



ACE EXPRESS Private Company Management Indemnity Package

Directors & Officers and Company
Coverage Section

In consideration of the payment of premium, in reliance on the **Application** and subject to the Declarations, and terms and conditions of this **Policy**, the **Insurer** and the **Insureds** agree as follows.

A. INSURING CLAUSES

1. The **Insurer** shall pay the **Loss** of the **Directors and Officers** for which the **Directors and Officers** are not indemnified by the **Company** and which the **Directors and Officers** have become legally obligated to pay by reason of a **Claim** first made against the **Directors and Officers** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to subsection E1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
2. The **Insurer** shall pay the **Loss** of the **Company** for which the **Company** has indemnified the **Directors and Officers** and which the **Directors and Officers** have become legally obligated to pay by reason of a **Claim** first made against the **Directors and Officers** during the **Policy Period** or, if elected, the **Extended Period**, and reported to the **Insurer** pursuant to subsection E1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.
3. The **Insurer** shall pay the **Loss** of the **Company** which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if applicable, the **Extended Period**, and reported to the **Insurer** pursuant to subsection E1 herein, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

B. DEFINITIONS

1. **Claim** means:
 - a) a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief;
 - b) a written demand by one or more of the securities holders of the **Company** upon the board of directors or the management board of the **Company** to bring a civil proceeding against any of the **Directors and Officers** on behalf of the **Company**;
 - c) a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
 - d) a criminal proceeding against any **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges;
 - e) an arbitration proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief;
 - f) a civil, administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges or similar document;

- g) a civil, criminal, administrative or regulatory investigation commenced by:
 - (i) the service upon or other receipt by any natural person **Insured** of a written notice, investigative order, or subpoena; or
 - (ii) the service upon or other receipt by any **Company** of a written notice or investigative order;

from the investigating authority identifying such natural person **Insured** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraphs c, d or f immediately above may be commenced; or

- h) a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs a through g immediately above.

2. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.

3. **Costs, Charges and Expenses** means:

- a) reasonable and necessary legal costs, charges, fees and expenses incurred by the **Insurer**, or by any **Insured** with the **Insurer's** consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds and only for the amount of such judgment that is up to the applicable Limit of Liability; and
- b) reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **Insureds** in investigating a written demand, by one or more of the securities holders of the **Company** upon the board of directors or the management board of the **Company**, to bring a civil proceeding against any of the **Directors and Officers** on behalf of the **Company**.

Costs, Charges and Expenses do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or employees of the **Company**.

4. **Directors and Officers** means any person who was, now is, or shall become:

- a) a duly elected or appointed director, officer, or similar executive of the **Company**, or any member of the management board of the **Company**;
- b) a person who was, is or shall become a full-time or part-time employee of the **Company**; and
- c) the functional equivalent of directors or officers of a **Company** incorporated or domiciled outside the United States of America.

5. **Insureds** mean the **Company** and the **Directors and Officers**.

6. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.

7. **Loss** means damages, judgments, settlements, pre-judgment or post-judgment interest awarded by a court, and **Costs, Charges and Expenses** incurred by **Directors and Officers** under Insuring Clauses 1 or 2, or the **Company** under Insuring Clause 3. **Loss** does not include:

- a) taxes, fines or penalties;
 - b) matters uninsurable under the laws pursuant to which this **Policy** is construed;
 - c) punitive or exemplary damages, or the multiple portion of any multiplied damage award, except to the extent that such punitive or exemplary damages, or multiplied portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **Insureds, Insurer, this Policy or the Claim** giving rise to such damages;
 - d) the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
 - e) any amount for which the **Insured** is not financially liable or legally obligated to pay; or
 - f) the costs to modify or adapt any building or property to be accessible or accommodating, or more accessible or accommodating, to any person.
8. **Outside Entity** means:
- a) any non-profit company in which any of the **Directors and Officers** is a director, officer, trustee, governor, executive director or similar position of such non-profit company; and
 - b) any other company specifically identified by endorsement to this **Policy**.
9. **Wrongful Act** means any actual or alleged error, omission, misleading statement, misstatement, neglect, breach of duty or act allegedly committed or attempted by:
- a) any of the **Directors and Officers**, while acting in their capacity as such, or any matter claimed against any **Director and Officer** solely by reason of his or her serving in such capacity;
 - b) any of the **Directors and Officers**, while acting in their capacity as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Company**; and
 - c) the **Company**, but only with respect to Insuring Clause 3 of this Coverage Section.

C. EXCLUSIONS

1. Exclusions Applicable to All Insuring Clauses

Insurer shall not be liable for **Loss** under this Coverage Section on account of any **Claim**:

- a) for actual or alleged bodily injury, sickness, disease, death, false imprisonment, mental anguish, emotional distress, invasion of privacy of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured;
- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

- (i) any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
 - (ii) any other **Wrongful Act**, whenever occurring, which together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
- c) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
 - (ii) any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

provided, however, this exclusion shall not apply to any **Claim** brought directly, derivatively or otherwise by one or more securities holders of the **Company** in their capacity as such, or, except as to **Clean Up Costs**, to any **Non-Indemnifiable Loss** of a **Director and Officer**, or **Loss** of a **Director and Officer** for which the **Company** does not indemnify such **Director and Officer** because of either the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

For purposes of this exclusion:

Clean Up Costs means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**;

Non-Indemnifiable Loss means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, a **Director and Officer** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**;

Pollutants means any substance exhibiting any hazardous characteristics as defined by, or identified on, a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous, biological, bacterial or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials (including materials to be reconditioned, recycled or reclaimed). **Pollutants** shall also mean any other air emission or particulate, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field;

- d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law;
- e) brought or maintained by, on behalf of, in the right of, or at the direction of any **Insured** in any capacity, or any **Outside Entity**, in any respect and whether or not collusive, or

which is brought by any securities holder or member of the **Company**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Director and Officer** or the **Company**; provided, however, that **Whistleblower Conduct** by a **Director and Officer**, other than a **Director and Officer** as that term is defined in subparagraphs a or c of definition 4, shall not be considered solicitation, assistance, active participation, or intervention of a **Director and Officer**;

and provided further that this exclusion shall not apply to any **Claim** that:

- (i) is brought or maintained by any **Insured** in the form of a cross claim, third party claim or other proceeding for contribution or indemnity which is part of, and directly results from a **Claim** that is covered by this Coverage Section;
- (ii) is brought or maintained by an employee of the **Company** who is not or was not a director or officer of the **Company**, including any **Claim** brought by such employee for any actual or alleged violation of the provisions of 31 U.S.C. 3729 of the Federal False Claims Act, or any similar provision of any federal, state, local or foreign statutory law;
- (iii) is brought or maintained by any former director or officer of the **Company** and where such **Claim** is solely based upon and arising out of **Wrongful Acts** committed subsequent to the date such director or officer ceased to be a director or officer of the **Company** and where such **Claim** is first made two (2) years subsequent to the date such director or officer ceased to be a director or officer of the **Company**;
- (iv) is brought or maintained by any bankruptcy or insolvency trustee or bankruptcy appointed representative of the **Company**, or receiver, examiner, liquidator or similar official for the **Company**; or
- (v) any **Claim** brought and maintained by a **Director and Officer**, as that term is defined in subparagraphs a or c of definition 4, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.

For purposes of this exclusion, **Whistleblower Conduct** means any of the activity set forth in 18 U.S.C. Sec. 1514A(a), engaged in by a whistleblower with a federal regulatory or law enforcement agency, Member of Congress or any committee of Congress, or person with supervisory authority over the whistleblower, or an enforcement action by the whistleblower set forth in 18 U.S.C. Sec. 1514A (b);

- f) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any deliberately fraudulent or criminal act of an **Insured**; provided, however this exclusion f)(i) shall not apply unless and until there is a final judgment against such **Insured** as to such conduct; or
 - (ii) the gaining of any profit, remuneration or financial advantage to which any **Directors and Officers** were not legally entitled; provided, however this exclusion f)(ii) shall not apply unless and until there is a final judgment against such **Directors and Officers** as to such conduct.

When f) (i) or (ii) apply, the **Insured** shall reimburse the **Insurer** for any **Costs, Charges**

or Expenses;

- g) for the return by any of the **Directors and Officers** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Company** or **Outside Entity**, which payment without such previous approval shall be held to be in violation of law;
- h) against any of the **Directors and Officers** of any **Subsidiary** or against any **Subsidiary** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Directors and Officers** thereof before the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**;
- i) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
- j) for a **Wrongful Act** actually or allegedly committed or attempted by any of the **Directors and Officers** in his or her capacity as a director, officer, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with any entity other than the **Company**; provided, however, that this exclusion shall not apply to **Loss** resulting from any such **Claim** to the extent that:
 - (i) such **Claim** is based on the service of any of the **Directors and Officers** as a director, officer, trustee, governor, executive director or similar position of any **Outside Entity** where such service is with the knowledge and consent of the **Company**; and
 - (ii) such **Outside Entity** is not permitted or required by law to provide indemnification to such **Directors and Officers**; and
 - (iii) such **Loss** is not covered by insurance provided by any of the **Outside Entity's** insurer(s);
- k) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry filed or pending on or before the **Continuity Date**; or
 - (ii) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry;
- l) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act**, fact, circumstance or situation which any of the **Insureds** had knowledge of prior to the **Continuity Date** where such **Insureds** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
- m) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:

- (i) improper payroll deductions, unpaid wages or other compensation, misclassification of employee status, or any violation of any law, rule or regulation, or amendments thereto, that governs the same topic or subject; or
 - (ii) any other employment or employment-related matters brought by or on behalf of or in the right of an applicant for employment with the **Company**, or any of the **Directors and Officers**, including any voluntary, seasonal, temporary, leased or independently-contracted employee of the **Company**;
- n) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
- (i) any public offering of **Securities** undertaken or consummated by or on behalf of the **Company** ("Public Offering"), or the solicitation, sale, purchase, distribution, or issuance of any such **Securities**, whether any such activity occurs or allegedly occurs prior to, during, or after such Public Offering; or
 - (ii) any **Wrongful Act**, including without limitation any actual or alleged violation of any **Securities Law**, relating in any way to a Public Offering or to any **Securities** issued, sold or distributed pursuant to a Public Offering, whether any such **Wrongful Act** occurs or allegedly occurs prior to, during, or after such Public Offering,

provided that this exclusion shall not apply to **Claims** arising from an offer, sale or purchase of **Securities** in a transaction that is exempt from registration under the Securities Act of 1933, or any amendments thereto or any rules and regulations promulgated thereunder.

For purposes of this exclusion:

Securities means common or preferred stock or rights, warrants or options in such stock representing an ownership interest in the **Company** or a right to acquire or dispose of such interest; or notes, bonds or debentures representing a debt owed by the **Company** to the extent such instruments would be deemed securities under the federal or state laws of the United States;

Securities Law means the Securities Act of 1933, the Securities Exchange Act of 1934, or any rules or regulations of the Securities Exchange Commission adopted pursuant thereto, or any federal, state, provincial or foreign statute or common law regulating securities similar to the foregoing; or any amendments to the foregoing or any rules or regulations adopted pursuant to the foregoing; or any other federal, state, provincial or foreign law or common law relating to liability in connection with an offering of **Securities** of a **Company**, including without limitation the solicitation, sale, purchase, distribution or issuance of such **Securities**;

- o) for that portion of **Loss** which is covered under any other Coverage Section of this **Policy**.
2. Exclusions Applicable Only to Insuring Clause A3

Insurer shall not be liable for **Loss** on account of any **Claim**:

- a) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the actual or alleged breach of any contract or agreement; except and to the extent the **Company** would have been liable in the absence of such contract or agreement; or

- b) alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (i) any actual or alleged infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services; or
 - (ii) any goods or products manufactured, produced, processed, packaged, sold, marketed, distributed, advertised or developed by the **Company**.

Provided, however, the exclusions in 2a) and 2b) above shall not apply to any such **Claim** brought or maintained, directly or indirectly, by one or more securities holders of the **Company** in their capacity as such.

No **Wrongful Act** of one or more **Insureds** shall be imputed to any other **Insureds** for the purpose of determining the applicability of any of the above exclusions.

D. LIMIT OF LIABILITY AND RETENTIONS

1. The liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the Retention amounts applicable to this Coverage Section, as shown in Item C of the Declarations. Such Retentions shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable Retentions under this Coverage Section, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. As shown in Item C1 of the Declarations relating to this Coverage Section, the following Limits of Liability of the **Insurer** shall apply:
 - a) The amount set forth in Item C1a relating to this Coverage Section shall be the aggregate limit of liability for the payment of **Loss** under all Insuring Clauses for this Coverage Section, subject to additional payments for **Loss** under Insuring Clause A1 as further described in subsection b) immediately below.
 - b) The amount set forth in Item C1b relating to this Coverage Section shall be an aggregate limit of liability for the payment of **Loss** under Insuring Clause A1 in addition to the limit described in subsection a) immediately above; provided, all payments for **Loss** under the additional limits described in this subsection b) shall be excess of the limit described in subsection a) above, and excess of any other available insurance that is specifically excess to this **Policy**. Such excess insurance must be completely and fully exhausted through the payment of loss, including but not limited to defense costs thereunder, before the **Insurer** shall have any obligations to make any payments under the additional limits described in this subsection b).
 - c) The amount set forth in Item C1c of the Declarations relating to this Coverage Section shall be the maximum aggregate limit of liability for the payment of **Loss** under all Insuring Clauses for this Coverage Section. The limit of liability set forth in C1a and C1b relating to this Coverage Section shall be a part of and not in addition to the maximum aggregate limit of liability set forth in Item C1c for this Coverage Section.
3. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **Policy Period**:

- a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Act** is first made; or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to subsection E2, below.
4. The Retention applicable to Insuring Clause 2 shall apply to **Loss** resulting from any **Claim** if indemnification for the **Claim** by the **Company** is required or permitted by applicable law, to the fullest extent so required or permitted, regardless of whether or not such actual indemnification by the **Company** is made, except and to the extent such indemnification is not made by the **Company** solely by reason of the **Company's** financial insolvency.
 5. Payments of **Loss** by **Insurer** shall reduce the Limit(s) of Liability under this Coverage Section. **Costs, Charges and Expenses** are part of, and not in addition to, the Limits of Liability and payment of **Costs, Charges and Expenses** reduce the Limits of Liability. If such Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this Coverage Section are completely fulfilled and extinguished.

E. NOTIFICATION

1. The **Insureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give **Insurer** written notice of any **Claim** as soon as practicable after the **Company's** general counsel, risk manager, chief executive officer or chief financial officer (or equivalent positions) first becomes aware of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**, or respecting any **Claim** first made against the **Insureds** during the **Extended Period**, if purchased, sixty (60) days after the end of the **Extended Period**.
2. If, during the **Policy Period** or the **Discovery Period**, if purchased, any of the **Insureds** first becomes aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds**, during the **Policy Period** or the **Discovery Period**, if purchased, give written notice to **Insurer** as soon as practicable of:
 - a) a description of the **Wrongful Act** allegations anticipated;
 - b) the identity of the potential claimants;
 - c) the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
 - d) the identity of the **Insureds** allegedly involved;
 - e) the consequences which have resulted or may result; and
 - f) the nature of the potential monetary damages and non-monetary relief;

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. Notice to **Insurer** shall be given to the address shown under Item G of the Declarations for this **Policy**.

F. SETTLEMENT AND DEFENSE

1. It shall be the duty of the **Insurer** and not the duty of the **Insureds** to defend any **Claim**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **Insurer's** duty to defend any **Claim** shall cease when the Limits of Liability have been exhausted by the payment of **Loss** including **Costs, Charges and Expenses**.
2. The **Insurer** may make any investigation it deems necessary, and shall have the right to settle any **Claim**; provided, however, no settlement shall be made without the consent of the **Parent Company**, such consent not to be unreasonably withheld.
3. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Costs, Charges and Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Costs, Charges and Expenses**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s).
4. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
5. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:
 - a) the **Insureds** consent to such settlement within thirty (30) days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
 - b) such consent occurs within the first ninety (90) days after the **Claim** is first reported; and
 - c) such **Claim** is reported within the first thirty (30) days after it is made,

then, in the event the **Claim** settles as a result of such Settlement Opportunity, the Retention applicable to such **Claim** shall be waived, and any amounts paid by the **Insureds** towards the Retention shall be reimbursed by the **Insurer**.

G. OTHER INSURANCE

If any **Loss** covered under this Coverage Section is covered under any other valid and collectible insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability for this Coverage Section.

H. PAYMENT PRIORITY

1. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining Limit of Liability applicable to the **Loss**, the **Insurer** shall pay the **Loss**, subject to such Limit of Liability, in the following priority:
 - a) first, the **Insurer** shall pay any **Loss** covered under Insuring Clause A1, in excess of any applicable Retention shown in Item C of the Declarations; and
 - b) second, only if and to the extent the payment under subsection 1.a above does not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item C of the Declarations covered under any other applicable Insuring Clause.

- c) Subject to the foregoing subsection, the **Insurer** shall, upon receipt of a written request from the Chief Executive Officer of the **Parent Company**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the Chief Executive Officer of the **Parent Company** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

I. ALLOCATION

If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** (except for **Costs, Charges and Expenses**) and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.