed or leased, by the **Insured Entity** to others.

#### TECHNOLOGY SERVICES

**Technology Services** means:

1. analysis, design, integration and conversion of computer systems, computer networks and electronic systems;
2. designing, developing, programming, installing, servicing, supporting, maintaining and repairing computer software, computer code and computer firmware;
3. designing, installing, integrating, servicing, supporting, maintaining and repairing computer hardware;
4. education and training in the use of computer hardware and/or computer software;
5. information services;
6. disk wiping, remediating computer equipment for redeployment and designating computer equipment for disposal;
7. data processing, management or warehousing;
8. hosting, managing or administering the computer systems or facilities of another;
9. **Internet Services**; or,
10. project management and consulting, including the identifying, screening, qualifying and placing of potential candidates for temporary and permanent employment with a client, related to 1. through 9. above or on **Technology Products**.

#### TELECOMMUNICATION SERVICES

**Telecommunication Services** means:

1. local, regional and long distance wireline and wireless dial tone access and switched services, including value added services such as directory assistance, toll free services, voice mail, call forwarding, call waiting and caller ID;
2. ground based satellite communications services;
3. DSL and ISDN services;
4. video conferencing services;
5. paging services;
6. basic wire maintenance;
7. 911 emergency services;

8. directory services and operator assistance;
9. analysis, design, integration and conversion of telecommunication systems;
10. voice-over Internet protocol (“VoIP”) services, including related VoIP implementation services; or,
11. project management and consulting, including identifying, screening, qualifying, placing of potential candidates for temporary and permanent employment with a client, related to 1. through 10. above.

#### THIRD PARTY CUSTODIAN

Third Party Custodian means a third party to whom the Insured Entity entrusts Nonpublic Personal information or Nonpublic Corporate Information, where such third party:

1. is contractually obligated to protect such information using safeguards at least as effective as the **Insured Entity’s** own;
2. without limitation, indemnifies the **Insured**, will defend the **Insured** and hold the **Insured** harmless for any unauthorized disclosure, access to or use of such information while in such third party’s care, custody or control;
3. is audited and inspected by the **Insured Entity** to ensure that the protective safeguards employed by that third party are at least as effective as the **Insured Entity’s** own; and,
4. is not authorized by the **Insured** to entrust such information to any other third party.

#### UNAUTHORIZED ACCESS

**Unauthorized Access** means any accessing of the **Network** or information residing on the **Network** by unauthorized persons or by authorized persons accessing such information in an unauthorized manner.

#### VOLUNTARY COMPLIANCE PROGRAM

**Voluntary Compliance Program** means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, the United States Department of Labor or other similar governmental authority located outside the United States, including without limitation:

1. the Employee Plans Compliance Resolution System consisting of the Self-Correction Program, the Voluntary Compliance Resolution Program and the Audit Closing Agreement Program all as set forth in IRS Revenue Procedure 2003-44 (as amended, modified, expanded or superseded by any successor Revenue Procedure); or
2. Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program administered by the Department of Labor.

#### WELFARE PLAN

**Welfare Plan** means any employee welfare benefit plan as defined in 29 U.S.C. §1002, subject to regulation under **ERISA or any Similar Act**. **Welfare Plan** shall not include an excess benefit plan as defined in 29 U.S.C. §1002.

#### WHISTLEBLOWER ACTIVITY

**Whistleblower Activity** means the kind of activity protected under a federal or state whistleblower statute or any regulation promulgated thereunder, regardless of whether or not such activity is done by an **Employee** protected under such statute or regulation.

#### WRONGFUL ACT

**Wrongful Act** has the meanings set forth below.

- I. When used in the Directors & Officers Liability **Coverage Part**, **Wrongful Act** means:

1. any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty (including violations of the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA)) committed or attempted by:
    - a. the **Insured Persons** in their capacity as such; or
    - b. the **Insured Entity** or by any natural person for whose **Wrongful Act** the **Insured** is legally responsible; or,
  2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity.
- II. When used in the Employment Practices Liability **Coverage Part, Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by the **Insured Persons** in their capacity as such or by an **Insured Entity**.
- III. When used in the Fiduciary Liability **Coverage Part, Wrongful Act** means:
1. any actual or alleged error, omission, negligent act, misstatement, misleading statement, neglect or breach of duty imposed upon an **Insured** by **ERISA or any Similar Act**, solely in such **Insured's** capacity as a **Fiduciary** of a **Plan**, or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary** of a **Plan**;
  2. any actual or alleged error, omission, negligent act, misstatement, misleading statement, neglect or breach of duty committed or attempted by the **Insureds**, including any violation of regulation 45 CFR, Subchapter C, Part 164, under the Health Insurance Portability and Accountability Act of 1996, solely in such **Insured's** capacity as an **Administrator**; or,
  3. the failure to properly or timely provide COBRA notices, but only with respect to a **Plan**.
- IV. When used in any Professional Liability **Coverage Part, Wrongful Act** means any actual or alleged act, error, omission, neglect, breach of duty or **Personal/Proprietary Injury** committed solely in the conduct of **Professional Services**.
- V. When used in the Media Liability **Coverage Part, Wrongful Act** means any actual or alleged act, error or omission, giving rise to an **Injury**, in the course of performing **Media Activity**.
- VI. When used in the Technology & Telecommunications Liability **Coverage Part, Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty, or **Personal/Proprietary Injury**:
1. committed solely in the conduct of **Technology Services** or **Telecommunication Services** for others; or
  2. resulting in the failure of the **Insured Entity's Technology Products** to perform the function or serve the purpose intended.
- VII. When used in the Network Security and Privacy Injury Liability **Coverage Part**:
1. solely with respect to Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 1. **Network Security, Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty that results in any **Security Breach** of the **Insured Entity's Network**;
  2. solely with respect to Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 2. **Basic Privacy Injury Liability, Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty that results in any **Security Breach** of the **Insured Entity's Network**;
  3. solely with respect to Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 3. **Laptop Computer Breach Privacy Liability, Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty that results in any **Laptop Computer Breach**;
  4. solely with respect to Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 4. **Broad Form Privacy Injury Liability, Wrongful Act** means, with respect to any information in durable and persistent form and in the **Insured's** care, custody or control, any actual or alleged act, error, omission, neglect or breach of duty; and,

5. solely with respect to Section I. **COVERAGE AGREEMENTS** Part A. **Insuring Agreements**, Paragraph 5. **Privacy Regulatory Proceeding, Wrongful Act** has the meaning set forth in Paragraph 1. 2. or 4. above to the extent such referenced Insuring Agreements have been purchased.

<b>WRONGFUL EMPLOYMENT PRACTICE</b>
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**Wrongful Employment Practice** means any **Wrongful Act** constituting or relating to:

1. wrongful dismissal, discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866 and the Family and Medical Leave Act of 1993;
4. sexual harassment or other unlawful harassment;
5. wrongful deprivation of career opportunity, demotion, failure to grant tenure, failure to employ or promote; failure to afford partnership or other equity status and failure to train;
6. wrongful discipline of **Employees**;
7. retaliation against **Employees** for the exercise of any legally protected right or for engaging in any legally protected activity;
8. negligent evaluation of **Employees**, negligent hiring, negligent supervision, and negligent training;
9. failure to adopt adequate workplace or employment policies and procedures;
10. employment-related libel, slander or defamation, humiliation or invasion of privacy;
11. employment-related wrongful infliction of emotional distress; or
12. solely with respect to any natural person other than an **Employee**, any actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment.

<b>I. INSURING AGREEMENT</b>
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**A. Management Liability (Individual) – Non-Indemnifiable Loss**

The Insurer shall pay on behalf of the **Insured Persons** (including **Outside Entity Executives**) that **Loss** up to the applicable limit of liability, resulting from any **Claim** first made against them during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**, except and to the extent that the **Insured Entity** has indemnified them for such **Loss**.

**B. Management Liability – Indemnifiable Loss**

The Insurer shall pay on behalf of an **Insured Entity** that **Loss**, in excess of the retention (if any) and up to the applicable limit of liability, for which such **Insured Entity** has indemnified an **Insured Person** and which results from any **Claim** first made against such **Insured Person** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

**C. Insured Entity Liability**

The Insurer shall pay on behalf of **Insured Entity**:

1. that **Loss**, in excess of the retention (if any) and up to the applicable limit of liability, resulting from any **Claim** first made during the **Policy Period** or the Extended Reporting Period, if applicable, against the **Insured Entity** for a **Wrongful Act**; and
2. all **Investigative Costs**, up to the applicable sublimit of liability, resulting from any **Shareholder Demand** first made during the **Policy Period** or the Extended Reporting Period, if applicable, against the **Insured Entity** for a **Wrongful Act**.

Provided, however, that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

<b>II. EXCLUSIONS</b>
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**A. Exclusions Applicable to All Insureds**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

**1. Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, humiliation, libel, slander or defamation of any person, or **Property Damage** except that this exclusion does not apply to any actual or alleged emotional distress, mental anguish or humiliation made in connection with any employment-related **Wrongful Act**;

**2. Claims by Insureds**

by or on behalf of any **Insured** in any capacity provided, however that this exclusion shall not apply to:

- a. any **Claim** brought derivatively on behalf of the **Insured Entity** provided that such **Claim** is brought and maintained solely by persons acting independent of and without the solicitation, assistance, active participation or intervention of the **Insured Entity** or any **Executive** (unless such solicitation, assistance, participation or intervention is **Whistleblower Activity**);
- b. any **Claim** that is in the form of a cross claim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- c. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver, rehabilitator or creditors committee for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator or creditors committee;

- d. any **Claim** brought by any past **Executive** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the Board of **Managers**, General Counsel (or equivalent position) of an **Insured Entity** for at least three (3) years prior to such **Claim** being first made by any such person;
  - e. any **Claim** brought by an **Executive**, who is also an **Employee**, for any actual or alleged wrongful dismissal, discharge or termination of employment;
  - f. any **Claim** (other than an employment-related **Claim**) brought by an **Employee** who is not an **Executive**; or,
  - g. any **Claim** brought and maintained in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of the **Named Company** or any **Subsidiary** chartered in such foreign jurisdiction;
- 3. Discrimination or Harassment/Fair Labor Standards Act**
- by any third party or independent contractor alleging any actual or alleged:
- a. discrimination or harassment including but not limited to violation of any federal, state or local laws (whether common-law or statutory) concerning discrimination including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866; or
  - b. violation of the Fair Labor Standards Act as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies;
- 4. ERISA or any Similar Act**
- for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;
- 5. Illegal Profits/Deliberate Acts**
- where:
- a. such **Insureds** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled; or
  - b. such **Insureds** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage,
- as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;
- For purposes of determining the applicability of this exclusion:
- 1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
  - 2. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**;
- 6. Outside Entity vs. Insured Persons**
- made against an **Outside Entity Executive** by or on behalf of the **Outside Entity** or one or more of the **Outside Entity's** directors, officers, trustees, governors or equivalent executives; provided, however, that this exclusion shall not apply to:
- a. any **Claim** brought derivatively on behalf of the **Outside Entity** provided that such **Claim** is brought and maintained solely by persons acting independent of and without the solicitation, assistance, active participation or intervention of the **Outside Entity** or any **Outside Entity Executive** (unless such solicitation, assistance, participation or intervention is **Whistleblower Activity**);

- b. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- c. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver, rehabilitator or creditors committee for an **Outside Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator or creditors committee;
- d. any **Claim** brought by any past directors, officers, trustees, governors or equivalent executives of an **Outside Entity** who has not served as a duly elected or appointed past directors, officers, trustees, governors or equivalent executives of for an **Outside Entity** for at least three (3) years prior to such **Claim** being first made against any person; or,
- e. any **Claim** brought and maintained by a director, officer, trustee or governor, management committee member or **Manager** of an **Outside Entity** in a jurisdiction outside the United States of America, Canada or Australia;

#### 7. Pollutants

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity** or any **Outside Entity**, their security holders, or their creditors resulting from any of the aforementioned matters;

However, this exclusion shall not apply to the extent:

- i. there is no indemnification of the **Insured Persons** for such **Claim** by the **Insured Entity**; and,
- ii. such **Claim** is brought by or on behalf of any owners of securities in their capacity as such while acting totally independently of and totally without the solicitation, assistance, participation or intervention of the **Insured Entity** or any **Insured Persons**;

#### 8. Prior Notice

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

#### 9. Prior or Pending

based upon or arising out of or constituting any civil, criminal, administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

#### 10. Prior Wrongful Acts of Subsidiaries

for:

- a. any **Wrongful Act** by **Insured Persons** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**; or,

- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

#### 11. Professional Services

based upon or arising out of any **Wrongful Act** in connection with the performance of professional services by or on behalf of the **Insured Entity** for the benefit of any other entity or natural person; provided, however, this exclusion shall not apply to any **Claim** which alleges that any **Executive**, in his or her capacity as such, failed to supervise those who performed such professional services;

#### 12. Public Offerings

based upon or arising out of:

- a. the public offer, sale, solicitation or distribution of securities issued by the **Insured**; or
- b. the actual or alleged violation of any federal, state, local or provincial statute relating to securities or any rules or regulations promulgated thereunder if such violation actually or allegedly occurred after a transaction described in a. above;

provided that if, at least 30 days prior to the transaction described in a. above, the Insurer receives notice of the proposed transaction and any additional information requested by the Insurer, the Insurer shall offer to the **Insured Entity** a proposal to delete this exclusion subject to the terms and conditions, and payment of any additional premium, described in such proposal;

However this exclusion shall not apply:

- 1. to the extent that such **Claim** is made by a security holder of the **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of the **Insured Entity**; or
- 2. to any offer, purchase or sale of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933;

#### 13. Wrongful Acts of Executives of other Entities

for any **Wrongful Act** by such **Insured Person** while serving in the capacity, or solely by reason of their status, as a director, officer, trustee, governor, manager, employee or similar position in any entity, other than an **Insured Entity** or an **Outside Entity**;

### B. Exclusions Applicable to the Insured Entity

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against the **Insured Entity**:

#### 1. Corporate Distributions

based upon or arising out of:

- a. the actual or proposed payment by an **Insured** of an allegedly inadequate price or consideration for the purchase of securities issued by an **Insured Entity**; or
- b. any dividends or other distributions of corporate profits of an **Insured Entity** to any shareholder of an **Insured Entity**;

provided however, that the Insurer shall provide a defense of such Claim and will pay Defense Costs in connection with such Claims subject to the applicable limits of liability and retentions;

#### 2. Employment Related Wrongful Acts

based upon or arising out of any employment-related **Wrongful Act**;

#### 3. Failure of Product



based upon or arising out of any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;

**4. Intellectual Property**

for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property rights;

**5. Unfair Trade Practices**

based upon or arising out of:

- a. charges of price fixing, restraint of trade, monopolization or unfair trade; or
- b. any actual or alleged violation of:
  - i. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - ii. any rules or regulations promulgated under or in connection with the above statutes; or
  - iii. any similar provision of any state, federal or local statutory law or common law.

**III. INVESTIGATIVE COSTS SUBLIMIT**

The Insurer shall reimburse the **Insured**, subject to the maximum aggregate Limit of Liability, up to \$250,000.00 for all **Investigative Costs** arising out of all **Shareholder Demands** first made against an **Insured Entity** during the **Policy Period** or the Extended Reporting Period (if applicable). This **Investigative Costs** Sublimit shall be part of and not in addition to the aggregate limit of liability stated in the Management Liability **Coverage Part** Declarations. No retention applies to **Investigative Costs**.

**IV. ORDER OF PAYMENTS**

If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this **Coverage Part** exceeds the then-remaining Limit of Liability of this Policy, the Insurer shall pay such **Loss** under this **Coverage Part** (subject to such Limit of Liability) in the following priority:

- 1. first, the Insurer shall pay **Loss** for which coverage is provided under Insuring Agreement A. of this **Coverage Part**; then
- 2. only after payment of **Loss** has been made pursuant to 1. above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the chief executive officer, or equivalent officer, of the **Named Insured**, the Insurer shall either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreements B. and C. of this **Coverage Part**.

In the event the Insurer withholds payment pursuant to Paragraph 2. above, then the Insurer shall at such time and in such manner as shall be set forth in written instructions from the Chief Executive Officer, or equivalent officer, of the **Named Insured** remit such payment to an **Insured Entity** or directly to or on behalf of an **Insured Person**. The Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

The bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Part** pursuant to this Section.

**V. COORDINATION WITH EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION**

If a **Claim** is covered under both this **Coverage Part** and the Employment Practices Liability **Coverage Part** then such **Claim** first shall be covered pursuant to the Employment Practices Liability **Coverage Part**, including its limit of



**DIRECTORS & OFFICERS LIABILITY COVERAGE PART**

liability and retention. Any remaining **Loss** otherwise covered by this **Coverage Part** which is not paid under such Employment Practices Liability **Coverage Part** shall be covered pursuant to this **Coverage Part**, including its limit of liability and retention; provided any applicable Retention under this **Coverage Part** shall be reduced by the amount of **Loss** (otherwise covered by this **Coverage Part**) which is paid by the **Insureds** as the retention under such Employment Practices Liability **Coverage Part**.

## I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, resulting from any **Claim** first made against any **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by such **Insured** or by any natural person for whose **Wrongful Act** such **Insured** is legally responsible. Provided, however that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

## II. EXCLUSIONS

### A. Exclusions Applicable to All Loss

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

#### 1. Assumed Liability

based upon or arising out of liability of others assumed by any **Insured** under any contract or agreement, however, this exclusion shall not apply to the extent that:

- a. the **Insured** would have been liable in the absence of such contract or agreement; or
- b. the liability was assumed in accordance with or under the trust instrument or equivalent documents governing the assets of the **Plan**;

#### 2. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, libel, slander or defamation of any person, or **Property Damage**;

#### 3. Discrimination

for discrimination in violation of any law other than **ERISA or any Similar Act**;

#### 4. Illegal Profits/Deliberate Acts

where:

- a. such **Insured** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled; or,
- b. such **Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage;

as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;

For purposes of determining the applicability of this exclusion:

- i. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and,
- ii. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**; or past, present or future trustee or **Administrator** of a **Plan** shall be imputed to all **Plans**;

#### 5. Prior Notice

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or

b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

6. **Prior or Pending**

based upon or arising out of or constituting any administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Management Liability Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

7. **Prior Wrongful Acts of Subsidiaries**

for:

- a. any **Wrongful Act** by **Insured Persons** or **Plans** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**; or,
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

8. **Pollutants**

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity** or the **Plan**, their security holders, or their creditors resulting from any of the aforementioned matters.

However this exclusion shall not apply to:

- i. any **Claim** by or on behalf of a beneficiary of or participant in any **Plan** by reason of the diminution in value of any securities (other than the **Insured Entity's** securities) owned by the **Plan**, resulting from, or allegedly resulting from, any of the aforementioned matters; or
- ii. **Non-Indemnifiable Loss**.

**B. Exclusions Applicable to Loss Other than Defense Costs**

The Insurer shall not be liable to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

1. **Benefits Due**

benefits due or to become due under any **Plan**, or benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, except to the extent that:

- a. an **Insured Person** is legally obligated to pay such benefits as a personal obligation, and recovery for the benefits is based upon a covered **Wrongful Act**; or
- b. the **Claim** alleges that a covered **Wrongful Act** caused or contributed to a reduction or loss in the value of the Plan's assets and/or to the accounts of such **Plan's** participants by reason of a change in the value of the investments held by such **Plan**, regardless of whether the amounts sought or recovered by the plaintiffs in such **Claim** are characterized by plaintiffs as benefits or held by a court to be benefits;

2. **Non-Monetary Relief**

any costs incurred by an **Insured** to comply with any order for remedial, preventive, injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;

3. **Owed Contributions**



an employer's contributions owed to a **Plan**.

For the purpose of determining the applicability of any exclusion set forth in this subsection B., the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**.

<b>III. SUPPLEMENTARY PAYMENTS</b>
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The Insurer shall reimburse the **Insured**, subject to the aggregate Limit of Liability, up to \$150,000.00 for **Compliance Costs** incurred during the **Policy Period** in connection with any **Voluntary Compliance Programs** provided the **Insured** gives prior written notice to the Insurer of its intent to enter into such **Voluntary Compliance Programs** during the **Policy Period**. This supplementary payment is part of and not in addition to the Limit of Liability for the Fiduciary Liability **Coverage Part** stated in the Management Liability **Coverage Part** Declarations. No retention applies to this supplementary payment.

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, by or on behalf of:

- A. a natural person who is an **Employee** or an applicant for employment for a **Wrongful Employment Practice** as described in paragraphs 1. through 11. of the definition of **Wrongful Employment Practice**.
- B. any other natural person, for a **Wrongful Employment Practice** but solely to the extent that such **Wrongful Employment Practice** is as described in paragraph 12. of the definition of **Wrongful Employment Practice**.

Provided, however, that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

**II. EXCLUSIONS****A. Exclusions Applicable to All Loss**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

**1. Bodily Injury /Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease of any person, or **Property Damage** except that this exclusion shall not apply to allegations of emotional distress, humiliation, mental anguish or loss of reputation;

**2. Prior Notice**

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

**3. Prior or Pending**

based upon or arising out of or constituting any administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Management Liability Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

**4. Prior Wrongful Acts of Subsidiaries**

for:

- a. any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary**, or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
- b. any other actual or alleged **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

**5. Pollutants**

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;

- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so;
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss.

**6. Violation of Law**

- a. for any actual or alleged violation of:
  - i. **ERISA or any Similar Act**, or any other federal, state or local statutory law or common law anywhere in the world governing any employee benefit program, policy, plan or arrangement of any type, including but not limited to laws governing retirement or pension benefit programs, welfare plans, insurance plans, employee stock options, employee stock ownership or employee stock purchase plans or deferred compensation programs;
  - ii. the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
  - iii. any law governing workers' compensation, unemployment insurance, social security, disability benefits or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
  - iv. the Occupational Safety and Health Act of 1970 (OSHA), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing workplace safety and health;
  - v. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing an employer's obligation to notify or bargain with others in advance of any facility closing or mass layoff;
  - vi. the National Labor Relations Act, as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing employees' rights and the employers duties with respect to unions, bargaining, strikes, boycotts, picketing, lockouts or collective activities; and,
- b. based upon or arising out of any actual or alleged violation of: the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies.

However, exclusions 5. and 6. do not apply to any **Claim** alleging retaliation (including any **Claim** alleging retaliation in violation of Section 510 of ERISA) or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of:

- a. with respect to exclusion 5., a claimant's actual or threatened disclosure of the matters described in the Pollutants Exclusion; and
- b. with respect to exclusion 6., a claimant's exercise of a right pursuant to any such laws.

**B. Exclusions Applicable To Loss Other than Defense Costs**

The Insurer shall not be liable under this **Coverage Part** to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

**1. Cost of Accommodations**

the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;

**2. Non-monetary Relief**



the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement.

**III. RISK MITIGATION**

- A.** The Insurer will reduce the **Insured Entity's** retention for a **Claim** by 50%, up to \$10,000, whichever is less, if the **Insured Entity**, involved in such **Claim**, demonstrates, to the Insurer's reasonable satisfaction, the existence of the following four (4) conditions:
1. proof of legal review and sign-off of in-force employment practices policies and procedures for harassment, discrimination and employee grievance by outside counsel who specializes in employment practices law;
  2. proof of distribution of employment practices policies and procedures on harassment, discrimination and employee grievance, to all employees;
  3. proof that all directors, officers and managers of the **Insured Entity** have attended outside training and education programs on sexual harassment within the last 24 months prior to the filing of a **Claim**; and,
  4. a copy of the **Insured Entity's** written policy on email or other electronic communications.
- B.** In the event that one **Claim** is eligible for both this Risk Mitigation Credit Section and the Mediation provision found in the General Terms and Conditions, Section **XXI. DEFENSE/SETTLEMENT/MEDIATION/PRE-CLAIM ASSISTANCE** Paragraph B.2 Mediation, then the **Insured Entity** shall receive only the benefit of one retention credit, but not both. In no way shall either section be construed to afford any more than a total of 50% or \$10,000 credit toward any one retention for any one **Claim**.

**I. INSURING AGREEMENT**

The Insurer will pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone for whose **Wrongful Act** the **Insured** is legally responsible, provided that:

- A.** prior to the inception date of this Policy, or the first professional liability policy issued and continuously renewed by any insurer, of which this Policy is a replacement or renewal, whichever is earlier:
  - 1. no **Insured** gave notice to any prior insurer of such **Claim** or any **Related Claim**;
  - 2. no **Insured** gave notice to a prior insurer of any such **Wrongful Act** or any **Interrelated Wrongful Act**; and
  - 3. no **Insured** had a basis to believe that any such **Wrongful Act**, or any **Interrelated Wrongful Act**, might reasonably be expected to be the basis of such **Claim**;
- B.** the **Wrongful Act** occurred on or after the **Retroactive Date** for the Miscellaneous Professional Liability **Coverage Part** as set forth in the Professional Liability **Coverage Part** Declarations and prior to the end of the **Policy Period**; and
- C.** such **Claim** is reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions.

**II. EXCLUSIONS**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

**A. Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or **Property Damage**;

**B. Claims by Insureds**

by or on behalf of any **Insured** in any capacity, provided, however that this exclusion shall not apply to:

- 1. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy; or
- 2. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator.

**C. Deliberate Acts/Commingling or Misappropriation of Funds**

based upon or arising out of any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, commingling, misappropriation or misuse of funds, or intentional wrongdoing, including the intentional misappropriation of trade secrets, by an **Insured** if a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed. The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty or pleaded guilty, *nolo contendere* or no contest. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

For purposes of determining the applicability of this exclusion:

- 1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and,
- 2. only facts pertaining to and knowledge possessed by any **Executive** shall be imputed to the **Insured Entities**;

**D. ERISA or any Similar Act**

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

**E. Injunctive Relief**

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

**F. Owned Entity**

by any entity that is not an **Insured** under this Policy, if, at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an **Executive** or **Employee** of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

**G. Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

**H. Pollutants**

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
3. any voluntary decision to do so; or any actual or alleged **Property Damage**, or bodily injury, sickness, disease or death of any person, or financial loss;

**I. Securities Claims**

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

**J. Unfair Competition/Antitrust Claims/RICO Claims**

based upon or arising out of any actual or alleged:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud;
2. charges of price fixing, monopolization or restraint of trade;
3. any violation of:
  - a. the Federal Trade Commission Act;
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;

- c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes; or
  - e. any state, federal or local statutory law or common law similar to the above statutes; or
4. false or deceptive advertising or misrepresentation in advertising,

not directly related to a **Claim** alleging a **Personal/Proprietary Rights Injury** as defined in paragraphs 5 and 6 of the definition of **Personal/Proprietary Rights Injury**;

**K. Wrongful Employment Practice/Discrimination/Humiliation/Harassment**

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment.

**III. RISK MITIGATION CREDIT**

- A.** The Insurer will reduce the **Insured Entity's** retention for a **Claim** by 50% or up to \$10,000, whichever is less, if the **Insured Entity** involved in such **Claim** demonstrates, to the Insurer's reasonable satisfaction, the existence of the following three (3) conditions:
- 1. a copy of the **Insured Entity's** executed contract or services agreement with the client bringing the **Claim** that outlines professional services to be performed.
  - 2. proof that the **Insured Entity** documented client approvals during the project and upon final acceptance of the completed project.
  - 3. proof that if there were any interim changes made to the existing contract with the client bringing the **Claim** that such changes were documented in writing and approved by both the **Insured Entity** and the client.
- B.** In the event that one **Claim** is eligible for both this Risk Mitigation Credit Section and the Mediation provision found in the General Terms & Conditions, Section **XXI. DEFENSE/SETTLEMENT/MEDIATION /PRE-CLAIM ASSISTANCE**, Paragraph B.2. Mediation, then the **Insured Entity** shall receive only the benefit of one retention credit, but not both. In no way shall either section be construed to afford any more than a total of 50% or \$10,000 credit toward any one retention for any one **Claim**.

**IV. VICARIOUS LIABILITY**

Any entity the **Insured Entity** is required by contract to include as an insured for liability of such entity for an **Insured's Wrongful Acts** shall be insured under this Policy but solely to the extent that a **Claim** is made against such entity for a **Wrongful Act** of an **Insured**, and only so long as the written contract is entered into before such **Wrongful Act** occurs. Any coverage afforded by this Section is subject always to all of the Policy's terms and conditions, provided however:

- A.** there shall be no coverage afforded to such entity for its **Wrongful Acts**; and
- B.** nothing herein shall serve to confer any rights or duties to such entity under this Policy, other than as provided in this Section.

## I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insured** all sums, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay as **Loss** resulting from liability imposed by law or **Assumed Under Contract** resulting from any **Claim** alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible, provided that:

- A. prior to the inception date of this Policy, or the first media liability policy issued and continuously renewed by any insurer, of which this Policy is a replacement or renewal, whichever is earlier:
  - 1. no **Insured** gave notice to any prior insurer of such **Claim** or any **Related Claim**;
  - 2. no **Insured** gave notice to a prior insurer of any such **Wrongful Act** or any **Interrelated Wrongful Act**; and
  - 3. no **Insured** had a basis to believe that any such **Wrongful Act**, or any **Interrelated Wrongful Act**, might reasonably be expected to be the basis of such **Claim**.
- B. the **Wrongful Act** occurred on or after the **Retroactive Date** for the Media Liability **Coverage Part** as set forth in the Professional Liability **Coverage Part** Declarations and prior to the end of the **Policy Period**; and
- C. such **Claim** is reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions.

## II. EXCLUSIONS

The Insurer shall not be liable to pay that part of **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

### A. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, mental anguish, of any person, or **Property Damage**;

### B. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however, that this exclusion shall not apply to any **Claim**:

- 1. that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy; or
- 2. brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;

### C. Deliberate Acts

where such **Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage, as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;

For purposes of determining the applicability of this exclusion:

- 1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- 2. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**;

### D. ERISA or any Similar Act

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

**E. Injunctive Relief**

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

**F. Licensing Organizations**

involving, by, or on behalf, of or for the benefit of any licensing organization, including but not limited to ASCAP, SESAC, or BMI;

**G. Licensing and Ownership of Material**

brought by any independent contractor, third-party distributor, licensee, sub-licensee, joint-venturer, venture partner of the **Insured Entity**, or any **Employee** of the foregoing, alleging a dispute over the ownership or exercise of rights in **Material**, however this exclusion shall not apply to a **Claim** for plagiarism;

**H. Merchandising Activity Services**

based upon or arising out of **Merchandising Activity**;

**I. Over-Redemption**

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

**J. Owned Entity**

by any entity that is not an **Insured** under this Policy, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an **Executive** or **Employee** of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

**K. Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

**L. Price Fixing/Restraint of Trade/Federal Trade Commission/Anti-Trust/RICO Claims**

based upon or arising out of any actual or alleged:

1. charges of price fixing, restraint of trade, monopolization or unfair trade; or
2. any violation of:
  - a. the Federal Trade Commission Act;
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes; or
  - e. any provision similar to a. b. or c. above of any state, federal or local statutory law or common law, not directly related to an **Injury** as defined in paragraphs 5. or 6. of the definition of **Injury**;

**M. Professional Services Exclusion**

based upon or arising out of professional services;

**N. Pollutants**

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
3. any actual or alleged **Property Damage**, or bodily injury, sickness, disease or death of any person, or financial loss;

**O. Securities Claims**

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

**P. Unsolicited Communication**

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003, as amended; or
2. any actual or alleged violation of any federal or state statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001, as amended;

**Q. Wrongful Employment Practice/Discrimination/Humiliation/Harassment**

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment.

**III. CONFIDENTIAL SOURCE**

The **Insured's** rights under this **Coverage Part** shall not be prejudiced by any **Insured's** refusal to reveal the identity of a confidential source or to disclose documents or information obtained by the **Insured** during the course of **Media Activity**.

**IV. RISK MITIGATION CREDIT**

- A.** The Insurer will reduce the **Insured Entity's** retention for a **Claim** by 50%, up to \$10,000, whichever is less, if the **Insured Entity** involved in such **Claim** demonstrates, to the Insurer's reasonable satisfaction, the existence of three (3) out of the four (4) following conditions:
1. the existence of a written contract, with final project approval and any interim midterm changes, approved in writing by the client;
  2. **Material**, created by the **Insured** for the client, is reviewed and approved by the **Insured's** editorial staff or an outside media counsel, prior to dissemination;
  3. release forms obtained prior to, or simultaneous with, receiving any **Material** for a client from any agent or independent contractor;



4. continuing education, within twenty-four (24) months of such **Claim**, on current media and libel laws for those employees who create **Material** on behalf of the **Insured Entity**.
- B.** In the event that one **Claim** is eligible for both this Risk Mitigation Credit Section and the Mediation provision found in the General Terms and Conditions, Section **XXI. DEFENSE/SETTLEMENT/MEDIATION /PRE-CLAIM ASSISTANCE**, Paragraph B.2. Mediation, then the **Insured Entity** shall receive only the benefit of one retention credit, but not both. In no way shall either section be construed to afford any more than a total of 50% or \$10,000 credit toward any one retention for any one **Claim**.

## I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insured** all sums, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay as **Loss** resulting from liability imposed by law or **Assumed Under Contract** resulting from any **Claim** alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity**, or by someone for whose **Wrongful Act** the **Insured** is legally responsible provided that such **Wrongful Act** occurs during the **Policy Period**.

## II. EXCLUSIONS

The Insurer shall not be liable to pay that part of **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

### A. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, mental anguish, of any person, or **Property Damage**;

### B. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however, that this exclusion shall not apply to any **Claim**:

1. that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy; or
2. brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;

### C. Deliberate Acts

where such **Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage, as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;

For purposes of determining the applicability of this exclusion:

1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
2. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**;

### D. ERISA or any Similar Act

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

### E. Injunctive Relief

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

### F. Licensing Organizations

involving, by, or on behalf, of or for the benefit of any licensing organization, including but not limited to ASCAP, SESAC, or BMI;

#### **G. Licensing and Ownership of Material**

brought by any independent contractor, third-party distributor, licensee, sub-licensee, joint-venturer, venture partner of the **Insured Entity**, or any **Employee** of the foregoing, alleging a dispute over the ownership or exercise of rights in **Material**, however this exclusion shall not apply to a **Claim** for plagiarism;

#### **H. Merchandising Activity Services**

based upon or arising out of **Merchandising Activity**;

#### **I. Over-Redemption**

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

#### **J. Owned Entity**

by any entity that is not an **Insured** under this Policy, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an **Executive** or **Employee** of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

#### **K. Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

#### **L. Price Fixing/Restraint of Trade/Federal Trade Commission/Anti-Trust/RICO Claims**

based upon or arising out of any actual or alleged:

1. charges of price fixing, restraint of trade, monopolization or unfair trade; or
2. any violation of:
  - a. the Federal Trade Commission Act;
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes; or
  - e. any provision similar to a. b. or c. above of any state, federal or local statutory law or common law, not directly related to an **Injury** as defined in paragraphs 5. or 6. of the definition of **Injury**;

#### **M. Professional Services Exclusion**

based upon or arising out of professional services;

#### **N. Pollutants**

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
3. any actual or alleged **Property Damage**, or bodily injury, sickness, disease or death of any person, or financial loss;

**O. Securities Claims**

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of any state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

**P. Unsolicited Communication**

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003, as amended; or
2. any actual or alleged violation of any federal or state statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001, as amended;

**Q. Wrongful Employment Practice/Discrimination/Humiliation/Harassment**

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment.

**III. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**

The **Insureds**, as a condition precedent to the obligations of the Insurer under this **Coverage Part**, shall give written notice to the Insurer as soon as reasonably possible:

**A.** of any **Claim**; or,

**B.** of the **Insured's** receipt of any written notice, advice or threat that any person or organization intends to hold any **Insured** responsible for any alleged **Media Activity**. Such notice to the Insurer shall include, to the extent possible:

1. the allegations anticipated as the basis of the potential **Claim** and the names of any potential claimants;
2. the identity of the specific **Insureds** allegedly responsible for such specific facts and circumstances;
3. the consequences which have resulted or may result from such specific facts and circumstances;
4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific facts and circumstances; and,
5. the circumstances by which the **Insureds** first became aware of such specific facts and circumstances.

**IV. CONFIDENTIAL SOURCE**

The **Insured's** rights under this **Coverage Part** shall not be prejudiced by any **Insured's** refusal to reveal the identity of a confidential source or to disclose documents or information obtained by the **Insured** during the course of **Media Activity**.

**V. RISK MITIGATION CREDIT**

**A.** The Insurer will reduce the **Insured Entity's** retention for a **Claim** by 50%, up to \$10,000, whichever is less, if the **Insured Entity** involved in such **Claim** demonstrates, to the Insurer's reasonable satisfaction, the existence of three (3) out of the four (4) following conditions:



1. the existence of a written contract, with final project approval and any interim midterm changes, approved in writing by the client;
  2. **Material**, created by the **Insured** for the client, is reviewed and approved by the **Insured's** editorial staff or an outside media counsel prior to dissemination;
  3. release forms obtained prior to, or simultaneous with, receiving any **Material** for a client from any agent or independent contractor;
  4. continuing education, within twenty-four (24) months of such **Claim**, on current media and libel laws for those employees who create **Material** on behalf of the **Insured Entity**.
- B.** In the event that one **Claim** is eligible for both this Risk Mitigation Credit Section and the Mediation provision found in the General Terms and Conditions, Section **XXI.. DEFENSE/SETTLEMENT/MEDIATION/PRE-CLAIM ASSISTANCE**, Paragraph B.2. Mediation, then the **Insured Entity** shall receive only the benefit of one retention credit, but not both. In no way shall either section be construed to afford any more than a total of 50% or \$10,000 credit toward any one retention for anyone **Claim**.

**I. INSURING AGREEMENT**

The Insurer will pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay resulting from any **Claim** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone for whose **Wrongful Act** the **Insured** is legally responsible, provided that:

- A. prior to the inception date of this Policy, or the first technology and telecommunications liability policy issued and continuously renewed by any insurer, of which this Policy is a replacement or renewal, whichever is earlier:
  - 1. no **Insured** gave notice to any prior insurer of such **Claim** or any **Related Claim**;
  - 2. no **Insured** gave notice to a prior insurer of any such **Wrongful Act** or any **Interrelated Wrongful Act**; and
  - 3. no **Insured** had a basis to believe that any such **Wrongful Act**, or any **Interrelated Wrongful Act**, might reasonably be expected to be the basis of such **Claim**;
- B. the **Wrongful Act** occurred on or after the **Retroactive Date** for the Technology and Telecommunications Liability **Coverage Part** as set forth in the Professional Liability Declarations and prior to the end of the **Policy Period**; and,
- C. such **Claim** is reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions.

**II. EXCLUSIONS**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

**A. Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or **Property Damage**;

**B. Claims by Insureds**

by or on behalf of any **Insured** in any capacity provided, however that this exclusion shall not apply to any **Claim**:

- 1. that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy; or
- 2. brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator;

**C. Deliberate Acts/Commingling or Misappropriation of Funds**

based upon or arising out of any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, commingling, misappropriation or misuse of funds, or intentional wrongdoing, including the intentional misappropriation of trade secrets, by an **Insured** if a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed; The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty or pleaded guilty, *nolo contendere* or no contest; Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

For purposes of determining the applicability of this exclusion:

- 1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and,

- only facts pertaining to and knowledge possessed by any **Executive** shall be imputed to the **Insured Entities**;

**D. Injunctive Relief**

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

**E. Mechanical or Electrical Failure and Service Interruptions**

based upon or arising out of any:

- mechanical or electrical failure of any **Technology Products** caused by a third party, acting independently of the **Insured**, including any such failure caused by electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations;
- planned or unplanned service interruption caused by or at the direction of any entity, other than an **Insured Entity**, that provides third parties with access to the Internet or provides third parties with any services available on the Internet; or
- interruption, surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations to any governmental or private utilities or elements of infrastructure, including gas, water, or telephone (on-line, wireless or other);

**F. Over-Redemption**

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

**G. Owned Entity**

by any entity that is not an **Insured** under this Policy, if at the time of the **Wrongful Act** giving rise to such **Claim**:

- any **Insured** controlled, owned, operated or managed such entity; or
- any **Insured** was an **Executive** or **Employee**;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

**H. Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

**I. Pollutants**

based upon or arising out of:

- any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
- any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss;

**J. Satellite Failure**

based upon or arising out of the failure of any satellite;

**K. Securities Claims**

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

**L. Support or Maintenance**

based upon or arising out of the intentional discontinuance or cessation of the provision, support or maintenance of any **Technology Products**, except for otherwise covered **Wrongful Acts** occurring prior to the intentional discontinuance or cessation;

**M. Unauthorized Access**

based upon or arising out of the failure to prevent the **Unauthorized Access** to electronic systems, networks or programs that the **Insured Entity** maintains to administer its business; provided however, that this exclusion shall not apply to **Claims** arising out of **Technology Products** or **Technology Services** provided to others, including such **Technology Products** or **Technology Services** hosted by any system, network or program of the **Insured**;

**N. Unfair Competition/Antitrust Claims/RICO Claims**

based upon or arising out of any actual or alleged:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud;
2. charges of price fixing, monopolization or restraint of trade;
3. any violation of:
  - a. the Federal Trade Commission Act;
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes; or
  - e. any state, federal or local statutory law or common law similar to the above statutes; or
4. false or deceptive advertising or misrepresentation in advertising,

not directly related to a **Claim** alleging a **Personal/Proprietary Rights Injury** as defined in paragraphs 5 and 6 of the definition of **Personal/Proprietary Rights Injury**;

**O. Unsolicited Communication**

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003, as amended; or
2. any actual or alleged violation of any federal or state statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001, as amended;

**P. Withdrawal/Recall**

for any costs or expenses incurred by any **Insured**, or others:

1. for the recall, removal, disposal or withdrawal of the **Insured's Technology Product** or any products which incorporate the **Insured's Technology Product**; or **Technology Services** or



2. to repair, replace, upgrade, supplement, improve, or complete the **Insured's Technology Product** or any products which incorporate the **Insured's Technology Product** or **Technology Services**.

However, this exclusion shall not apply to **Claims** for the actual or alleged loss of use of such **Technology Product**;

**Q. Wrongful Employment Practice/Discrimination/Humiliation/Harassment**

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment;

**III. VICARIOUS LIABILITY COVERAGE**

Any entity the **Insured Entity** is required by contract to include as an insured for liability of such entity for an **Insured's Wrongful Acts** shall be insured under this Policy but solely to the extent that a **Claim** is made against such entity for a **Wrongful Act** of an **Insured**, and only so long as the written contract is entered into before such **Wrongful Act** occurs. Any coverage afforded by this Section is subject always to all of the Policy's terms and conditions, provided however:

- A. there shall be no coverage afforded to such entity for its **Wrongful Acts**; and
- B. nothing herein shall serve to confer any rights or duties to such entity under this Policy, other than as provided in this Section.

## I. INSURING AGREEMENTS

Coverage is provided under the following Insuring Agreements for which a Limit of Liability is shown in the Crime Coverage Part Declarations.

### A. EMPLOYEE THEFT

The Insurer will pay for **Loss** sustained by the **Insured Entity** of **Money, Securities and Other Property** as a direct result of **Employee Theft**.

#### A.1 EMPLOYEE THEFT OF CLIENT PROPERTY WHILE ON CLIENT PREMISES

The Insurer will pay the **Insured Entity** for **Loss** sustained by the **Insured Entity** by reason of loss or damage to **Money, Securities and Other Property** owned or held by a **Client** on such **Client's Premises** as a direct result of **Employee Theft** while such **Employee** is performing assigned duties pursuant to a written contract between the **Insured Entity** and the **Client** and while such **Employees** are under the direction and control of the **Client**.

### B. FORGERY OR ALTERATION-INCLUDING PERSONAL ACCOUNTS OF THE PROPRIETOR, PARTNERS, MEMBERS, AND OFFICERS OF THE INSURED ENTITY

The Insurer will pay for **Loss** sustained by the **Insured Entity** resulting from **Forgery** or **Alteration** of, on, or in **Covered Instruments** that are:

1. made or drawn by, or drawn upon, the **Insured Entity**; or,
2. made or drawn by one acting as the **Insured Entity's** agent,

or that are purported to have been so made or so drawn, by any person, acting alone or together with others. Mechanically reproduced facsimile signatures are the same as handwritten signatures.

The Insurer will also pay reasonable legal expenses that the **Insured Entity** incurs if the **Insured Entity** is sued for refusing to pay any of the **Covered Instruments** under Insuring Agreement B. on the basis that such instrument has been subject to **Forgery** or **Alteration**, and the **Insured Entity** has the Insurer's written consent to defend against the suit. The Insurer will pay for any reasonable and necessary legal expenses that the **Insured Entity** incurs in defense of the suit. The amount paid is additional to the applicable Limit of liability under Insuring Agreement B.

The Insurer will include the proprietor, partners, **Members** and officers of the **Insured Entity** as additional insureds under this Insuring Agreement, but only for **Loss** involving **Covered Instruments** of those persons' personal accounts and subject to the Limit of Liability and Deductible shown in the Crime **Coverage Part** Declarations. Coverage provided for personal accounts is part of, and not in addition to, the Limit of Liability under Insuring Agreement B.

### C. THEFT, DISAPPEARANCE AND DESTRUCTION OF MONEY AND SECURITIES

The Insurer will pay for **Loss** sustained by the **Insured Entity** as the direct result of the actual destruction, disappearance or **Theft** of **Money** and **Securities** within the **Premises** or within any **Banking Premises**.

This Insuring Agreement shall also include **Loss** sustained by the **Insured Entity** as the direct result of:

1. damage to the **Premises** or its exterior from an actual or attempted **Theft** of **Money** and **Securities**, if the **Insured Entity** is the owner of the **Premises** or is liable for damage to it; or
2. damage to a locked safe, vault, cash box, cash register or cash drawer within the **Premises** from an actual or attempted **Theft** of, or unlawful entry into those containers.

The Insurer will pay for **Loss** sustained by the **Insured Entity** as the direct result of the actual destruction, disappearance or **Theft** of **Money** and **Securities** while outside the **Premises** in the care and custody of a **Messenger** or armored motor vehicle company.

### D. ROBBERY & SAFE BURGLARY OF OTHER PROPERTY

The Insurer will pay for **Loss** sustained by the **Insured Entity** of **Other Property** as the direct result of:

1. an actual or attempted **Robbery**, inside the **Premises**, of **Other Property** from the care and custody of any person, or **Safe Burglary** inside the **Premises**. The Insurer will also pay for **Loss** sustained by the **Insured Entity** due to damage to the **Premises** as a direct result of such actual or attempted **Robbery** or **Safe Burglary** if the **Insured Entity** is the owner of the **Premises** or is liable for damage to it. The Insurer will also pay for damage to a locked safe or vault located inside the **Premises** resulting directly from such actual or attempted **Safe Burglary**; or
2. an actual or attempted **Robbery** outside the **Premises** of **Other Property** while such **Other Property** is in the in the care and custody of a **Messenger** or an armored motor vehicle company and while such **Other Property** is in the active process of transportation.

But, the Insurer will pay only for the amount the **Insured Entity** cannot recover:

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

#### E. COUNTERFEIT MONEY ORDERS AND CURRENCY

The Insurer will pay for **Loss** sustained by the **Insured Entity** as a direct result of the **Insured Entity's** acceptance in good faith of:

1. **Counterfeit** postal or express money order issued or purported to have been issued by any post office, express company or bank that are not paid upon presentation; or
2. **Counterfeit** paper currency of the United States of America, or any other country in the exchange for merchandise, **Money** or services.

#### F. COMPUTER AND FUNDS TRANSFER FRAUD

The Insurer will pay for **Loss** sustained by the **Insured Entity** of:

1. **Money, Securities** and **Other Property** as a direct result of **Computer Fraud**; or
2. **Money** and **Securities** on deposit at a **Financial Institution**, subject to a **Transfer Agreement**, as a direct result of **Funds Transfer Fraud** provided that such **Transfer Agreement**:
  - a. contains a listing of the **Insured Entity's Employees** who are authorized to initiate wire transfers; and
  - b. requires the **Financial Institution** to make a telephone call to the **Insured Entity's** authorized **Employees** to verify any electronic or wire transfer instructions communicated by the **Insured Entity**, other than:
    - i. **prearranged transfers**; or
    - ii. transfers made through an automated teller machine before transferring **Money** or **Securities**; and
  - c. requires the **Financial Institution** to confirm completed transfers in writing to the **Insured Entity** within five working days; and
  - d. does not impair the **Insured Entity's** right of action against the **Financial Institution** for any loss of **Money** or **Securities** resulting from failure to exercise reasonable care or to comply.

## II. DEFINITIONS

For purposes of this **Coverage Part**, words in bold, whether expressed in the singular or the plural, have the meaning set forth below even if otherwise defined elsewhere.

**Alteration** means the material modification of an original document by a person acting without authority and with the intent to deceive.

**Banking Premises** means the interior of that portion of any building occupied by a **Financial Institution**.

**Client** means a third party for whom the **Insured Entity** performs specified professional services for a fee.

**Computer Fraud** means **Theft of Money, Securities and Other Property** following and directly related to the use of any computer to fraudulently cause a transfer of that property to a person who is not an **Employee** or to an account of any **Financial Institution** not controlled by the **Insured Entity**.

**Coverage Part** means the EPACK Extra Crime **Coverage Part**.

**Counterfeit** means an imitation of an actual valid original which is intended to deceive and to be taken as the original.

**Covered Instruments** means checks, drafts, promissory notes or similar written promises, orders or directions to pay a sum certain in **Money**, and also includes written instruments required in conjunction with any credit, debit or charge card issued to the **Insured Entity** or to any **Employee** for business purposes, or issued to any proprietor, partner, **Member** or officer of the **Insured Entity** for personal use.

**Discover or Discovered** means:

- A. the time when the **Insured Entity** first becomes aware of facts which would cause a reasonable person to assume that **Loss** covered by this **Coverage Part** did or will happen, regardless of when the act that may cause or contribute to such **Loss** occurred, even though the exact amount or details of **Loss** may not be known; or
- B. the time when the **Insured Entity** first receives notice of an actual or potential claim in which it is alleged that the **Insured Entity** is liable to a third party under circumstances which, if true, would constitute **Loss** under this **Coverage Part**.

**Employee** means:

- A. any natural person:
  - 1. while in the **Insured Entity's** service (and for 60 days after termination of service); and
  - 2. whom the **Insured Entity** compensates directly by salary, wages, or commissions; and
  - 3. whom the **Insured Entity** has the right to direct and control while performing services for the **Insured Entity**; or
- B. any natural person who is furnished to the **Insured Entity**:
  - 1. to substitute for a permanent **Employee** on leave; or
  - 2. to meet seasonal or short-term workload conditions;

while that person is subject to the **Insured Entity's** direction and control and performing services for the **Insured Entity**, excluding, however, any such person while having care and custody of the **Insured Entity's** property outside the **Premises**; or

- C. any natural person leased to the **Insured Entity**, under an agreement between the **Insured Entity** and a labor leasing firm, while that person is subject to the **Insured Entity's** direction and control and performing services for the **Insured Entity**; or
- D. any non-compensated natural person:
  - 1. other than one who is a fund solicitor, while performing services for the **Insured Entity** that are usual to the duties of an **Employee** or officer; or
  - 2. while acting as a fund solicitor during fund raising campaigns; or
- E. Solely with respect to an **Employee Benefit Plan** any natural person who is required to be bonded by the Employee Retirement Income Security Act of 1974 (ERISA), any amendments thereto and any regulations promulgated thereunder.

However, **Employee** does not mean any:

1. agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
2. **Manager, Member**, partner, proprietor, director or trustee, but solely to the extent he or she is acting in his or her capacity as such;

However, this exception does not apply to an **Employee Benefit Plan**.

**Employee Benefit Plan** means an employee welfare benefit plan or an employee pension benefit plan as more fully set forth in Title 1, Section 3 of the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto and which is solely sponsored by the **Insured Entity**.

**Employee Theft** means the unlawful taking of **Money, Securities** and **Other Property** to the deprivation of the **Insured Entity** by an **Employee**, whether identified or not, acting alone or in collusion with others. With respect to Insuring Agreement A.1 only, it means the unlawful taking of **Money, Securities** and **Other Property** to the deprivation of the **Client** by an identified **Employee**. **Employee Theft** also includes **Forgery** by an **Employee**. For purposes of clarification, solely with respect to an **Employee Benefit Plan**, **Employee Theft** means all acts of fraud or dishonesty required to be bonded against by the Employee Retirement Income Security Act of 1974 (ERISA), any amendments thereto and any regulations promulgated thereunder.

**Financial Institution** means:

- A. a banking, savings or thrift institution, credit union, or similar depository institution; or
- B. a stock brokerage firm, mutual fund, liquid assets fund or similar investment institution where the **Insured Entity** maintains an account.

However, **Financial Institution** does not include check cashers, currency exchangers or money remittance firms.

**Forgery** means the signing 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.

**Funds Transfer Fraud** means **Theft of Money** and **Securities** following and directly related to the use of fraudulent written or verbal instructions which are purported to have been made by the **Insured Entity**, which causes an electronic transfer of **Money** or **Securities** from a **Financial Institution** to:

- A. an account at a **Financial Institution** not controlled by the **Insured Entity**; or
- B. a person other than an **Employee**.

**Insured Entity** means the **Named Insured** and any **Subsidiary**. As respects Insuring Agreement A. only, **Insured Entity** also means, at the inception of the **Policy Period**, any **Employee Benefit Plan**.

**Loss** means solely with respect to Insuring Agreements A., A.1, D. and F., the actual and direct deprivation or dispossession or damage to the property specified in such Insuring Agreement. With respect to all other insuring Agreements **Loss** means the actual and direct deprivation or dispossession of the property specified in each Insuring Agreement.

**Manager** means any natural person manager, member of the Board of Managers or equivalent executive of a **Named Insured** that is a limited liability company.

**Member** means an owner of a limited liability company (LLC) represented by its membership interest, who may also serve as a **Manager**.

**Messenger** means any of the **Insured Entity's** natural person **Members**, proprietors, partners, or **Employees** who are duly authorized by the **Insured Entity** to have care and custody of the property outside the **Premises**.

**Money** means:

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

**Named Insured** is the entity named in Item 1. of the Policy Declarations.

**Other Property** means any tangible property other than **Money** and **Securities** that has intrinsic value. However, “**Other Property**” does not include any property listed in this **Coverage Part** as specifically not covered.

**Policy Period** means the period of time from the effective date and time of this Policy to the date and time of termination as shown in the Policy Declarations, or its earlier cancellation date. If the length of the **Policy Period** is the same as the **Policy Year**, the terms **Policy Period** and **Policy Year** are used interchangeably herein.

**Policy Year** means the period of one year following the effective date of the **Policy Period** or any subsequent one-year anniversary thereof. As permitted by individual state law, a **Policy Year** may be extended or reduced by endorsement or by termination of the Policy.

**Prearranged Transfer** means an electronic transfer of **Money** or **Securities** which is part of a regular or scheduled series of electronic transfers, authorized by written agreement, to a designated **Financial Institution** specifying:

- A. the amount of **Money** or **Securities** to be transferred; and
- B. account number to be credited.

**Premises** means:

- A. the interior of that portion of any building the **Insured Entity** occupies in conducting the **Insured Entity’s** business;
- B. as respects damage to **Other Property** only, the exterior of that portion of any building the **Insured Entity** occupies in conducting the **Insured Entity’s** business; or
- C. with respect to Insuring Agreement A.1 only, the interior of that portion of any building a **Client** occupies in conducting their business or the interior of a **Client’s** owned, leased or rented residence.

**Robbery** means the unlawful taking of specified property from the care and custody of any person by one who has:

- A. caused or threatened to cause that person bodily harm; or
- B. committed an unlawful act witnessed by that person.

**Safe Burglary** means the unlawful taking of:

- A. 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
- B. a safe or vault from inside the **Premises**.

**Securities** means negotiable and non-negotiable instruments or contracts representing either **Money** or **Other Property** and includes:

- A. tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; or
- B. evidences of debt issued in connection with credit, debit or charge cards, which cards are not issued by the **Insured Entity**.

However, **Securities** does not include **Money**.

**Subsidiary** means at policy inception, any entity owned or controlled by the **Named Insured**. For the purposes of this coverage, “owned and controlled” means any entity not specifically named on the Crime **Coverage Part** Declarations of which the **Named Insured** has more than 50% of the total assets and liabilities. This includes any joint venture, partnership or limited liability company, however, with respect to any joint venture coverage is provided only to the extent of the ownership interest held by any **Named Insured** listed on the Crime **Coverage Part** Declarations.

**Theft** means the unlawful taking of **Money**, **Securities** and **Other Property** to the deprivation of the **Insured Entity** by someone other than an **Employee**;

**Transfer Agreement** means a written agreement with any **Financial Institution** authorized to transfer **Money** and **Securities** at the **Insured Entity's** request.

### III. EXCLUSIONS

#### A. Exclusions Applicable to All Insuring Agreements

The Insurer does not cover any **Loss** sustained by the **Insured Entity**:

##### 1. Indirect Loss

as an indirect or consequential loss of any nature including, but not limited to:

- a. the **Insured Entity's** inability to realize income that the **Insured Entity** would have realized had there been no loss of, or damage to property that is covered under this **Coverage Part**; or
- b. payment of damages of any type for which the **Insured Entity** is legally liable. But, the Insurer will pay compensatory damages arising directly from a covered **Loss** under this **Coverage Part**;
- c. payment of costs, fees or other expenses the **Insured Entity** incurs in establishing either the existence or the amount of **Loss** under this **Coverage Part**, however, this exclusion does not apply to Supplementary Payment Proof of **Loss** Expenses as set forth in paragraph G. of Section IV, **LIMITS OF LIABILITY AND DEDUCTIBLE**; or
- d. amounts due to expenses related to any legal action, except as may be covered under Insuring Agreement B; or
- e. salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment.

##### 2. Inventory or Profit of Loss Computations

the proof of which as to its existence or amount is dependent upon:

- a. an inventory computation; or
- b. a profit and loss computation.

However, where the **Insured Entity** establishes wholly apart from such computations that the **Insured Entity** has sustained **Loss** covered under any Insuring Agreement, then the **Insured Entity** may offer the **Insured Entity's** inventory records and an actual physical count of inventory in support of other evidence as to the amount of **Loss** claimed;

##### 3. Nuclear Reaction

as a result of nuclear reaction, nuclear radiation or radioactive contamination;

##### 4. Seizure or Destruction of Property

as a result of seizure or destruction of property by order of any governmental authority;

##### 5. Theft, Forgery, Alteration or Other Dishonest Act of the Insured Entity

as a result of **Theft**, **Employee Theft**, **Forgery**, **Alteration** or any other dishonest act committed by the **Insured Entity** or any of the **Insured Entity's** partners, proprietors, **Employees**, **Managers**, **Members**, directors, trustees or authorized representatives whether acting alone or in collusion with others, and while performing services for the **Insured Entity** or otherwise,

except:

- i. as specifically provided under Insuring Agreements A., A.1. or B.;
- ii. with respect to Insuring Agreement B. only, when handling the personal accounts of the proprietor, any partner, any **Member**, or any officer of the **Insured Entity**;

6. **Trade Secrets**

as a result of loss of trade secrets, confidential processing methods, confidential information or intangible property of any kind;

7. **Trading**

as a result of trading in a genuine or fictitious account, whether or not on behalf of the **Insured Entity**, provided, however, this exclusion does not apply to **Loss** caused by **Employee Theft** which results in improper financial gain to such **Employee**. As used herein, "improper financial gain" does not include any salary or other benefits paid to the **Employee** in the course and scope of employment. However, this exclusion shall not apply to any **Employee Theft** with respect to an **Employee Benefit Plan**.

8. **War**

as a result of war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

**B. Additional Exclusions Applicable to Insuring Agreement A. and Insuring Agreement A.1:**

Insuring Agreement A. and Insuring Agreement A.1 do not apply to **Loss** sustained by the **Insured Entity**:

1. **Canceled Insurance of an Employee**

as a result of any act of the **Insured Entity's Employee** or an **Employee** of a predecessor in interest of the **Insured Entity**, for whom similar prior insurance has been canceled and not reinstated;

2. **Contractual Liability**

as a result of contractual or extra-contractual liability sustained by the **Insured Entity** in connection with the issuance of contracts, or purported contracts of insurance, indemnity or suretyship.

**C. Additional Exclusion Applicable to Insuring Agreement A.1 – Unidentified Employee**

Insuring Agreement A.1 does not apply to **Loss** sustained by the **Insured Entity** as a result of any act of an unidentified **Employee**.

**D. Additional Exclusion Applicable to Insuring Agreement B.:**

Insuring Agreement B. does not apply to **Loss** sustained by the **Insured Entity** as a result of use of any credit, debit or charge card if the **Insured Entity** has not fully complied with the provisions, conditions, or other terms upon which the card was issued.

**E. Additional Exclusions Applicable to Insuring Agreement C., Insuring Agreement D. and Insuring Agreement F.:**

Insuring Agreement C., Insuring Agreement D. and Insuring Agreement F. do not apply to **Loss** sustained by the **Insured Entity**:

1. **Accounting or Arithmetical Error**

as a result of accounting or arithmetical errors or omissions;

2. **Fire**

as a result of loss of, or damage to, the **Premises** or **Other Property** as a direct result of fire, however caused; except for damage to a safe or vault otherwise covered under Insuring Agreement C., **THEFT, DISAPPEARANCE AND DESTRUCTION OF MONEY AND SECURITIES**;

3. **Money in Automated Teller Machine**

involving **Money** in any automated teller machine unless the amount of **Money** contained in it is recorded by a continuous recording instrument;

4. **Motor Vehicles, Trailers or Semi-Trailers**

as a result of loss of, or damage to, motor vehicles, trailers or semi-trailers or equipment, and accessories to them;

**5. Precious Materials**

as a result of loss of, or damage to, precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of, or containing such materials, that constitute the principal value of such articles, except as provided under Section IV. E. and F.

**6. Surrender of Property**

as a result of the giving or surrendering of property in any exchange or purchase;

**7. Transferred Money, Securities and Other Property**

involving **Money, Securities and Other 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, except for **Loss** under Insuring Agreement F., or as a result of a threat to do bodily harm to any person or damage to any property. However, this exclusion does not apply **Money, Securities or Other Property** while outside the **Premises** or **Banking Premises** in the care and custody of a **Messenger** if the **Insured Entity**:

- a. had no knowledge of any threat at the time the conveyance began; or
- b. had knowledge of a threat at the time the conveyance began, but the **Loss** was not related to the threat;

**8. Vandalism or Malicious Mischief**

as a result of loss of, or damage to, the **Premises** or to containers of **Money, Securities or Other Property** by vandalism or malicious mischief;

**9. Voluntarily Parting with Title or Possession**

as a result of the **Insured Entity**, or anyone acting on the **Insured Entity's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**F. Additional Exclusions Applicable to Insuring Agreement A.:**

The Insurer does not cover any **Loss** under Insuring Agreement A sustained by the **Insured Entity** for salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment.

**IV. LIMITS OF LIABILITY AND DEDUCTIBLE**

Except as set forth in Section VI., **INSURED SPONSORED ERISA PLANS**, the limits of liability and deductibles are as follows:

**A. Limit of Liability**

- 1. **Per Loss** – The maximum Limit of Liability the Insurer will pay during the **Policy Year** for one **Loss** shall not exceed the applicable dollar amount set forth as “**Per Loss Limit**” in the Crime **Coverage Part** Declarations, Limit of Liability.
- 2. **In the Aggregate** - The maximum Limit of Liability the Insurer will pay during the **Policy Year** for all **Loss** shall not exceed the applicable dollar amount set forth as the Policy Period “**Aggregate Limit**” in the Crime **Coverage Part** Declarations, Limit of Liability.

**B. All Loss Resulting From a Single Act or Series of Acts**

All Loss

- 1. under Insuring Agreement A and A1, caused by or involving any **Employee**, acting alone or in collusion with other persons, or any group of **Employees** acting together, even if in collusion with other persons,

whether the result of a single act or multiple acts and whether or not sustained only during the **Policy Year**;  
or

2. under Insuring Agreement B, caused or contributed to, by any one person, acting alone or in collusion with others, or in which any such person is implicated, whether the **Loss** involves one or more instruments; or
3. under all other Insuring Agreements, caused by:
  - a. any single act, or series of related acts;
  - b. any act or acts involving one person, or a group of persons acting together, or
  - c. an act or event, or a series of related acts or events, not involving any identifiable person,

will be treated as a single **Loss** and the applicable Limit of Liability of this **Coverage Part** will apply, subject to Section V. **CONDITIONS**, paragraph D, **Loss Sustained During Prior Policy**.

#### **C. Non-Cumulation of Limit of Insurance**

Regardless of the number of years this **Coverage Part** or similar insurance (whether issued on a “Loss Sustained” or “Loss Discovered” basis) issued by the Insurer remains in force or the number of premiums paid, the Limit of liability does not cumulate from **Policy Year** to **Policy Year**.

#### **D. Deductible Provision**

The Insurer will not pay for **Loss** sustained under any Insuring Agreement unless the amount of such **Loss** exceeds the applicable deductible for that Insuring Agreement shown in the Crime **Coverage Part** Declarations. The Insurer will then pay for the amount of covered **Loss** in excess of the deductible subject to the Limit of Liability paragraph of this Section. If any **Loss** is covered partly by this **Coverage Part** and partly by any prior cancelled or terminated policy, the deductible applicable to that **Loss** covered by this **Coverage Part** shall be reduced by the applicable deductible of the preceding Policy.

In the event that more than one deductible amount under this **Coverage Part** applies to the same **Loss**, only the highest deductible amount will apply.

#### **E. Specific Limit of Insurance Insuring Agreement D.**

Under Insuring Agreement D., the Insurer will only pay up to \$7,500 for any one **Loss** involving precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles. This limit is part of, and not in addition to, the Limit of Liability shown on the Crime **Coverage Part** Declarations.

#### **F. Specific Limit of Insurance: Under Insuring Agreement D. and Insuring Agreement F.**

The Insurer will only pay up to \$7,500 for any one **Loss** involving manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them. This limit applies independently to Insuring Agreement D. and Insuring Agreement F. This limit is part of, and not in addition to, the Limit of Liability shown on the Crime **Coverage Part** Declarations.

#### **G. Supplementary Payments – Proof of Loss Expenses**

1. Subject to the limits set forth in paragraph 2 and 3 below, the Insurer will pay for reasonable expense the **Insured Entity** incurs, with our consent, for assistance in establishing the nature, extent and amount of any **Loss** covered under any insuring agreement (“Proof of Loss Expenses”). This includes expense the **Insured Entity** incurs as a result of any audits or investigations conducted by its directors, trustees or **Employees**. The Insurer’s consent will not be unreasonably withheld.
2. The maximum Limit of Liability the Insurer will pay for all such proof of loss expenses in any one **Loss** is the lesser of:
  - a. the “Per **Loss**” Limit of Liability shown as applicable to Proof of Loss Expenses in the Crime **Coverage Part** Declarations; or
  - b. 10% of the applicable Limit of Liability shown in the Crime **Coverage Part** Declarations.

3. In the Aggregate – The maximum Limit of Liability the Insurer will pay for all Proof of Loss Expenses incurred during the **Policy Period** shall not exceed the applicable dollar amount set forth as “Aggregate” in the Crime **Coverage Part** Declarations, Limit of Liability.
4. The Insurer will not pay for any such Proof of Loss Expenses in any one **Loss** unless the amount of the **Loss** exceeds:
  - a. the Deductible amount shown in the Crime **Coverage Part** Declarations as applicable to the Insuring Agreement involved in the **Loss**; and
  - b. the Deductible amount shown in the Crime Pack **Coverage Part** Declarations as applicable to Proof of Loss Expenses.

<b>V. CONDITIONS</b>
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**A. New Employees/New Employee Benefit Plans****1. New Employees or Premises**

If, during the **Policy Period** the **Insured Entity** establishes any additional **Premises** or hires additional **Employees** other than as set forth in Section **XII. COVERAGE FOR NEW SUBSIDIARIES AND PLANS** of the General Terms and Conditions any insurance afforded for **Employees** and **Premises** shall also apply to those additional **Premises** and **Employees**.

**2. New Employee Benefit Plans**

If any **Employee Benefit Plan** is acquired by the **Insured Entity** during the **Policy Period** that is:

- a. sponsored and approved by the **Insured Entity**; and
- b. required to be bonded under the provisions of the Employee Retirement Income Security Act of 1974, it shall be included as an **Insured Entity** under this **Coverage Part**.

**B. Joint Insured Entity**

1. If more than one **Insured Entity** is covered, the first **Named Insured** on the Policy Declarations will act for itself and for every other **Insured Entity** for all purposes of this **Coverage Part**. If the first **Named Insured** ceases to be covered, then the next **Named Insured** will become the first **Named Insured**, unless all other **Joint Insured Entities** are unnamed. In that case the **Named Insured** must, prior to termination of Insuring Agreement, provide notice to the Insurer designating the entity to be the **Named Insured**. If such notice is not provided coverage will terminate and the surviving entities may be considered for coverage under a new **Coverage Part**.
2. If the **Insured Entity** or partner, proprietor, **Member** or officer of that **Insured Entity** has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every **Insured Entity**.
3. An **Employee** of any **Insured Entity** is considered to be an **Employee** of every **Insured Entity**.
4. If this **Coverage Part** or any of its Insuring Agreements is canceled or terminated as to any **Insured Entity**, a **Loss** with respect to that **Insured Entity** is covered only if the **Loss** was **Discovered** during the period of time provided in the Condition entitled “**When Loss must be Sustained and Discovered**”. However, this extended period to **Discover Loss** terminates as to that **Insured Entity** immediately upon the effective date of any other insurance obtained by that **Insured Entity** replacing in whole or in part the insurance afforded hereunder, whether or not such other insurance provides coverage for **Loss** or damage sustained prior to its effective date.
5. In the event **Loss** or damage is sustained by more than one **Insured Entity**, the Insurer will not pay more than if the **Loss** or damage was sustained by one **Insured Entity**.

**C. When Loss Must be Sustained and Discovered**

Except as provided in paragraph D. below, **Loss** is covered under this **Coverage Part** only if sustained on or after the effective date of this **Policy Period** and prior to the cancellation or termination of the **Policy Period** and **Discovered** no later than ninety (90) days (or one year with respect to any **Employee Benefit Plan**) from the expiration date of the **Policy Period**. However, with respect to any **Insured Entity** who obtains any other insurance replacing in whole or in part the insurance afforded by this **Coverage Part**, regardless of whether such insurance is obtained during or after the **Policy Period**, this extended period to **Discover Loss** terminates immediately upon the effective date of such other insurance, whether or not such other insurance provides coverage for **Loss** sustained prior to its effective date.

#### **D. Loss Sustained During Prior Policy**

1. If the **Insured Entity**, or a predecessor in interest, sustained a **Loss** that could have been recovered under a prior policy except that the time within which to **Discover** the **Loss** under such prior policy had expired, then the Insurer will pay for it under this policy, provided:
  - a. this policy became effective at the time of cancellation or termination of such prior policy; and
  - b. the **Loss** would have been covered by this **Coverage Part** had it been in effect at the time of such **Loss**.
2. The limit of Liability available under this Condition is part of, and not in addition to, the limits of liability applicable to this **Coverage Part** and is limited to:
  - a. the highest single Limit of Liability of the amount recoverable under:
    - i. this policy as of its effective date; or
    - ii. the prior policy had it remained in effect where such prior policy was issued by the Insurer or any affiliate of the Insurer.
  - b. the lesser of the single Limit of Liability recoverable under:
    - i. this policy as of its effective date; or
    - ii. the prior policy had it remained in effect where such prior policy was not issued by the Insurer or any of its affiliates.

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

If the **Insured Entity Discovers** covered **Loss** during the **Policy Period** resulting directly from an act or series of acts that took place partly during the **Policy Period** and partly during the policy period of any prior canceled or terminated policy that the Insurer or any affiliate issued to the **Insured Entity** or any predecessor in interest, the most the Insurer will pay is the larger of the amount recoverable under this policy or the prior policy.

#### **F. Examination of the Insured Entity's Books and Records**

The Insurer may examine and audit the **Insured Entity's** books and records as they relate to this **Coverage Part** at any time during the **Policy Period** and up to three years afterward. The **Insured Entity** must keep records of all property covered under this **Coverage Part** so that the Insurer can verify the amount of any **Loss** or damage.

#### **G. Inspections and Surveys**

The Insurer has the right but is not obligated to:

1. make inspections and surveys at any time;
2. give the **Insured Entity** reports on the conditions the Insurer finds; and
3. recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Insurer does not make safety inspections. The Insurer does not undertake to perform the duty of

any person or organization to provide for the health and safety of workers or the public. Further, the Insurer does not warrant that conditions are safe or healthful or comply with laws, regulations, codes or standards. This does not apply to any inspections, surveys, reports or recommendations the Insurer may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels, or elevators.

This condition applies not only to the Insurer, but also to any rating or advisory service or similar organization which makes insurance inspections, surveys, reports or recommendations.

#### **H. Loss or Damage Covered Under More Than One Insuring Agreement Under This Coverage Part**

If two or more Insuring Agreements of this **Coverage Part** apply to the same **Loss** or damage, the Insurer will pay the lesser of:

1. the actual amount of the **Loss** or damage; or
2. the sum of the limits of liability applicable to those Insuring Agreements.

#### **I. Other Insurance**

This **Coverage Part** does not apply to **Loss** or damage recoverable or recovered under any other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the **Loss** or damage, this **Coverage Part** will apply to that part of the **Loss** or damage, other than that falling within any deductible, not recoverable or recovered under the other insurance or indemnity, but not more than the applicable Limit of Liability.

#### **J. Ownership of Property; Interests Covered**

The **Money, Securities** and **Other Property** covered under this **Coverage Part** is limited to such property:

1. that the **Insured Entity** owns or leases;
2. that the **Insured Entity** holds for others; or,
3. owned and held by someone other than the **Insured Entity** under circumstances which make the **Insured Entity** responsible for the property prior to the occurrence of **Loss**.

Solely with respect to an **Employee Benefit Plan**, the **Money, Securities** and **Other Property** covered under this **Coverage Part** is limited to all funds or property that the **Employee Benefit Plan** uses or may use as a source for the payment of benefits to plan participants or beneficiaries, as described by the Employee Retirement Income Security Act of 1974 (ERISA), any amendments thereto and any regulations promulgated thereunder.

However, this insurance is for the **Insured's Entity** benefit only. It provides no rights or benefits to any **Clients** or to any other person or organization.

#### **K. Premiums**

The first **Named Insured** shown in the Policy Declarations is responsible for the payment of all premiums and will be the payee for any return premiums the Insurer pays.

#### **L. Transfer of the Insured Entity's Rights and Duties Under This Coverage Part**

The **Insured Entity's** rights and duties under this **Coverage Part** may not be transferred without the Insurer's written consent.

#### **M. Concealment, Misrepresentation or Fraud**

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

1. this insurance;
2. the **Money, Securities** or **Other Property**;

3. the **Insured Entity** interest in the **Money, Securities** or **Other Property**; or
4. a claim under this **Coverage Part**.

#### **N. Duties In The Event of Loss**

After **Discovery of Loss** or a situation that may result in covered **Loss**, the **Insured Entity** must:

1. provide written notice as soon as possible to the address specified on the Policy Declarations;
2. notify the law enforcement authorities, if the **Insured Entity** has reason to believe that any loss or damage (except for loss or damage under Insuring Agreement A., Insuring Agreement A.1 or Insuring Agreement B.) involves a violation of law;
3. submit to examination under oath at the Insurer's request and give the Insurer a signed statement of the **Insured Entity's** answers;
4. give the Insurer a detailed, sworn proof of **Loss** within 120 days. Proof of **Loss** under Insuring Agreement B. must include an affidavit of **Forgery** setting forth the amount and cause of loss or damage and (1) the original instruments or (2) copy of the instruments involved in that loss or damage if the originals are unavailable, and,
5. cooperate with the Insurer in the investigation and settlement of any claim.

#### **O. Valuation-Settlement**

1. Subject to the applicable Limit of Liability the Insurer will pay for **Loss** sustained by the **Insured Entity**:
  - a. due to loss of or damage to **Money** but only up to and including its face value. The Insurer may, at the Insurer's option, pay for loss of **Money** issued by any country other than the United States of America
    - i. at face value in the **Money** issued by that country; or
    - ii. in the United States of America dollar equivalent determined by the rate of exchange on the day the **Loss** was discovered based on foreign exchange selling rates as published in that day's "Wall Street Journal".
  - b. due to loss of, or damage to, **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 the Insurer's option:
    - i. pay the value of such **Securities** or replace them in kind, in which event the **Insured Entity** must assign to the Insurer all the **Insured Entity's** rights, title and interest in and to those **Securities**; or
    - ii. 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 day the **Loss** was discovered or the Limit of Liability.
  - c. due to loss of, or damage to, **Other Property** or damage to the **Premises** for not more than the:
    - i. actual cash value of the property on the day the **Loss** or damage was discovered;
    - ii. cost of repairing the property or **Premises**; or
    - iii. cost of replacing the property with property of like kind and quality.

The Insurer may, at the Insurer's option, pay the actual cash value of the property or repair or replace it. If the Insurer cannot agree with the **Insured Entity** upon the actual cash value or the cost of repair or replacement, the value or cost will be determined by arbitration.

2. The Insurer may, at the Insurer's option, pay for covered **Loss** sustained by the **Insured Entity** due to loss of, or damage to, property other than **Money**:
  - a. in the **Money** of the country in which the **Loss** occurred; or

- b. in the United States of America dollar equivalent of the **Money** of the country in which the **Loss** occurred determined by the rate of exchange on the day the **Loss** was discovered based on the foreign exchange selling rates as published in that day's "Wall Street Journal".
- 3. Any property that the Insurer pays for or replace becomes the Insurer's property.

**P. Recoveries**

- 1. Any recoveries, less the cost of obtaining them, made after settlement of **Loss** or damage covered by this **Coverage Part** will be distributed as follows:
  - a. to the **Insured Entity**, until the **Insured Entity** is fully reimbursed for any **Loss** or damage that the **Insured Entity** sustains that exceeds the Limit of Liability and the Deductible amount, if any;
  - b. then to the Insurer, until the Insurer is reimbursed for the settlement made; and,
  - c. then to the **Insured Entity**, until the **Insured Entity** is reimbursed for that part of the **Loss** or damage 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.

**Q. Transfer the Insured Entity's Rights of Recovery Against Others to the Insurer**

The **Insured Entity** must transfer to the Insurer all the **Insured Entity's** rights of recovery against any person or organization for any **Loss** the **Insured Entity** sustained and for which the Insurer has paid or settled. The **Insured Entity** must also do everything necessary to secure those rights and do nothing after **Loss** to impair them.

**R. Legal Action Against the Insurer**

No suit, action or legal proceeding may be brought hereunder by anyone other than the **Insured Entity**. The **Insured Entity** may not bring any legal action against the Insurer involving **Loss** (1) unless the **Insured Entity** has complied with all the terms of this Policy; (2) until 90 days after the **Insured Entity** has filed proof of **Loss** with the Insurer; and, (3) unless brought within 2 years from the date the **Insured Entity Discovers** the **Loss**. However, if any law prohibits such time limitation then the limitation is amended to equal the minimum time limitation required by such law.

**S. Termination of Coverage as Respects Acts of Any Employee**

Coverage under any Insuring Agreement is terminated with respect to any **Employee**:

- 1. immediately upon **Discovery** of any dishonest act:
  - a. committed by that **Employee** while employed by the **Insured Entity**, or
  - b. committed by that **Employee** prior to becoming employed by the **Insured Entity**, provided dishonest acts committed prior to becoming employed by the **Insured Entity** resulted in a loss equal to or exceeding \$10,000;provided that such **Discovery** was made by the **Insured Entity** or any of the **Insured Entity's Employees**, partners, proprietors, **Members**, **Managers**, officers, directors or trustees, not in collusion with the **Employee** who committed such act,
- 2. on the date specified in the notice mailed to the **Named Insured**. That date will be at least 60 days after the date of mailing.

**VI. INSURED SPONSORED ERISA PLANS**

In compliance with certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA):

- A. If the first **Named Insured** is an entity other than an **Employee Benefit Plan**, any payment made by the Insurer will be made jointly to the first **Named Insured** and to the **Employee Benefit Plan** that sustained the **Loss**.
- B. If two or more **Employee Benefit Plans** are insured under this **Coverage Part**, any payment the Insurer makes for **Loss**:
  - 1. sustained by two or more **Employee Benefit Plans**; or
  - 2. of commingled funds or other property of two or more **Employee Benefit Plans**is to be shared by each **Employee Benefit Plan** sustaining **Loss** in the proportion that the amount of insurance required for each such **Employee Benefit Plan** under ERISA bears to the total of such payments.
- C. The deductible applicable to Insuring Agreement A. does not apply to **Loss** sustained by any **Employee Benefit Plan** subject to ERISA which is insured under this **Coverage Part**.
- D. The first **Named Insured** must purchase a Limit of Liability applicable to Insuring Agreement A. that is at least equal to the minimum amount required by ERISA for any **Employee Benefit Plans**. If **Employee Benefit Plans** are insured jointly with any other entity under this **Coverage Part** the limit must be at least equal to the minimum amount required by ERISA if each **Employee Benefit Plan** were insured independently. If, during the **Policy Period**, it is determined that the applicable Limit of Liability as set forth in the Declarations was less than the amounts required by ERISA on the effective date of this Policy, then, at the request of the first **Named Insured** during the **Policy Period**, and subject to the payment of any additional premium, the applicable Limit of Liability may be amended to equal the minimum amount required by ERISA.

**I. COVERAGE AGREEMENTS****A. INSURING AGREEMENTS**

If the Insuring Agreement has been purchased, as indicated in the Declarations, the Insurer will pay on behalf of the **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, that the **Insured** shall become legally obligated to pay as the result of:

**1. Network Security Liability**

any **Claim** for **Network Damage** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone (other than a **Rogue Employee**) for whose **Wrongful Act** the **Insured** is legally responsible;

**2. Basic Privacy Injury Liability**

any **Claim** for **Privacy Injury** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone (other than a **Rogue Employee**) for whose **Wrongful Act** the **Insured** is legally responsible;

**3. Laptop Computer Breach Privacy Liability**

any **Claim** for **Privacy Injury** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone (other than a **Rogue Employee**) for whose **Wrongful Act** the **Insured** is legally responsible;

**4. Broad Form Privacy Injury Liability**

any **Claim** for **Privacy Injury** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act** by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone (including a **Rogue Employee**) for whose **Wrongful Act** the **Insured** is legally responsible; or,

**5. Privacy Regulatory Proceeding**

any **Privacy Regulation Proceeding** first made against the **Insured** during the **Policy Period**, or any Extended Reporting Period, if applicable, alleging any **Wrongful Act**, by the **Insured Entity**, by an **Insured Person** within the scope of such individual's duties on behalf of the **Insured Entity** or by someone (including a **Rogue Employee**) for whose **Wrongful Act** the **Insured** is legally responsible;

provided that:

- a. prior to the inception date of this Policy, or the first network security and privacy injury liability policy issued and continuously renewed by any insurer, of which this Policy is a replacement or renewal, whichever is earlier:
  - i. no **Insured** gave notice to any prior insurer of such **Claim** or any **Related Claim**;
  - ii. no **Insured** gave notice to a prior insurer of any such **Wrongful Act** or any **Interrelated Wrongful Act**; and
  - iii. no **Insured** had a basis to believe that any such **Wrongful Act**, or any **Interrelated Wrongful Act**, might reasonably be expected to be the basis of such **Claim**.
- b. the **Wrongful Act** occurred on or after the **Retroactive Date** for the Network Security and Privacy Injury Liability **Coverage Part** as set forth in the Professional Liability **Coverage Part** Declarations and prior to the end of the **Policy Period**.
- c. such **Claim** is reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions.

**B. SUPPLEMENTAL INSURING AGREEMENTS****1. Privacy Event Expense**

If the **Privacy Event Expense** Reimbursement coverage has been purchased, as indicated in the Professional Liability **Coverage Part** Declarations, the Insurer will pay the **Insured Entity** for **Privacy Event Expenses**, in excess of any retention and up to the applicable limit of liability, it incurs to directly:

- a. effect compliance with:
  - i. a **Security Breach Notice Law**; or
  - ii any statute or regulation referenced under the definition of **Privacy Injury** where the **Insured Entity** has been notified that a **Privacy Regulation Proceeding** with respect to such law has been commenced; or
- b. minimize harm to the **Insured Entity's** reputation from such **Privacy Event**, including but not limited to, by setting up a call center and providing a credit monitoring service for those individuals impacted by a **Privacy Event**;

provided, however, that all **Privacy Event Expenses** must be:

- (I) reported in accordance with The General Terms and Conditions, Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**;
- (II) incurred within twelve months of the date that the **Insured Entity** reports the event; and,
- (III) consented to in writing by the Insurer (such consent not to be unreasonably withheld).

**2. Network Extortion Expense**

If the **Network Extortion Expense** Reimbursement coverage has been purchased, as indicated in the Professional Liability **Coverage Part** Declarations, the Insurer will pay the **Insured Entity** for **Network Extortion Expenses** which a law enforcement agency has directed it to pay, in excess of any retention and up to the applicable limit of liability, that the **Insured Entity** incurs to directly respond to a **Network Extortion** demand that is made during the **Policy Period** provided, however, all **Network Extortion Expenses** must be:

- a. reported to Insurer within three (3) days of the **Insured Entity** receipt of **Network Extortion** demand;
- b. incurred within twelve months of the date that the **Insured** reports the **Network Extortion** demand to the Insurer; and
- c. consented to in writing by the Insurer (such consent not to be unreasonably withheld).

<b>II. EXCLUSIONS</b>
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The Insurer shall not be liable to pay that part of **Loss** under this **Coverage Part** in connection with any **Claim** or any **Privacy Regulation Proceeding** made against the **Insured**:

**A. Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, of any person, or **Property Damage**, except that this exclusion shall not apply to the wrongful infliction of emotional distress or mental anguish arising out of **Privacy Injury**;

**B. Claims by Insureds**

by or on behalf of any **Insured** in any capacity provided, however that this exclusion shall not apply to:

1. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;

2. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver or rehabilitator for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator; or
3. any **Claim** that is by an independent contractor or **Employee** and alleges **Privacy Injury** resulting from the unauthorized disclosure of such person's **Nonpublic Personal Information**;

**C. Deliberate Acts/Commingling or Misappropriation of Funds**

based upon or arising out of any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, commingling, misappropriation or misuse of funds, or intentional wrongdoing, including an intentional misappropriation of trade secret, by an **Insured** if a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed. The Insurer will not defend any criminal act which was the subject of a criminal prosecution in which the **Insured** was found guilty or pleaded guilty, *nolo contendere* or no contest. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

For purposes of determining the applicability of this exclusion:

1. the facts pertaining to and knowledge possessed by any natural person **Insured** shall not be imputed to any other natural person **Insured**; and
2. only facts pertaining to and knowledge possessed by any **Executive** shall be imputed to the **Insured Entities**;

**D. ERISA or any Similar Act**

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

**E. Governmental Actions**

based upon or arising out of any action or order by any domestic or foreign law enforcement, administrative, regulatory or judicial body or other governmental authority, to ban, limit or restrict access to, or provide access to, or intercept, confiscate, monitor or analyze, the **Network** or any data, software or other information stored or processed on, or transmitted to or from, the **Network**, whether authorized by the **Insured Entity** or not, including without limitation, interception, monitoring, or analysis by the NSA, CIA or FBI, or under the Foreign Intelligence Surveillance Act, the USA Patriot Act or any other domestic or foreign law, regulation or order;

**F. Injunctive Relief**

for the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement. However, the Insurer shall provide a defense for any **Claim** seeking injunctive relief. Such defense will not waive any of the Insurer's rights under this Policy;

**G. Laptop Compromise**

based on or arising out of any **Laptop Computer Breach** where the laptop was not under the **Insured's** or a **Third Party Custodian's Direct and Continuous Physical Control**, unless the information contained on the laptop was encrypted using a Federal Information Processing Standard (FIPS) 140-2 compliant whole disk encryption solution, and:

1. the encryption keys were generated and distributed in a manner that precludes access to such keys by unauthorized personnel;
2. the encryption includes a key recovery mechanism that ensures that encrypted information can only be decrypted and accessed by authorized personnel; and,
3. the encryption key recovery mechanism requires approval by the **Insured Entity's** senior management to authorize recovery of keys by anyone other than the key owner;

**H. Laptop Compromise Under Basic Privacy Injury Liability**

based upon or arising out of a **Laptop Computer Breach**, provided however that this exclusion shall only apply to **Claims** arising under Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 1. **Network Security Liability** and 2. **Basic Privacy Injury Liability**;

**I. Lotteries/Sweepstakes/Over-redemption**

based upon or arising out of price discounts, prizes, awards, coupons or any other valuable consideration given in excess of the total contracted or expected amount;

**J. Mechanical or Electrical Failure and Service Interruptions**

based upon or arising out of any:

1. mechanical or electrical failure of any **Technology Products** caused by a third party, acting independently of the **Insured**, including any such failure caused by electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations;
2. planned or unplanned service interruption caused by or at the direction of any entity, other than an **Insured Entity**, that provides third parties with access to the Internet or provides third parties with any services available on the Internet; or
3. interruption, surge, brownout, blackout, short circuit, over voltage, induction or power fluctuations; to any governmental or private utilities or elements of infrastructure, including gas, water, or telephone (on-line, wireless or other);

**K. Offline Information For Network Security Liability**

based upon or arising out **Privacy Injury**, provided however that this exclusion shall only apply to **Claims** arising under Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 1. **Network Security Liability**;

**L. Offline Information Under Basic Privacy Injury Liability**

based upon or arising out any information not stored on the **Insured Entity's** network, provided however that this exclusion shall only apply to **Claims** arising under Section I. **COVERAGE AGREEMENTS**, Part A. **Insuring Agreements**, Paragraph 1. **Network Security Liability** and 2. **Basic Privacy Injury Liability**;

**M. Owned Entity**

by any entity that is not an **Insured** under this Policy, if at the time of the **Wrongful Act** giving rise to such **Claim**:

1. any **Insured** controlled, owned, operated or managed such entity; or
2. any **Insured** was an **Executive** or **Employee** of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

**N. Patent Infringement**

based upon or arising out of actual or alleged infringement of patent;

**O. Pollutants**

based upon or arising out of:

1. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
2. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
3. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss;

**P. Satellite Failure**

based upon or arising out of the failure of any satellite;

**Q. Securities Claims**

based upon or arising out of:

1. the filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
2. the Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities;

**R. Software**

based upon or arising out of the inability to use or lack of performance of software programs:

1. due to expiration, cancellation, withdrawal or failure to maintain or support;
2. that have not yet been released from their development stage, passed all test runs or proven successful in applicable daily operations; or
3. that result from the **Insured's** modification of software programs in violation of any software license agreement, including but not limited to, violation of license provisions regarding modifications that invalidate a warranty;

**S. Unfair Competition/Antitrust Claims/RICO Claims**

based upon or arising out of any actual or alleged:

1. unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud;
2. charges of price fixing, monopolization or restraint of trade;
3. any violation of:
  - a. the Federal Trade Commission Act,
  - b. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
  - c. the Racketeer Influenced and Corrupt Organizations Act;
  - d. any rules or regulations promulgated under or in connection with the above statutes, or
  - e. any state, federal or local statutory law or common law similar to the above statutes;
4. false or deceptive advertising or misrepresentation in advertising,

except that paragraphs paragraph 1. and 4. do not apply to any **Privacy Regulation Proceeding or Claim for Privacy Injury**;

**T. Unsolicited Communication/Spyware**

based upon or arising out of:

1. any actual or alleged violation of any federal or state anti-spam statute or regulation, including the CAN-SPAM Act of 2003; or
2. any actual or alleged violation of any federal or state statute or regulation prohibiting the dissemination of unsolicited electronic communications to multiple third parties, including any violation of the Telephone Consumer Protection Act of 2001;
3. the distribution of unsolicited content including using "pop-ups" or other ad-ware without written permission of the recipient of such content;



Provided however, that this exclusion shall not apply to the extent such violation or such unsolicited distribution arises out of a **Security Breach**;

**U. Video Game Property**

based upon or arising out of any theft or unlawful exchange of computer or video game currency, points, earnings, awards or other such intangible property;

**V. Wrongful Employment Practice/Discrimination/Humiliation/Harassment**

for any actual or alleged **Wrongful Employment Practice** or any other discrimination, humiliation or harassment;

<b>III. VICARIOUS LIABILITY COVERAGE</b>
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Any entity the **Insured Entity** is required by contract to include as an insured for liability of such entity for an **Insured's Wrongful Acts** shall be insured under this Policy but solely to the extent that a **Claim** is made against it for a **Wrongful Act** of an **Insured**, and only so long as the written contract is entered into before such **Wrongful Act** occurs. Any coverage afforded by this Section is subject always to all of the Policy's terms and conditions, provided however:

- A.** there shall be no coverage afforded to such entity for its **Wrongful Acts**; and
- B.** nothing herein shall serve to confer any rights or duties to such entity under this Policy, other than as provided in this Section.