



# ACE Westchester Advantage<sup>SM</sup> Private Company Management Liability Policy Declarations

This Policy is issued by the stock insurance company listed above.

**THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED REPORTING PERIOD, AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY. PLEASE READ THIS POLICY CAREFULLY. THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT. TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.**

<b>Policy No.</b>	Renewal of:																										
Item 1. <b>Named Insured:</b> Principal Address:   State of Incorporation:																											
Item 2. <b>Policy Period:</b> From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)																											
Item 3. <b>Limit(s) of Liability and Retention(s):</b>																											
<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">A. Single Aggregate Limit of Liability and Retention:</td> <td style="width: 20%;">Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td style="width: 20%;"></td> </tr> <tr> <td style="padding-left: 20px;"><u>Insuring Agreements Purchased:</u></td> <td style="padding-left: 20px;"><u>Limit(s) of Liability:</u> (including <b>Defense Costs</b>)</td> <td style="padding-left: 20px;"><u>Retention(s):</u></td> </tr> <tr> <td style="padding-left: 20px;"><input type="checkbox"/> Management Liability</td> <td rowspan="2" style="vertical-align: middle;">} \$ __ Aggregate Limit</td> <td style="padding-left: 20px;">\$ __ each Claim</td> </tr> <tr> <td style="padding-left: 20px;"><input type="checkbox"/> Employment Practices Liability</td> <td style="padding-left: 20px;">\$ __ each Claim</td> </tr> <tr> <td colspan="3" style="padding: 10px 0 0 0;">B. Separate Limits of Liability and Retentions:</td> </tr> <tr> <td colspan="3" style="padding: 0 0 0 20px;">Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding-left: 20px;"><u>Insuring Agreements Purchased:</u></td> <td style="padding-left: 20px;"><u>Limit(s) of Liability:</u> (including <b>Defense Costs</b>)</td> <td style="padding-left: 20px;"><u>Retention(s):</u></td> </tr> <tr> <td style="padding-left: 20px;"><input type="checkbox"/> Management Liability</td> <td style="padding-left: 20px;">\$ __ Aggregate Limit</td> <td style="padding-left: 20px;">\$ __ each Claim</td> </tr> <tr> <td style="padding-left: 20px;"><input type="checkbox"/> Employment Practices Liability</td> <td style="padding-left: 20px;">\$ __ Aggregate Limit</td> <td style="padding-left: 20px;">\$ __ each Claim</td> </tr> </table>		A. Single Aggregate Limit of Liability and Retention:	Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No		<u>Insuring Agreements Purchased:</u>	<u>Limit(s) of Liability:</u> (including <b>Defense Costs</b> )	<u>Retention(s):</u>	<input type="checkbox"/> Management Liability	} \$ __ Aggregate Limit	\$ __ each Claim	<input type="checkbox"/> Employment Practices Liability	\$ __ each Claim	B. Separate Limits of Liability and Retentions:			Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No			<u>Insuring Agreements Purchased:</u>	<u>Limit(s) of Liability:</u> (including <b>Defense Costs</b> )	<u>Retention(s):</u>	<input type="checkbox"/> Management Liability	\$ __ Aggregate Limit	\$ __ each Claim	<input type="checkbox"/> Employment Practices Liability	\$ __ Aggregate Limit	\$ __ each Claim
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Item 4. Notice to **Insurer**:

A. Notice of **Claim** or **Wrongful Act**:

ACE Westchester Specialty Group  
Professional Risk Division  
500 Colonial Center Parkway, Suite 200  
Roswell, GA 30076

B. All other notices:

ACE Westchester Specialty Group  
Professional Risk Division  
500 Colonial Center Parkway, Suite 200  
Roswell, GA 30076

Item 5. Prior or Pending Proceeding Date:

- Management Liability      \_\_\_\_\_  
 Employment Practices Liability      \_\_\_\_\_

Item 6. A. **Policy** Premium:

B. **Extended Reporting Period** Premium: \_\_\_\_\_ % of Policy Premium

**Total Amount Due:**

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative



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

I. **INSURING AGREEMENTS**

A. **Management Liability**

If Management Liability coverage is purchased as indicated in Item 3 of the Declarations:

1. **Management Liability**

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

2. **Company Reimbursement**

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

3. **Company Liability**

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

4. **Outside Entity Management Liability**

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, but only excess of (i) any indemnification provided by an **Outside Entity** and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

B. **Employment Practices Liability**

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, if such **Claim** is brought and maintained by or on behalf of:

1. any **Employee** of, or applicant for employment with the **Company** or **Outside Entity**; or
2. any natural person who is a customer or client of the **Company** or **Outside Entity**, or any other natural person or group of natural persons, including without limitation any vendor or supplier, or any group of such customers, clients, or natural persons, other than an employee or applicant for employment with the **Company** or any **Outside Entity**.

## II. DEFINITIONS

When used in this **Policy**:

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy with an inception date within thirty-six months prior to the inception date of this **Policy**, of which this **Policy** is a renewal, replacement or which it succeeds in time. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.
- B. **Claim** means:
  1. a written demand for monetary damages or non-monetary or injunctive relief; or
  2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief, commenced by: (i) service of a complaint or similar pleading; or (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges, including, with respect to Insuring Agreement B, Employment Practices Liability:
    - (a) any such administrative or regulatory proceeding by, or pending before, or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world; or
    - (b) the issuance of a notice of violation or order to show cause in connection with an audit conducted by the Office of Federal Contract Compliance Program; or
  3. a civil, criminal, administrative or regulatory investigation commenced by:
    - (a) the service upon or other receipt by any **Insured Person** of a written notice or subpoena; or
    - (b) the service upon or other receipt by any **Company** of a written notice;
 

from the investigating authority identifying such **Insured Person** as an individual, or such **Company** as an entity, respectively, against whom a proceeding described in paragraph 2 immediately above may be commenced; or
  4. a written request of the **Insured** to toll or waive a statute of limitations relating to a **Claim** described in paragraphs 1 through 3 above.

However, notwithstanding the foregoing, with respect to Insuring Agreement B, Employment Practices Liability, **Claim** shall not include a labor or grievance proceeding which is pursuant to a collective bargaining agreement.

- C. **Company** means the **Named Insured** and any **Subsidiary**, including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.
- D. **Defense Costs** means reasonable and necessary 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. **Defense Costs** do not include wages, salaries, fees or other compensation of the **Insured Persons** or **Company** employees.

- E. **Employee** means any natural person whose labor or services are engaged and directed by the **Company**, but only while acting in his or her capacity as such, including any part-time, seasonal and temporary employee or volunteer, and any natural person who is leased to the **Company**, and any natural person independent contractor working for the **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, but only if the **Company** provides indemnification to such leased person or natural person independent contractor in the same manner as is provided to the **Company's** employees.
- F. **Insured** means:
1. any **Insured Person**;
  2. except with respect to Insuring Agreement A1, Management Liability and A4, **Outside Entity** Management Liability, the **Company**.
- G. **Insured Person** means any person who was, now is or shall become:
1. a duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee), general counsel, and risk manager of the **Company**, and, where the **Company** is incorporated outside the United States, the functional equivalent;
  2. a duly elected or appointed manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company, or management committee member if it is a joint venture; and
  3. an **Employee** of the **Company**.
- H. **Insurer** means the insurance company providing this insurance.
- I. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- J. **Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies.

**Loss** does not include:

1. any amount for which the **Insured** is not financially liable or which is without legal recourse to any **Insured**;
2. taxes, fines or penalties;
3. any amount incurred by any **Insured** in any proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
4. matters uninsurable under the laws pursuant to which this **Policy** is construed;
5. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, **Stock Benefits**, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation; and

6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar.

**Loss** includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.

- K. **Named Insured** means the organization first named in Item 1 of the Declarations.
- L. **Non-Indemnifiable Loss** means **Loss** for which a **Company** has not indemnified, and is not permitted or required to indemnify, an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.
- M. **Outside Entity** means any not-for-profit organization and any other entity listed by endorsement to this **Policy**.
- N. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee) or similar executive of a **Company**, or any manager, member of the board of managers or equivalent executive of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**. In the event of a dispute between the **Company** and **Outside Entity Insured Person** over whether the **Company** requested or directed such service, the **Insurer** shall act in accordance with the decision of the **Company**.
- O. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements to this policy form.
- P. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.
- Q. **Retaliation** means retaliatory treatment on account of:
1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
  2. the filing of any claim under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
  3. the disclosure or threat of disclosure by an **Employee** of the **Company** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or
  5. any strike by any **Employee** of the **Company**.
- R. **Securities** means:
1. 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

2. 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.
- S. **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**.
- T. **Stock Benefits** means any offering, plan or agreement between the **Company** and any **Insured Person** which grants stock or stock options or stock appreciation rights as to the **Company** to such **Insured Person**, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.
- U. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:
1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company; or
  2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the board of managers or equivalent executive if such entity is a limited liability company;

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

- V. **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).

W. **Wrongful Act** means:

1. With respect to Insuring Agreement A, Management Liability, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by:
  - a. any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A1, Management Liability, and Insuring Agreement A2, **Company** Reimbursement;
  - b. the **Company**, with respect to Insuring Agreement A3, **Company** Liability; or
  - c. any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity, with respect to Insuring Agreement A4, **Outside Entity** Management Liability.
2. With respect to Insuring Agreement B, Employment Practices Liability: any **Wrongful Employment Practice** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or by the **Company**.

X. **Wrongful Employment Practice** means:

If the **Wrongful Act** relates to an **Employee** of, or applicant for employment with the **Company** or an **Outside Entity**, **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline;
7. **Retaliation**;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure.

Solely with respect to numbered paragraph 2 of Insuring Agreement B, Employment Practices Liability, **Wrongful Employment Practice** means any actual or alleged violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

III. **EXCLUSIONS**

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

- A. for bodily injury, mental anguish or emotional distress, sickness, disease or death 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. Provided, however, that this exclusion shall not apply to a **Claim** under Insuring Agreement B, Employment Practices Liability, for mental anguish or emotional distress.
- B. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, retirement benefits, disability benefits; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act or Labor Management Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act, (viii) any rule or regulation promulgated under, or any amendment to, any of the foregoing; or (viii) any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

- C. alleging, based upon, arising out of, or attributable to, any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.
- D. alleging, based upon, arising out of, or attributable to injury from false arrest, detention, or imprisonment; wrongful eviction from, wrongful entry into or invasion of right of private occupancy of a dwelling; libel, slander, defamation or disparagement; or violation of a right of privacy of a person. However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability.
- E. alleging, based upon, arising out of, or attributable to the gaining of any profit, remuneration or financial advantage to which any **Insured Person** was not legally entitled. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.
- F. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** or **Outside Entity** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to:
  1. that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, where such **Claim** is for **Retaliation** by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described above; or
  2. any **Non-Indemnifiable Loss** of an **Insured Person**, or **Loss** of an **Insured Person** for which the **Company** does not indemnify such **Insured Person** 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, **Pollutants** mean 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 or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, 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.

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**.

- G. alleging, based upon, arising out of, or attributable to 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.

- H. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding, or with respect to Insuring Agreement B, Employment Practices Liability, any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, which was filed or commenced against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 5 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.
- I. alleging, based upon, arising out of, or attributable to:
- (1) 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
  - (2) any **Wrongful Act**, including without limitation any actual or alleged violation of any **Securities Laws**, 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.

- J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured**, or after the date the **Subsidiary** ceased to be an **Insured**.
- K. alleging, based upon, arising out of, or attributable to improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Company**, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject, or any rules, regulations or amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.
- L. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability:
1. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, 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 **Insured Person** or the **Company**; provided, however, that **Whistleblower Conduct** by an **Insured Person**, other than an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G, shall not be considered solicitation, assistance, active participation, or intervention of an **Insured Person**;

and provided further that this exclusion shall not apply to:

- a. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;
- b. any **Claim** brought or maintained by an **Employee** of the **Company** who is not an **Insured Person** as that term is defined in subparagraphs 1 or 2 of definition G if such **Claim** is brought and maintained totally independent of, and totally without the solicitation, assistance, active participation or intervention of any such **Insured Persons** as defined in definition G.1 or 2;

- c. any **Claim** brought by any **Insured Person** of the **Company** who has not provided service 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, or consultant for, the **Company** for at least four years prior to such **Claim** being first made against any **Insured**;
  - d. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or
  - e. any **Claim** brought and maintained by an **Insured Person**, as that term is defined in subparagraphs 1 and 2 of definition G, of a **Company** formed and operating solely in a country other than the United States of America, Canada, or any other common law country.
2. for a **Wrongful Act** by any **Insured Person** 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 organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.
  3. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, general counsel, risk manager, governor of any **Outside Entity**, or manager, member of the board of managers, or equivalent executives, or management committee member, if the **Outside Entity** is a limited liability company or joint venture, respectively, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, 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, and intervention of, any **Outside Entity** or such person.
  4. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.
  5. alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.
- M. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement A, Management Liability, subsection 3, **Company** Liability:
1. alleging, based upon, arising out of or attributable to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or other violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.
  2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to the extent that liability would have attached to the **Company** in the absence of such contract or agreement.

3. brought or maintained by or on behalf of or in the right of a customer or client of the **Company** in connection with the actual or alleged rendering or failure to render any service to or for the benefit of such customer or client.
  4. alleging, based upon, arising out of, or attributable to (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**.
- N. The following exclusions shall apply only to any **Claim** covered, in whole or in part, under Insuring Agreement B, Employment Practices Liability:
1. alleging, based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under an express written contract or agreement. However, this exclusion shall not apply: (i) to the extent that liability would have attached to the **Insureds** in the absence of the written contract or agreement with or obligation of the **Company**; and (ii) to **Defense Costs**.
  2. for compensation earned by or due to the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any (i) back pay or front pay allegedly due as the result of discrimination, and (ii) **Defense Costs**.
  3. for medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance. However, this exclusion shall not apply to **Defense Costs**.
  4. for the cost of any remedial, preventive or other non-monetary relief including without limitation (i) any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement, or governmental authority, or (ii) any 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 or any amendments thereto or any similar federal, state, local or foreign statute, regulation, or common laws.

#### IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions C and E facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

#### V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, and spouses of any **Insured Person**, and any natural person qualifying as a domestic partner of any **Insured Person** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 3 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

## VI. EXTENDED REPORTING PERIOD

- A. If the **Insurer** or **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the additional premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period**.
- B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.
- C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

## VII. LIMITS OF LIABILITY

- A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.
- B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.
- C. If separate Limits of Liability are granted as provided in Item 3B of the Declarations:
  - 1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B.
  - 2. If more than one Insuring Agreement applies to a **Claim**, the maximum aggregate liability of the **Insurer** under all such Insuring Agreements, combined, with respect to such **Claim** shall be the largest of such applicable Limits of Liability.
  - 3. The Limit of Liability for each Insuring Agreement described in paragraphs 1 and 2 above are separate limits applicable only to each such Insuring Agreement and do not increase the **Insurer's** maximum liability under any other Insuring Agreement.
- D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

## VIII. RETENTIONS

- A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 3 of the Declarations. Such Retention 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, 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.

- B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Acts** and any **Interrelated Wrongful Acts**.
- C. No Retention shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

#### IX. NOTICE

A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or, if elected, **Extended Reporting Period**, respectively.

B. If during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of:

1. the identity of the potential claimants;
2. a description of the anticipated **Wrongful Act** allegations;
3. the identity of the **Insureds** allegedly involved;
4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
5. the consequences which have resulted or may result; and
6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** subsequently made against an **Insured** and reported to the **Insurer** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written 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**.

C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 4A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 4B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

#### X. DEFENSE AND SETTLEMENT

A. It shall be the right and duty of the **Insurer**, and not the **Insureds**, to defend any **Claim** brought against the **Insureds** even if the **Claim** is groundless, false or fraudulent. The **Insurer's** right and duty to defend includes, without limitation, the right and duty to select defense counsel.

B. The **Insurer** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted, or after the **Insurer** has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.

- C. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, 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). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.
- D. The **Insureds** shall have the right and shall be given the opportunity to effectively associate with the **Insurer** regarding the defense and negotiation of any settlement of any **Claim**.
- E. 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. The **Insurer** may make any investigation it deems necessary.
- F. If the **Insurer** recommends a settlement within the **Policy** Limit of Liability which is agreed to by the claimant ("Settlement Opportunity") and:
  - (i) the **Insureds** consent to such settlement within 30 days of the date the **Insureds** are first made aware of the Settlement Opportunity; and
  - (ii) such consent occurs within the first 90 days after the **Claim** is first reported; and
  - (iii) such **Claim** is reported within the first 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**.

#### XI. PRESUMPTIVE INDEMNIFICATION

- A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The agreement contained in this paragraph is binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.
- B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of 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.

#### XII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid 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 provided by this **Policy**. Regarding **Loss** arising out of an **Outside Entity Insured Person's** service with an **Outside Entity**, this **Policy** shall cover such **Loss**, under the applicable Insuring Agreements and subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of any indemnification provided by such **Outside Entity**, and any insurance coverage afforded to such **Outside Entity** or its executives, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

### XIII. MATERIAL CHANGES IN CONDITIONS

#### A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**;

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

#### B. If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

#### C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insured Persons** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

### XIV. PAYMENT PRIORITY

#### A. 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:

1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B,

Employment Practices Liability, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;

2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability, in excess of the Retention shown in Item 3 of the Declarations;
3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;
4. fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

- B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, 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 **Named Insured** 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.

#### XV. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

#### XVI. NON-RESCINDABILITY

This **Policy** shall not be rescinded by the **Insurer** in whole or in part for any reason.

#### XVII. TERMINATION OF THE **POLICY**

- A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 30 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 30 day period;
3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

This **Policy** may be canceled by the **Insurer** only in the event of non-payment of premium by the **Named Insured**.

- B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

#### XVIII. TERRITORY AND VALUATION

- A. All premiums, limits, Retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is

denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or, if not published on such date, the next date of publication of *The Wall Street Journal*.

B. Where legally permissible, coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

#### XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

#### XX. ACTION AGAINST THE INSURER

Except as provided in Section XXIV, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

#### XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively, "**Bankruptcy Law**") then, in regard to a covered **Claim** under this **Policy**, the **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

#### XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

#### XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

#### XXIV. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process described in this section.

All such disputes and controversies shall be submitted to non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

The ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with the ADR process under this section.

#### XXV. 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 **Defense Costs**) 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**.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective
			to
Issued By (Name of Insurance Company)			

**FIDUCIARY LIABILITY INSURING AGREEMENT**

It is agreed that the **Policy** is amended as follows:

1. Items 3 and 5 of the Declarations are deleted in their entirety and replaced with the following:

Item 3. Limit(s) of Liability and Retention(s):			
A. Single Aggregate Limit of Liability and Retention:		Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<u>Insuring Agreements Purchased:</u>		Limit(s) of Liability (including <b>Defense Costs</b> ):	Retention(s):
<input type="checkbox"/> Management Liability	} \$ _____ Aggregate Limit		\$ _____ each <b>Claim</b>
<input type="checkbox"/> Employment Practices Liability			\$ _____ each <b>Claim</b>
<input type="checkbox"/> Fiduciary Liability			\$ _____ each <b>Claim</b>
B. Separate Limit(s) of Liability and Retentions:		Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<u>Insuring Agreements Purchased:</u>		Limit(s) of Liability (including <b>Defense Costs</b> ):	Retention(s):
<input type="checkbox"/> Management Liability	\$ _____ Aggregate Limit		\$ _____ each <b>Claim</b>
<input type="checkbox"/> Employment Practices Liability	\$ _____ Aggregate Limit		\$ _____ each <b>Claim</b>
<input type="checkbox"/> Fiduciary Liability	\$ _____ Aggregate Limit		\$ _____ each <b>Claim</b>
C. <b>Voluntary Compliance Loss and Delinquent Filer Penalties:</b>			
i. Sublimit of Liability:	\$ _____		
ii. Retention	\$0		
iii. Not provided			
Item 5. Prior or Pending Proceeding Date:			
<input type="checkbox"/> Management Liability	_____		
<input type="checkbox"/> Employment Practices Liability	_____		
<input type="checkbox"/> Fiduciary Liability	_____		

2. Section I, Insuring Agreements, is amended by adding the following at the end thereof:

C. Fiduciary Liability, **Voluntary Compliance Loss and Delinquent Filer Penalties:**

1. Fiduciary Liability

The **Insurer** shall pay on behalf of the **Insureds** all **Loss** which the **Insureds** have become legally obligated to pay by reason of a **Claim** first made against them during

the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** by the **Insureds**, or by any **Employee** for whom such **Insured** is legally responsible.

## 2. **Voluntary Compliance Program and Delinquent Filer Penalties**

If provided, the **Insurer** shall pay **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Compliance Loss** of the **Insureds** relating to a **Voluntary Compliance Notice** first given to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, or within 30 days after the end of the **Policy Period** or, if elected, the **Extended Reporting Period**, provided the **Voluntary Compliance Loss** is incurred after such **Voluntary Compliance Notice** is first given to the **Insurer**.

## 3. Section II, Definitions, is amended by adding the following definitions:

**Administration** means: (i) counseling employees, beneficiaries or **Plan** participants with respect to any **Plan**; (ii) providing interpretations with respect to any **Plan**; (iii) handling records in connection with any **Plan**; and, (iv) enrolling, terminating or canceling employees, participants and beneficiaries under any **Plan**.

**Delinquent Filer Penalties** means penalties assessed by the U.S. Department of Labor or the IRS under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal thereof.

**Employee Benefit Law** means the Employee Retirement Income Security Act of 1974 (“**ERISA**”), as amended (including but not limited to amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996 as it relates to sections 102(b) and 104(b)(1) of **ERISA**, the Newborns’ and Mothers’ Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women’s Health and Cancer Rights Act of 1998, as amended), or any similar common or statutory law anywhere in the world (including without limitation the English Pension Scheme Act 1993 and the English Pension Act 1995, all as amended), and any rules and regulations promulgated thereunder. Solely with respect to paragraph 3b of the definition of **Wrongful Act**, **Employee Benefit Law** also includes: (i) Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, popularly known as the HIPAA Privacy Regulations; and, (ii) any workers’ compensation, unemployment insurance, social security, government-mandated disability benefits or similar law.

**ESOP** means any employee stock ownership plan as defined in any **Employee Benefit Law**, or any other **Pension Plan** under which investments are made primarily in securities of the **Company**, or whose assets at any time within twelve months prior to the inception date of this **Policy** were comprised of 20% or more of securities of the **Company**.

**Fiduciary** means, with respect to a **Plan**, a fiduciary as defined in an **Employee Benefit Law**, or a person or entity who exercises discretionary control with respect to the management of the **Plan** or the disposition of **Plan** assets.

**Pension Plan** means any employee pension benefit plan as defined in any **Employee Benefit Law**, other than any **ESOP**, which was, is or shall be sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company**.

**Plan** means:

1. any **Pension Plan** or any **Welfare Plan** established anywhere in the world which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees, directors, officers, governors, management committee members, members of the board of managers and/or natural person general partners of the **Company**. However, any **Pension Plan** or **Welfare Plan** created or acquired by the **Company** during the **Policy Period** shall be included in this definition only if and to the extent coverage is afforded with respect thereto pursuant to subsection A of section XIII of this **Policy**;
2. any government-mandated insurance for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, but solely for a **Wrongful Act** as defined in subsection 3b of the definition of **Wrongful Act**;
3. any deferred compensation plan, supplemental executive retirement plan, top-hat plan, or excess benefit plan for a select group of management or highly compensated directors, officers, governors, management committee members, members of the board of managers, natural person general partners and/or **Employees** of the **Company**; and
4. any other plan, fund, trust or program specifically included in the definition of **Plan** pursuant to an endorsement to this **Policy**.

However, **Plan** does not include any multiemployer plan as defined in any **Employee Benefit Law**.

**Voluntary Compliance Loss** means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent noncompliance by a **Plan** with any statute, rule or regulation if participation by the **Insured** in such **Voluntary Compliance Program** results in the **Insured** obtaining a "No Action" letter from the governmental authority; provided that **Voluntary Compliance Loss** shall not include: (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines, penalties, sanctions or **Defense Costs** 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.

**Voluntary Compliance Notice** means prior written notice to the **Insurer** by the **Insured** of the **Insured's** intent to enter into a **Voluntary Compliance Program**.

**Voluntary Compliance Program** means a written agreement to correct an inadvertent **Plan** defect under a voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor or other similar governmental authority, including without limitation

the Employee Plans Compliance Resolution System, the Audit Closing Agreement Program, the Voluntary Compliance Resolution Program, the Walk-in Closing Agreement Program, the Administrative Policy Regarding Self-Correction, the Tax Sheltered Annuity Voluntary Correction Program, the Delinquent Filer Voluntary Compliance Program, and the Voluntary Fiduciary Correction Program, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the U.S. Internal Revenue Service during the **Policy Period**, or during the policy period of a policy issued by the **Insurer** of which this **Policy** is a continuous renewal.

**Welfare Plan** means any:

- (i) employee welfare benefit plan as defined in an **Employee Benefit Law**, including without limitation any plan from which participants may choose among two or more benefits consisting of cash and qualified benefits; and
- (ii) any cafeteria plan, dependent care assistance program, and fringe benefit and voluntary employees' beneficiary association as defined in sections 125, 129, 132 and 501(c)(9) of the U.S. Internal Revenue Code of 1986, as amended,

where sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, solely for the benefit of current or former employees, directors, officers, governors, management committee members, members of the board of managers or natural person general partners of the **Company**.

4. Section II, Definitions, is amended by amending the following definitions:

A. **Claim** is amended by deleting paragraph 4 in its entirety and replacing it with the following:

4. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority anywhere in the world, including without limitation the Pensions Ombudsman appointed by the United Kingdom Secretary of State for Social Services or the United Kingdom Occupational Pensions Regulatory Authority, commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as an individual or entity against whom a civil, administrative or regulatory proceeding may be commenced; or
5. a written request of the **Insured** to toll or waive a statute of limitations relating to a potential **Claim** described in paragraphs 1 through 4 above.

B. **Insured** is amended by adding the following at the end thereof:

3. solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, the **Company** and **Plans**.

C. **Insured Person** is amended by adding the following at the end thereof:

4. solely for purposes of coverage under Insuring Agreement C, Fiduciary Liability **Voluntary Compliance Program** and **Delinquent Filer Penalties**, any one or more natural persons who were, now are, or shall become duly elected or appointed trustees, directors, officers or employees of any **Plan**.

D. **Loss** is amended by deleting the first paragraph in its entirety and replacing it with the following:

**Loss** means damages (including, with respect to Insuring Agreement B, Employment Practices Liability, front-pay and back-pay), judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies, and if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

**Loss** is further amended by deleting numbered paragraph 2 in its entirety and replacing it with the following:

2. taxes, fines or penalties, except, solely with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**:
  - (a) the five percent (5%) or less, or the twenty percent (20%) or less, civil penalties imposed upon an **Insured** as a **Fiduciary** under sections 502(i) or (l), respectively of **ERISA**;
  - (b) civil fines or penalties imposed by the Pension Ombudsman appointed by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder; provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this **Policy**; or
  - (c) solely with respect to Insuring Agreement C2, if provided, **Voluntary Compliance Loss** and **Delinquent Filer Penalties**.

**Loss** is further amended by adding the following immediately after numbered paragraph 6:

7. any obligation under a **Plan** to pay to a participant or beneficiary of the **Plan** money or property, or to grant a privilege, right, option or perquisite, including any such obligation of any settlement or judgment which constitutes any such obligation, unless and to the extent that such obligation is based upon a covered **Wrongful Act** by an **Insured Person** and such obligation is payable as a personal obligation of such **Insured Person**.

E. **Wrongful Act** is amended by adding the following at the end thereof:

3. With respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

- a. any violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** under any **Employee Benefit Law** with respect to any **Plan**, or any matter claimed against any **Insured** solely by reason of his, her or its status as a **Fiduciary**, the **Plan** or the **Company**, but solely with respect to the **Plan**, or
- b. any act, error or omission actually or allegedly committed or attempted solely in the **Administration** of a **Plan**; or
- c. solely with respect to an **Insured Person**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or in the **Administration** of any multiemployer plan as defined in an **Employee Benefit Law**, but only if such service is at the specific written request or direction of the **Named Insured** and such multiemployer plan is added by specific written endorsement to this **Policy**, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this **Policy** extend to a **Claim** against a multiemployer plan itself, its contributing employer(s), or any other fiduciaries or administrators of such plan, other than an **Insured Person** as set forth in this paragraph 3c.

5. Section III, Exclusions, is amended as follows:

- A. Exclusion B is amended by deleting the last sentence thereof in its entirety and replacing it with the following:

However, this exclusion shall not apply to that part of any **Claim** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, and shall not apply to that part of any **Claim** under Insuring Agreement B, Employment Practices Liability, for **Retaliation**.

- B. By adding the following at the end thereof:

The following exclusions shall apply only to any **Claim** covered in whole or in part under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**:

- 1. for benefits due or to become due under any **Plan**, benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or that portion of any settlement or judgment which constitutes such benefits. However, this exclusion shall not apply to **Defense Costs** or to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**.
- 2. alleging, based upon, arising out of, or attributable to the actual or alleged breach of any oral, written, or express contract or agreement. However, this exclusion shall not apply to: (i) **Defense Costs**; and, (ii) to the extent that liability would have attached to the **Company** in the absence of such contract or agreement, or where the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.
- 3. alleging, based upon, arising out of, or attributable to the failure to collect from the **Company** contributions it owed to any **Plan**, or the failure to fund a **Plan** in accordance with **ERISA**, any similar state or local law, or the **Plan** instrument. However, this exclusion shall not apply to **Defense Costs**.

4. for discrimination in violation of any law other than: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits or similar law; (ii) the Employee Retirement Income Security Act of 1974; (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act or Labor Management Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Occupational Safety and Health Act; or (vii) any similar state or local laws, or any rules and regulations promulgated thereunder and amendments thereto.
6. Section VI, Extended Reporting Period, is amended by deleting Subsection C in its entirety and replacing it with the following:
- C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the immediately preceding **Policy Period**, and the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C of the Declarations for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability or the **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.
7. Section VII, Limits of Liability, is amended as follows:
- A. By deleting Subsection B in its entirety and replacing it with the following:
    - B. If a single aggregate Limit of Liability is granted as provided in Item 3A of the Declarations, the amount stated in Item 3A of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the Limit of Liability set forth in Item 3A of the Declarations and in no way shall be deemed to increase the Limit of Liability as set forth therein.
  - B. By deleting Subsection C.1 in its entirety and replacing it with the following:
    1. The maximum aggregate liability of the **Insurer** for all **Loss** under each Insuring Agreement resulting from all **Claims** first made during the **Policy Period** shall be the respective Limit of Liability for such Insuring Agreement as set forth in Item 3B. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability set forth in Item 3C of the Declarations is the maximum aggregate limit of the **Insurer's** liability for each **Policy Period** and, if elected, the **Extended Reporting Period**, for all **Voluntary Compliance Loss** and **Delinquent Filer Penalties**. The **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability is part of, and not in addition to, the respective Limit of Liability set forth in Item 3B of the Declarations and in no way shall be deemed to increase the respective Limit of Liability as set forth therein.

C. By deleting Subsection D in its entirety and replacing it with the following:

D. **Defense Costs** shall be part of and not in addition to the applicable Limit(s) of Liability shown in Item 3 and **Voluntary Compliance Loss** and **Delinquent Filer Penalties** Sublimit of Liability shown in Item 3C, and **Defense Costs** shall reduce such Limit(s) of Liability. If the Limit(s) of Liability are exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XIV, Payment Priority, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

8. Section XIII, Material Changes in Conditions, is amended by:

A. Deleting Subsection A in its entirety and replacing it with the following:

A. If, during the **Policy Period**, the **Company**:

1. acquires voting securities in another organization or creates another organization which does not have securities registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933 ("**Privately-held Organization**"), or a not-for-profit organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any **Privately-held Organization** or a not-for-profit organization by merger into or consolidation with the **Company**; or
3. with respect to Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, creates a **Plan**,

then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons**, and **Plan** shall be covered under this **Policy** but only with respect to **Claims for Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization or **Plan**, as reflected in the then most recent consolidated financial statements of the organization, or most recent financial statements of the **Plan**, as applicable, exceed 25% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, or 25% of the total assets of the **Plan** as reflected in its most recent financial statements, as applicable, coverage shall be provided for such acquired or created organization or **Plan** for a period of 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization or **Plan** shall terminate 90 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. By adding the following at the end thereof:

D. Termination of a **Plan**

If before or during the **Policy Period** a **Plan** is terminated, sold or run-off, coverage with respect to such **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such **Plan** was terminated, sold or run-off.

E. Other Organizational Changes

Coverage with respect to an **Insured**, or to a **Plan** under Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, if purchased, is afforded only for **Wrongful Acts** committed or allegedly committed after the effective time such **Insured** or **Plan** became an **Insured** and prior to the effective time that such **Insured** or **Plan** ceases to be an **Insured** or **Plan**.

9. Section XIV, Payment Priority, is deleted in its entirety and replaced with the following:

XIV. PAYMENT PRIORITY

- A. 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:
1. first, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A1, Management Liability, and any **Loss** of an **Insured Person** covered under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, for which the **Company** is not required or permitted by law to indemnify, in excess of any applicable Retention shown in Item 3 of the Declarations;
  2. second, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A2, **Company** Reimbursement, and any **Loss** indemnified by the **Company** under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability, **Voluntary Compliance Program** and **Delinquent Filer Penalties**, in excess of the Retention shown in Item 3 of the Declarations;
  3. third, the **Insurer** shall pay any **Loss** covered under Insuring Agreement A4, **Outside Entity** Management Liability, in excess of any applicable Retention shown in Item 3 of the Declarations;
  4. fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable Limit of Liability, the **Insurer** shall pay any **Loss** in excess of the Retention shown in Item 3 of the Declarations covered under Insuring Agreement A3, **Company** Liability.

10. Section XXI, Bankruptcy, is amended by deleting the first paragraph thereof in its entirety and replacing it with the following:

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement 1A, Management Liability, and under Insuring Agreement B, Employment Practices Liability or Insuring Agreement C, Fiduciary Liability for which the **Company** is not permitted or required to indemnify the **Insured Person**, prior to paying **Loss** under any other Insuring Agreement.

All other terms and conditions of this **Policy** remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period	Effective
			<b>to</b>
Issued By (Name of Insurance Company)			

**EPL INSURING AGREEMENT AMENDED TO INCLUDE WAGE AND HOUR CLAIMS DEFENSE COSTS COVERAGE ONLY**

It is agreed that the **Policy** is amended as follows:

1. Section I, Insuring Agreements, Insuring Agreement B, Employment Practices Liability, is amended by addition of the following:

If Employment Practices Liability coverage is purchased as indicated in Item 3 of the Declarations:

The **Insurer** shall pay on behalf of the **Insureds** all **Defense Costs** for which the **Insureds** become legally obligated to pay by reason of a **Wage and Hour Claim** first made against the **Insureds** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**. The coverage afforded under this Insuring Agreement is subject to the applicable Limit of Liability stated in Item 3 of the Declarations, except for **Wage and Hour Claims** brought or maintained as **Multiple Plaintiff Claims**. Respecting such **Multiple Plaintiff Claims**, the maximum limit of the **Insurer's** liability for all **Defense Costs** in the aggregate arising from all such **Multiple Plaintiff Claims** shall be \$100,000 (hereinafter known as the **Sub-limit of Liability**). This **Sub-limit of Liability** shall be part of and not in addition to the otherwise applicable aggregate Limit of Liability stated in Item 3 of the Declarations, and will in no way serve to increase such Limit of Liability.

This **Policy** shall not afford any coverage for **Loss** arising out of any **Wage and Hour Claim**, or attributable solely to any actual or alleged violation of any **Wage and Hour Law(s)**, other than **Defense Costs** subject to the above **Sub-limit of Liability**.

In the event a **Multiple Plaintiff Claim** alleges any violation(s) of any **Wage and Hour Law(s)**, as well as any covered **Wrongful Employment Practice(s)**, the **Sub-limit of Liability** shall apply to those **Defense Costs** attributable to that portion of the **Multiple Plaintiff Claim** alleging violation(s) of any **Wage and Hour Law(s)**. The applicable Limit of Liability stated in Item 3 of the Declarations shall apply to those **Defense Costs**, and all other **Loss**, attributable to that portion of the **Multiple Plaintiff Claim** alleging covered **Wrongful Employment Practices**.

2. Section III, Exclusions, is amended by deleting Exclusions K and N.2, and the phrase "(iii) the Fair Labor Standards Act (except the Equal Pay Act)" contained in Exclusion B, in their entirety, and by adding the following:

With respect to all Insuring Agreements, the **Insurer** shall not be liable for **Loss** attributable to that portion of any **Claim**:

- alleging, based upon, arising out of, or attributable to any violation of any California state or local **Wage and Hour Law**.

- which is brought or made in California alleging, based upon, arising out of, or attributable to any violation of any **Wage and Hour Law**.
3. Solely for purposes of this endorsement:

**Multiple Plaintiff Claim** means any **Claim** brought as a class action, whether certified or not; brought by more than one claimant or plaintiff; or brought by one claimant or plaintiff and joined or consolidated with another **Claim(s)** brought by one claimant or plaintiff.

**Wage and Hour Claim** means any **Claim** solely alleging, based upon, arising out of, or attributable to: (i) any violation of any **Wage and Hour Law**; and/or (ii) improper payroll deductions, unpaid wages or overtime pay for hours actually worked or labor actually performed, or wages earned by or due to the claimant in the course of employment but not paid (including any unpaid salary, hourly pay, on-call time or overtime pay), or any violation of any law, rule or regulation (whether statutory or common law, or otherwise) that governs the same topic or subject.

**Wage and Hour Law** means: (i) the Fair Labor Standards Act (except the Equal Pay Act), or any rule or regulation promulgated thereunder or any amendment thereto, or any provision of any federal, state, local or foreign statutory law or common law similar to any of the foregoing; and/or (ii) any law, rule or regulation (whether statutory or common law, or otherwise) governing or relating to: (a) the payment of wages, including payment of unpaid salary, hourly pay, on-call time and overtime pay; and/or (b) the classification of employees for purposes of determining employees' eligibility for compensation under such law, rules or regulations.

**Wrongful Act** means, with respect to the Insuring Agreement contained in this endorsement, any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity, or by the **Company**.

All other terms and conditions of this **Policy** remain unchanged.