



**BEAZLEY PRACTICE PROTECT**

THIS IS A CLAIMS-MADE AND REPORTED POLICY IN WHICH **COSTS, CHARGES AND EXPENSES** AND **INQUIRY COSTS** ARE INCLUDED WITHIN AND SUBJECT TO THE LIMITS OF LIABILITY. INSURING CLAUSE I.B. OF COVERAGE PART 5: INFORMATION SECURITY AND PRIVACY LIABILITY PROVIDES FIRST PARTY COVERAGE ON AN INCIDENT DISCOVERED AND REPORTED BASIS. READ THIS POLICY CAREFULLY.

The Declarations along with the **Application** and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

In consideration of the payment of the premium, in reliance on the **Application** and subject to all of the provisions of this Policy and the Declarations, Underwriters and the **Insureds** agree as follows.

**DECLARATIONS**

**Policy No:** {Response}

**Item A. Named Entity:**

{Response}

**Principal Address:**

{Response}

**Structure of Named Entity (Partnership, LLP, or LLC):**

{Response}

**Item B. Policy Period:**

**From:** {Response}

**To:** {Response}

Both days {Response} Local Time at the Principal Address stated in Item A.

**Item C. Limits of Liability:**

1. Coverage Part 1: Management Liability:

{Response} in the aggregate all **Claims, Investigations** and **Inquiries** under Coverage Part 1: Management Liability.

2. Coverage Part 2: Outside Position Liability:  

{Response} in the aggregate all **Claims** and **Investigations** under Coverage Part 2: Outside Position Liability.
3. Coverage Part 3: Employment Practices Liability:
  - (i) {Response} in the aggregate all **Claims** under Coverage Part 3: Employment Practices Liability, but sublimited to:
  - (ii) {Response} in the aggregate all **Costs, Charges and Expenses** resulting from all **Wage and Hour Claims** under Insuring Clause I.D. of Coverage Part 3: Employment Practices Liability, and
  - (iii) {Response} in the aggregate all **Employment Events** under Insuring Clause I.E. of Coverage Part 3: Employment Practices Liability.
4. Coverage Part 4: Fiduciary Liability:
  - (i) {Response} in the aggregate all **Claims** and **Investigations** under Coverage Part 4: Fiduciary Liability, but sublimited to:
  - (ii) {Response} in the aggregate all **Voluntary Compliance Fees and Costs, Charges and Expenses** under Insuring Clause I.D. of Coverage Part 4: Fiduciary Liability.
5. Coverage Part 5: Information Security and Privacy Liability:
  - (i) {Response} in the aggregate all **Claims** under Coverage Part 5: Information Security and Privacy Liability, but sublimited to:
  - (ii) {Response} in the aggregate all **Privacy Notification Costs** under Insuring Clause I.B. of Coverage Part 5: Information Security and Privacy Liability, and
  - (iii) {Response} in the aggregate all **Costs, Charges and Expenses** and **Penalties** under Insuring Clause I.C. of Coverage Part 5: Information Security and Privacy Liability
6. All Coverage Parts:  

{Response} in the aggregate for all Coverage Parts combined, including all **Claims, Investigations, Inquiries** and incidents.

Any such Sublimits of Liability shall be part of, and not in addition to, the overall Limits of Liability stated above.

**Item D. Additional Excess Limit of Liability for Non-Partner Executives**

{Response} in the aggregate all **Claims** against, **Investigations** of and **Inquiries** received by **Non-Partner Executives** under Insuring Clause I.A. of Coverage Part 1: Management Liability.

**Item E. Retentions:**

Coverage Part 1: Management Liability

{Response} each **Claim, Investigation** or **Inquiry** under Insuring Clause I.A.

{Response} each **Claim, Investigation** or **Inquiry** under Insuring Clause I.B.

{Response} each **Claim** or **Investigation** under Insuring Clause I.C.

Coverage Part 2: Outside Position Liability

{Response} each **Claim** or **Investigation** under Insuring Clause I.A.

{Response} each **Claim** or **Investigation** under Insuring Clause I.B.

Coverage Part 3: Employment Practices Liability

{Response} each **Claim** under Insuring Clause I.A.

{Response} each **Claim** under Insuring Clause I.B.

{Response} each **Claim** under Insuring Clause I.C.

{Response} each **Wage and Hour Claim** under Insuring Clause I.D.

{Response} each **Employment Event** under Insuring Clause I.E.

Coverage Part 4: Fiduciary Liability

{Response} each **Claim** or **Investigation** under Insuring Clause I.A.

{Response} each **Claim** or **Investigation** under Insuring Clause I.B.

{Response} each **Claim** or **Investigation** under Insuring Clause I.C.

{Response} each **Voluntary Compliance Notice** under Insuring Clause I.D.

Coverage Part 5: Information Security and Privacy Liability

{Response} each **Claim** under Insuring Clause I.A.



{Response} each incident, event or related incidents or events giving rise to an obligation to pay **Privacy Notification Costs** pursuant to Insuring Clause I.B.

{Response} each **Claim** under Insuring Clause I.C.

**Item F. Premium:**

{Response}

**Item G. Optional Extension Period:**

1. **Premium:** {Response}% of the total premium as provided in Clause XIV. of the General Terms and Conditions.

2. **Length:** {Response}

**Item H. Predetermined Run-Off Period:**

1. **Premium:** {Response}% of the total premium as provided in Clause XIV. of the General Terms and Conditions.

2. **Length:** {Response}

**Item I. Notification pursuant to Clauses IV. and V. of the General Terms and Conditions shall be given to:**

In respect of Coverage Parts 1 through 4:

Beazley Group,  
Attn: Claims Department,  
30 Batterson Park Road,  
Farmington,  
Connecticut 06032,  
United States of America.

e-mail: [claims@beazley.com](mailto:claims@beazley.com)

In respect of Coverage Part 5:

Beazley Group,  
Attn: Beth Diamond,  
1270 Avenue of the Americas, 12th Floor  
New York,  
New York 10020,  
United States of America.

e-mail: [bbr.claims@beazley.com](mailto:bbr.claims@beazley.com)

Privacy Breaches under Insuring Clause I.B.:

Email: [bbr.claims@beazley.com](mailto:bbr.claims@beazley.com)  
Toll-Free 24-Hour Hotline: (866) 567-8570  
(Emails and call reports from the toll-free hotline are forwarded to the Breach Response Services Team for response)

**Item J. Notification pursuant to Clause XX. of the General Terms and Conditions shall be given to:**

{Response}

**Item K. Outside Entities:**

{Response}

**Item L. Prior and Pending Litigation Date:**

Coverage Part 1: Management Liability

{Response}

Coverage Part 2: Outside Position Liability

{Response}

Coverage Part 3: Employment Practices Liability

{Response}

Coverage Part 4: Fiduciary Liability

{Response}

Coverage Part 5: Information Security and Privacy Liability

{Response}

**Item M. Choice of Law:**

{Response}

**Dated in London:** {Response}

**BEAZLEY PRACTICE PROTECT**

**General Terms and Conditions**

**I. DEFINITIONS**

The following terms whenever used in this Policy in boldface type shall have the meanings indicated. Any other terms whenever used in this Policy in boldface type which are not defined below shall have the meanings indicated in the Coverage Parts.

A. **“Application”** means:

1. the completed and signed application for this Policy including any written materials submitted therewith; and
2. with respect to Coverage Part 4: Fiduciary Liability, any publicly available documents that are filed by the **Named Entity** or a **Plan** prior to the inception date of this Policy with the Internal Revenue Service, Department of Labor or Pension Benefit Guaranty Corporation or any similar federal, state, local or foreign regulatory agency,

all of which shall be deemed part of this Policy, as if physically attached.

B. **“Attorney”** means an attorney, lawyer, counsel, special counsel, of counsel, notary, arbitrator, mediator, lobbyist, agent to title insurance company, administrator, executor, trustee, receiver, conservator, guardian, or similar fiduciary, agent or advisor.

C. **“Claim”** means:

1. any written demand for monetary damages, non monetary relief, injunctive relief or other relief against any of the **Insureds**;
2. any civil, criminal, administrative, regulatory, arbitration or mediation proceeding or other alternative dispute resolution process initiated against any of the **Insureds**, including any appeal from any such proceeding;
3. any extradition proceeding initiated against any of the **Insured Persons**, or the arrest and detainment or incarceration for more than twenty-four (24) hours of any of the **Insured Persons** solely with respect to their status as **Insured Persons** of the **Professional Entity**, by any law enforcement authority in a foreign jurisdiction in conjunction with any proceeding described in 2. above or an **Investigation** or **Inquiry**;

4. any written request received by any of the **Insureds** to toll a period or statute of limitation;
5. solely for the purpose of coverage afforded under Insuring Clause I.D. of Coverage Part 4: Fiduciary Liability, a **Voluntary Compliance Notice**;
6. solely for the purpose of coverage afforded under Insuring Clause I.A. of Coverage Part 5: Information Security and Privacy Liability for an incident described in Clause I.W.5.(a), a demand received by any of the **Insureds** to fulfill the **Professional Entity's** contractual obligation to provide notice of such incident pursuant to a **Breach Notice Law**; or
7. solely for the purpose of coverage afforded under Insuring Clause I.C. of Coverage Part 5: Information Security and Privacy Liability, a **Regulatory Proceeding**,

but shall not include any **Investigation** or **Inquiry**.

D. **“Costs, Charges and Expenses”** means:

1. reasonable and necessary legal fees and expenses including reasonable and necessary expert fees incurred by the **Insureds** in defense and appeal of any **Claim** or in responding to any **Investigation** and cost of attachment or similar bonds, and
2. in respect of coverage afforded under Clause I.C.3., reasonable costs (other than collateral) for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Persons** for bail or its equivalent required by a court in any foreign jurisdiction,

but shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Persons**.

E. **“Employee”** means all persons whose labor or service is, was, or will be engaged by and directed by the **Professional Entity**, or who are, were, or will be paid through the payroll of the **Professional Entity**, or any other persons who are, were, or will be acting on behalf of the **Professional Entity** including:

1. part-time, seasonal, temporary, contract, leased and volunteer workers for the **Professional Entity**; and
2. independent contractors for the **Professional Entity**.

F. **“Executive Officer”** means the chairperson, managing partner, executive or management committee members, chief executive officer, chief operating officer, president, chief financial officer, chief administration officer, in-house general counsel, risk manager,

director of human resources or an individual acting in a similar capacity with the **Named Entity**.

G. **“Insured Persons”** means:

1. all persons who were, now are, or shall be partners (whether equity income or otherwise), managers, shareholders, members, trustees, committee members, directors, officers, principals, board members or executives of the **Professional Entity** or a **Plan** and all persons serving in a functionally equivalent role for the **Professional Entity** or a **Plan** operating or incorporated outside the United States;
2. all persons of the **Professional Entity** approved by the Solicitors Regulation Authority to perform the functions of compliance officers for legal practice or compliance officers for finance and administration;
3. solely to the extent any **Claim** is for **Wrongful Employment Practices**, all persons who were, now are, or shall be **Employees** of the **Professional Entity**;
4. solely for the purpose of coverage afforded under Coverage Part 4: Fiduciary Liability, all persons who were, now are, or shall be **Employees** of the **Professional Entity** or a **Plan**;
5. solely for the purpose of coverage afforded under Coverage Part 5: Information Security and Privacy Liability, all persons who were, now are, or shall be **Employees** of the **Professional Entity**; and
6. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** or **Investigation** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** or **Investigation** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner,

including their estates, heirs, legal representatives trusts, estate planning vehicles or assigns in the event of their death, incapacity or bankruptcy.

H. **“Insureds”** means:

1. the **Professional Entity**;
2. the **Insured Persons**; and
3. solely for the purpose of coverage afforded under Coverage Part 4: Fiduciary Liability, any **Plan**.



- I. **“Interrelated Wrongful Acts”** means **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
  
- J. **“Investigation”** means
  - 1. solely for the purpose of coverage afforded under Coverage Part 1: Management Liability, any formal investigation of any of the **Insureds** by a **Regulatory Authority**:
    - (a) once any such **Insured** is identified in writing by such **Regulatory Authority** as a person or entity against whom a **Claim** may be brought, including without limitation receipt of a target letter, or
    - (b) after the service of a subpoena or other similar written request compelling witness testimony or document production upon any such **Insured**, or
    - (c) after any such **Insured** has been identified in a Wells Notice, target letter or other written notice describing actual or alleged violations of any law by any such **Insured**; or
  - 2. solely for the purpose of coverage afforded under Coverage Part 2: Outside Position Liability, any formal investigation of any of the **Insured Persons** by a **Regulatory Authority**:
    - (a) once any such **Insured Persons** are identified in writing by such **Regulatory Authority** as a person against whom a **Claim** may be brought, including without limitation receipt of a target letter, or
    - (b) after the service of a subpoena or other similar written request compelling witness testimony or document production upon any such **Insured Persons**, or
    - (c) after any such **Insured Persons** have been identified in a Wells Notice, target letter or other written notice describing actual or alleged violations of any law by any such **Insured Persons**; or
  - 3. solely for the purpose of coverage afforded under Coverage Part 4: Fiduciary Liability, any fact-finding investigation of any of the **Insureds** by the Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency located outside the United States.
  
- K. **“Joint Venture”** means any corporation, partnership, joint venture, association or other entity (other than a **Subsidiary**) over which the **Named Entity** directly or indirectly:
  - 1. owns or controls at least thirty three percent (33%), but no more than fifty percent (50%), of the voting, appointment or designation power for the selection of the partners of a partnership, the board of directors of a corporation, the members of

the management board of a limited liability corporation or with respect to entities operating or organized outside the United States, persons serving in a functionally equivalent role; or

2. has the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Professional Entity** to elect, appoint or designate at least thirty three percent (33%), but no more than fifty percent (50%), of the partners of a partnership, the board of directors of a corporation, the management board of a limited liability corporation or with respect to entities operating or organized outside of the United States, persons serving in a functionally equivalent role,

provided, that this Policy only provides coverage for any **Wrongful Act** committed or any conduct undertaken while the **Named Entity** had such ownership or control of such corporation, partnership, joint venture, association or other entity.

L. **“Loss”** means:

1. damages, judgments, settlements and **Costs, Charges and Expenses** incurred by any of the **Insureds**,
2. **Inquiry Costs** incurred by any of the **Insured Persons**,
3. solely for the purpose of coverage afforded under Coverage Part 3: Employment Practices Liability, the cost of training, re-education and sensitivity development programs which the **Insureds** become obligated to institute by reason of a judgment or arbitration, subject to a maximum sublimit of 10% of the Limit of Liability stated in Item C.3.(i) of the Declarations or USD 1,000,000 (whichever amount is the lessor) for all such costs, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.3.(i) of the Declarations,
4. solely for the purpose of coverage afforded under Insuring Clause I.E. of Coverage Part 3: Employment Practices Liability, **Employment Event Loss**, and
5. solely for the purpose of coverage afforded under Insuring Clause I.B. of Coverage Part 5: Information Security and Privacy Liability, **Privacy Notification Costs**,

but shall not include (other than **Costs, Charges and Expenses** and **Inquiry Costs**):

- (a) punitive, exemplary or multiplied damages, except where the applicable law in that jurisdiction allows coverage for punitive, exemplary or multiplied damages;
- (b) liquidated damages, except for liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act where the applicable law in that jurisdiction allows coverage for such liquidated damages;

- (c) taxes or the loss of tax benefits, criminal or civil fines or penalties imposed by law, except:
  - (i) under Coverage Part 1: Management Liability and Coverage Part 2: Outside Positions Liability only, for any fines or civil penalties assessed against any of the **Insured Persons** pursuant to Section 78dd 2(g)(2)(B) or Section 78ff (c)2(B) of the Foreign Corrupt Practices Act, 15 U.S.C. or Section 11(1)(a) of the United Kingdom Bribery Act of 2010, Chapter 23 or any statute or law similar to the foregoing in any jurisdiction;
  - (ii) under Coverage Part 1: Management Liability only, for any fines or penalties imposed upon any of the **Insureds Person** or the **Professional Entity** by the Solicitors Regulation Authority as a result of a **Wrongful Act** by the compliance officers for legal practice or compliance officers for finance and administration where the applicable law in that jurisdiction allows coverage for such fines or penalties;
  - (iii) under Insuring Clause I.A. of Coverage Part 1: Management Liability only, for any other fine or civil penalty imposed against any of the **Insured Persons** where the applicable law allows coverage for such fine or civil penalty, subject to a maximum sublimit of USD 10,000 each of the **Insured Persons** but in no event exceeding USD 100,000 in the aggregate for the **Policy Period** all **Insured Persons**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.1. of the Declarations;
  - (iv) under Coverage Part 4: Fiduciary Liability only, for:
    - a. the five percent (5%) or less civil penalty imposed upon any of the **Insureds** under Section 502(i) of **ERISA**;
    - b. the twenty percent (20%) or less civil penalty imposed upon any of the **Insureds** under Section 502(l) of **ERISA**;
    - c. **Voluntary Compliance Fees**;
    - d. penalties or other awards imposed by the Pension Ombudsman of England or Occupational Pensions Regulatory Authority of England pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, the UK Pensions Act 2004, as amended, and any rules and regulations promulgated thereunder, provided always that no part of the premium for this Policy attributable to this exception has been funded, paid or reimbursed from the funds or assets of any pension scheme insured under this Policy; or

- e. civil penalties imposed upon any of the **Insureds** under the Pension Protection Act of 2006 subject to a maximum sublimit of USD 50,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.4. of the Declarations;
  - f. civil penalties imposed upon any of the **Insureds** under Section 502(c) of **ERISA** subject to a maximum sublimit of USD 50,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.4. of the Declarations;
  - g. the fifteen percent (15%) or less tax penalty imposed upon any of the **Insureds** under Section 4975 of the Internal Revenue Code of 1986; subject to a maximum sublimit of USD 50,000 in the aggregate for the **Policy Period**, such sublimit shall be part of, and not in addition to, the Limit of Liability stated in Item C.4. of the Declarations. No Retention shall apply to **Loss** constituting the fifteen percent (15%) or less tax penalty imposed upon any of the **Insureds** under Section 4975 of the Internal Revenue Code of 1986; or
- (v) under Insuring Clause I.B. of Coverage Part 5: Information Security and Privacy Liability, for any **Penalties**;
- (d) the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;
  - (e) matters deemed uninsurable under the law pursuant to which this Policy shall be construed;
  - (f) any wages, salary, severance payments, benefits or distributions paid or payable by the **Professional Entity** to any of the **Insured Persons**, except for any back pay or front pay with respect to any **Claim** involving **Wrongful Employment Practices**;
  - (g) any return of capital or equity, redemption of shares, unreimbursed expenses or amount of compensation, income or distribution of profits;
  - (h) payments of insurance plan benefits claimed by or on behalf of any retired **Employee**, or that a claimant would have been entitled to as an **Employee** had the **Professional Entity** provided such claimant with a continuation of insurance;
  - (i) costs incurred by any of the **Insureds** to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person;

- (j) **Benefits** which are or may become due except to the extent that such sums are payable as a personal obligation of any of the **Insured Persons** because of such persons **Wrongful Act**; except for a monetary award in, or fund for settling, a **Claim** or **Investigation** against any of the **Insureds** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to, the securities of the **Professional Entity** regardless of whether the amounts sought in such **Claim** or **Investigation** have been characterized by plaintiffs as “benefits” or held by a court to be “benefits”;
- (k) amounts awarded as the result of a labor or grievance arbitration pursuant to a collective bargaining agreement;
- (l) future wages, salary, bonus, commissions and/or benefits resulting from a settlement of a **Claim**, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Insured Person**;
- (m) amounts owed under any **Wage and Hour Law**; or
- (n) amounts owed under employment contracts, partnership agreements, severance agreements or any other type of contract.

With respect to the coverage for punitive, exemplary, multiplied or liquidated damages, and the insurability of fines or penalties under exception (c) above or matters under exception (e) above, any applicable law most favourable to the insurability of such damages, fines or penalties or matters shall apply, and where the **Insureds** are able to demonstrate in good faith (including presenting a written legal opinion) that such damages, fines, penalties or matters are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this provision, “any applicable law” shall include but not be limited to the law: a) where the **Claim** seeking such damages was brought, b) where the **Wrongful Acts** giving rise to the **Claim** seeking such damages took place, c) where the **Insureds** are incorporated, have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business.

M. **“Management Control”** means:

1. owning interest representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the partners of a partnership, the board of directors of a corporation, the members of the management board of a limited liability corporation or with respect to entities operating or organized outside the United States, persons serving in a functionally equivalent role; or
2. having the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Professional Entity** to elect, appoint or designate a majority of the partners of a partnership, the board of directors of a corporation, the management board of a limited liability corporation or with

respect to entities operating or organized outside of the United States, persons serving in a functionally equivalent role.

- N. **“Named Entity”** means the entity named in Item A. of the Declarations.
- O. **“Non-Partner Executives”** means all persons who were, now are, or shall be members of the executive or management committee or similar body of the **Named Entity** who are currently not, or have not previously been, equity income partners in the **Professional Entity**.
- P. **“Optional Extension Period”** means the period described in Clause XIV.A. of the General Terms and Conditions.
- Q. **“Policy Period”** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item B. of the Declarations, or its earlier cancellation date and hour, if any, and shall include any **Optional Extension Period** or **Predetermined Run-Off Period**, if purchased.
- R. **“Predetermined Run-Off Period”** means the period described in Clause XIV.B. of the General Terms and Conditions.
- S. **“Professional Entity”** means:
  - 1. the **Named Entity**;
  - 2. any **Subsidiary**;
  - 3. the **Named Entity** or any **Subsidiary** as a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and
  - 4. any entity of which the **Named Entity** or any **Subsidiary** is the successor in business.
- T. **“Regulatory Authority”** means any federal, state, local or foreign law enforcement or governmental authority (including the Department of Justice and any attorney general) or the enforcement unit of any self-regulating body.
- U. **“Subsidiary”** means any entity over which the **Named Entity** directly or indirectly had or has **Management Control**, if the **Named Entity**:
  - 1. had **Management Control** of such entity prior to or on the inception date of this Policy; or
  - 2. first has **Management Control** of such entity after the inception date of this Policy provided that the provisions of Clause VIII.A. must be fulfilled,

provided, that this Policy only provides coverage for any **Wrongful Act** committed or any conduct undertaken while the **Named Entity** had **Management Control** of such entity.

V. **“Takeover”** means:

1. the acquisition by any person or entity of more than 50% of the interest in the **Named Entity**; or
2. the merger of the **Named Entity** into another entity such that the **Named Entity** is not the surviving entity.

W. **“Wrongful Act”** means:

1. with respect to Coverage Part 1: Management Liability:  
  
any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty:
  - (a) by any of the **Insured Persons** while acting in their capacity as such, or any matter claimed against any of the **Insured Persons** solely by reason of their serving in such capacity;
  - (b) by any of the **Insured Persons** who, at the specific request of the **Professional Entity**, are serving in an elected or appointed position of a **Joint Venture** and have fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person**, regardless of the name or title by which such position is designated; or
  - (c) solely with respect to Insuring Clause I.C., by the **Professional Entity**;
2. with respect to Coverage Part 2: Outside Position Liability:  
  
any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by any of the **Insured Persons** while acting in their capacity, or any matter claimed against any of the **Insured Persons** solely by reason of their serving, or having served, as a partner, member, trustee, director, officer, board member or executive of any **Outside Entity**; or
3. with respect to Coverage Part 3: Employment Practices Liability:  
  
**Wrongful Employment Practices**; or
4. with respect to Coverage Part 4: Fiduciary Liability:
  - (a) as respects a **Fiduciary**, a **Plan** or the **Professional Entity**:

- i) any actual or alleged violation of any of the responsibilities, obligations or duties imposed on **Fiduciaries** by **ERISA** in connection with a **Plan**; or
    - ii) any matter claimed against any of the **Insureds** by reason of his, her or its status as a **Fiduciary** of a **Plan**;
  - (b) as respects an **Administrator**:
    - i) any actual or alleged act, error or omission by an **Administrator** in the performance of **Administration**; or
    - ii) any matter claimed against an **Administrator** by reason of his or her status as such; or
  - (c) as respects an **Insured Person**, any matter claimed against such **Insured Person** arising out of his or her service as a **Fiduciary** or **Administrator** of any other plan, including a multi-employer plan, but only if such service is at the specific request of the **Professional Entity**; or
- 5. with respect to Coverage Part 5: Information Security and Privacy Liability:
  - (a)
    - i) theft, loss, or **Unauthorized Disclosure of Personally Identifiable Information**; or
    - ii) theft or loss of **Third Party Information**,  
  
that is in the care, custody or control of the **Professional Entity**, or a third party for whose actions the **Professional Entity** is legally liable (a third party shall include a Business Associate as defined by the Health Insurance Portability and Accountability Act (“HIPAA”));
  - (b) one or more of the following acts or incidents that directly result from a failure of **Computer Security** to prevent a **Security Breach**:
    - i) the alteration, corruption, destruction, deletion, or damage to data stored on **Computer Systems**;
    - ii) the failure to prevent transmission of malicious code from **Computer Systems** to computer or network systems that are not owned, operated or controlled by any of the **Insureds**; or
    - iii) the participation by the **Professional Entity's Computer System** in a denial of service attack directed against computer or network systems that are not owned, operated or controlled by any of the **Insureds**; or



- (c) the **Professional Entity's** failure to timely disclose an incident described in (a) or (b) above in violation of any **Breach Notice Law**.

## II. EXCLUSIONS

The Exclusions set forth below shall apply to all Coverage Parts of this Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim, Investigation, Inquiry** or incident:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  - 1. any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** and accepted under any other management liability, outside directorship liability, employment practices liability, fiduciary liability and/or information security and privacy liability policy of which this Policy is a renewal, replacement or which it succeeds in time,
  - 2. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice described in 1. above, would constitute **Interrelated Wrongful Acts**, or
  - 3. any written demand, suit, investigation or other proceeding pending, or order, decree or judgment entered, against any of the **Insureds** prior to the date set forth in Item L. of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
- B. for any actual or alleged seepage, pollution or contamination of any kind; provided, however, that this exclusion shall not apply to:
  - 1. the coverage afforded under Insuring Clause I.A. of Coverage Part 1: Management Liability and Insuring Clause I.A. of Coverage Part 2: Outside Directorship Liability; or
  - 2. any **Claim** under Coverage Part 4: Fiduciary Liability by or on behalf of a beneficiary of or a participant in any **Plan** relating to the diminution in value of any securities issued by an organization other than the **Professional Entity** which are owned by the **Plan**;
- C. brought about or contributed to by:
  - 1. any deliberately fraudulent or deliberately criminal act or omission by any of the **Insureds**, or
  - 2. any personal profit or financial advantage gained by any of the **Insureds** to which they were not legally entitled,

as determined by a final adjudication in any action or proceeding (other than an action or proceeding initiated by Underwriters to determine coverage under this Policy);

With respect to Exclusion C.1. for acts or omissions which are treated as a criminal violation in a jurisdiction outside the United States of America that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such jurisdiction will not, by itself, be conclusive proof that a deliberately fraudulent or deliberately criminal act or omission occurred.

- D. for the return by any of the **Insureds** of any remuneration paid to them without the previous approval of the **Professional Entity**, which payment without such previous approval shall be determined by a final adjudication in any action or proceeding (other than an action or proceeding initiated by Underwriters to determine coverage under this Policy) to be in violation of the law;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed or any conduct actually or allegedly undertaken subsequent to a **Takeover**; or
- F. for legal liability assumed by any of the **Insureds** under the terms, conditions or warranties of any contract or agreement, or by virtue of any waiver or release from liability of any third party; provided, however, this exclusion shall not apply to:
  - 1. the extent that liability would have attached to any of the **Insureds** in the absence thereof,
  - 2. any **Claim** or **Investigation** under Insuring Clause I.A. of Coverage Part 1: Management Liability,
  - 3. **Costs, Charges and Expenses** incurred in connection with any **Claim** involving **Wrongful Employment Practices**, or
  - 4. any **Claim** or **Investigation** under Coverage Part 4: Fiduciary Liability to the extent that liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Plan** was established.

For the purpose of determining the applicability of any of the Exclusions in this Policy, no facts pertaining to, no knowledge possessed by, and no **Wrongful Act** of any of the **Insureds** shall be imputed to any other natural person, and only the **Wrongful Acts** of any past, present or future **Executive Officer** of the **Named Entity** shall be imputed to the **Professional Entity**.

### III. LIMIT OF LIABILITY, RETENTIONS AND ORDER OF PAYMENTS

- A. Underwriters shall be liable to pay **Loss** in excess of the amount of the applicable Retention up to the applicable Limit of Liability. With respect to each Coverage Part purchased (other than Coverage Part 5: Information Security and Privacy Liability), the Retention applicable to Insuring Clause I.B. shall apply to **Loss** payable under Insuring

Clause I.A. if indemnification by the **Professional Entity** is required by law or is legally permissible to the fullest extent permitted by law, regardless of whether or not actual indemnification is made, unless the **Professional Entity** is unable to make such actual indemnification by reason of its insolvency.

- B. Except as stated in Clause III.C., Underwriters' maximum aggregate Limit of Liability for all **Loss** resulting from all **Claims, Investigations, Inquiries** and incidents under all Coverage Parts of this Policy shall be the amount set forth in Item C.6. of the Declarations.

Underwriters' maximum aggregate Limit of Liability for all **Loss** resulting from all **Claims, Investigations, Inquiries** and incidents under each respective Coverage Part shall be the applicable amount set forth in Items C.1. through to C.5. of the Declarations. The Limits of Liability set forth in Items C.1.through to C.5. of the Declarations shall be part of, and not in addition to, the aggregate Limit of Liability set forth in Item C.6. of the Declarations.

Underwriters' maximum aggregate Limit of Liability for all **Costs, Charges and Expenses** resulting from all **Wage and Hour Claims** under Coverage Part 3: Employment Practices Liability shall be the applicable amount set forth in Item C.3.(ii) of the Declarations. In the event a **Claim** alleges violations of any **Wage and Hour Law** and also contains allegations of otherwise covered **Wrongful Acts** under Coverage Part 3: Employment Practices Liability, the amount set forth in Item C.3.(ii) of the Declarations shall apply to **Costs, Charges and Expenses** attributable solely to that portion of such **Claim** which alleges violations of any **Wage and Hour Law**. The amount set forth in Item C.3.(i) of the Declarations shall apply to **Loss**, including **Costs, Costs and Charges**, attributable solely to that portion of such **Claim** alleging such covered **Wrongful Acts**.

Underwriters' maximum aggregate Limit of Liability for all **Employment Event Loss** resulting from all **Employment Events** under Coverage Part 3: Employment Practices Liability shall be the applicable amount set forth in Item C.3.(iii) of the Declarations.

Underwriters' maximum aggregate Limit of Liability for all **Voluntary Compliance Fees and Costs, Charges and Expenses** resulting from all **Voluntary Compliance Notices** under Coverage Part 4: Fiduciary Liability shall be the applicable amount set forth in Item C.4.(ii) of the Declarations.

Underwriters' maximum aggregate Limit of Liability for all **Privacy Notification Costs** under Coverage Part 5: Information Security and Privacy Liability shall be the applicable amount set forth in Item C.5.(ii) of the Declarations.

Underwriters' maximum aggregate Limit of Liability for all **Costs, Charges and Expenses and Penalties** resulting from all **Regulatory Proceedings** under Coverage Part 5: Information Security and Privacy Liability shall be the applicable amount set forth in Item C.5.(iii) of the Declarations.

Any Sublimits of Liability set forth in this Policy shall be part of, and not in addition to, the applicable aggregate Limit of Liability.

The aggregate Limit of Liability set forth in Item C.6. of the Declarations shall be reduced and may be exhausted by payments of **Loss** under the respective Coverage Parts.

- C. The Limit of Liability set forth in Item D. of the Declarations shall be a separate additional excess aggregate limit to the amount shown in Item C. of the Declarations and shall only apply to **Claims** against, **Investigations** of and **Inquiries** received under Insuring Clause I.A. of Coverage Part 1: Management Liability by **Non-Partner Executives**. Such Limit of Liability set forth in Item D. of the Declarations shall only apply in excess of the limit of liability of all policies of insurance providing excess coverage above Coverage Part 1: Management Liability of this Policy.
- D. More than one **Claim** or incident involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** or incident and shall be deemed to have been made at the earliest of the following times:
1. the time at which the earliest **Claim** or incident involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made or reported; or
  2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause V.F.
- E. More than one **Claim** or incident involving the same **Security Breach** arising from a failure of **Computer Security** shall be deemed to constitute a single **Claim** or incident and shall be deemed to have been made at the earliest of the following times:
1. the time at which the earliest **Claim** or incident involving the same **Security Breach** is first made or reported; or
  2. the time at which the **Claim** involving the same **Security Breach** shall be deemed to have been made pursuant to Clause V.F.
- F. More than one **Investigation** having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed to constitute a single **Investigation** and shall be deemed to have been commenced at the earliest of the following dates:
1. the date on which the earliest **Investigation** is first commenced; or
  2. the date on which the **Investigation** shall be deemed to have been commenced pursuant to Clause V.F.
- G. If an **Inquiry** is first received by the **Insured Persons** during the **Policy Period** and reported to Underwriters in accordance with Clause V.B., then such **Inquiry** and any subsequent **Inquiry** having as a common nexus any fact, circumstance, situation, event,

transaction or series of facts, circumstances, situations, events or transactions shall be deemed a single **Inquiry** first received on the date the earliest **Inquiry** is first received.

H. Any **Claim, Investigation, Inquiry** or incident having as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions shall be deemed a single **Claim** and shall be deemed to have been made at the earliest of the following dates:

1. the date on which the **Inquiry** is first received;
2. the date on which the **Investigation** is first commenced;
3. the date on which the incident is first reported; or
4. the date on which the **Claim** is first made.

I. In the event more than one of the Insuring Clauses set forth in a Coverage Part is applicable to a **Claim, Investigation, Inquiry** or incident, the Retentions set forth in Item E. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim, Investigation, Inquiry** or incident covered by each Insuring Clause. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim, Investigation, Inquiry** or incident. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to the Insuring Clauses that are applicable to such **Claim, Investigation, Inquiry** or incident.

J. In the event more than one of the Coverage Parts purchased is applicable to a **Claim, Investigation, Inquiry** or incident, the Retentions set forth in Item E. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim, Investigation, Inquiry** or incident covered by each Coverage Part. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim, Investigation, Inquiry** or incident. The total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to the Coverage Parts that are applicable to such **Claim, Investigation, Inquiry** or incident. **Loss** resulting from such **Claim, Investigation, Inquiry** or incident shall be subject to the applicable aggregate Limits of Liability for each applicable Coverage Part. The total aggregate Limit of Liability for such **Claim, Investigation, Inquiry** or incident as finally determined shall in no event exceed the largest of the applicable Limits of Liability. The **Insureds** and Underwriters agree to use their best efforts to fairly and reasonably allocate such **Loss** between the Coverage Parts that are applicable to such **Claim, Investigation, Inquiry** or incident.

K. Payments of **Loss** by Underwriters shall reduce the applicable Limits of Liability.

Underwriters shall pay **Loss** in the following order:

1. first, under Insuring Clause I.A. of any Coverage Part (other than Coverage Part 5: Information Security and Privacy Liability), provided however that such **Loss** is allocable to any **Wrongful Act** committed or any conduct undertaken prior to

the **Professional Entity** becoming a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and

2. second, under Insuring Clause I.A. of any Coverage Part (other than Coverage Part 5: Information Security and Privacy Liability) where such **Loss** is allocable to any **Wrongful Act** committed or any conduct undertaken on or after the **Professional Entity** became a debtor in possession under the United States bankruptcy law or similar legal status under foreign law; and
3. third, at the written request of the managing partner or equivalent position of the **Professional Entity**, Underwriters shall either pay or withhold **Loss** payable under any other Insuring Clause.

In the event Underwriters withhold payment pursuant to sub-paragraph 3., then Underwriters shall, at such time and in such manner as shall be set forth in the instructions of the managing partner or equivalent position of the **Professional Entity**, remit such payment to the **Professional Entity** or directly to or on behalf of the **Insured Persons**.

Underwriters shall have no obligation to pay **Loss** after exhaustion of the Limit of Liability or Sublimit of Liability, if applicable, regardless of whether the **Professional Entity** has withheld payment.

- L. Subject to Clause III.K., Underwriters shall pay **Costs, Charges and Expenses** or **Inquiry Costs** on a current basis but no less than once every 90 days.

#### IV. SETTLEMENTS AND DEFENSE

- A. It shall be the duty of the **Insureds** and not the duty of Underwriters to defend **Claims, Investigations** or **Inquiries**. The **Insureds** shall not incur any **Costs, Charges and Expenses, Inquiry Costs, Employment Event Loss, Voluntary Compliance Fees** or **Privacy Notification Costs** without obtaining Underwriters' prior written consent, such consent not to be unreasonably withheld. The **Insureds** must obtain Underwriters' prior written approval of defense counsel selected by the **Insureds**, such approval not to be unreasonably withheld.
- B. Underwriters shall have the right to associate with the **Insureds** in the defense and settlement of any **Claim, Investigation** or **Inquiry**. The **Insureds** shall not settle any **Claim** or **Investigation** or advance any settlement offer without Underwriters' prior written consent. However, Underwriters' prior written consent shall not be required for a settlement where such settlement is for an amount below the applicable Retention (inclusive of **Costs, Charges and Expenses**) provided the **Insureds** shall give Underwriters as soon as practicable details of the settlement amounts and the date the settlement is confirmed by the court.

- C. The **Insureds'** defense counsel, upon assignment of the **Claim, Investigation** or **Inquiry** for handling, shall provide to Underwriters:
1. the names, business addresses, telephone numbers and e-mail addresses of the attorneys at the firm who will be handling the defense of the **Claim, Investigation** or **Inquiry**;
  2. the fee structure for the attorneys and paralegals who will be handling the defense of the **Claim, Investigation** or **Inquiry**;
  3. a proposed budget for defending the **Claim, Investigation** or **Inquiry**;
  4. quarterly reports in the format established by Underwriters; and
  5. any other information requested by Underwriters.

Such information for Underwriters shall be given to the firm shown under Item I. of the Declarations.

## V. NOTIFICATION

- A. The **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of any **Claim** (other than a **Voluntary Compliance Notice**) or **Investigation** as soon as practicable after an **Executive Officer** first becomes aware of such **Claim** or **Investigation** but in no event later than:
1. 60 days after the end of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased; or
  2. in the event this Policy is renewed with Underwriters, 120 days after the end of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- B. If the **Insureds** elect to seek coverage for **Inquiry Costs** in connection with an **Inquiry**, the **Insureds** shall give to Underwriters notice in writing of such **Inquiry** but in no event later than 60 days after the end of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- C. The **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of any **Employment Event** as soon as practicable after an **Executive Officer** first becomes aware of such **Employment Event** but in no event later than 60 days after the end of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- D. If the **Insureds** elect to seek coverage for **Voluntary Compliance Costs** and **Costs, Charges and Expenses** in connection with a **Voluntary Compliance Notice**, the **Insureds** shall give to Underwriters notice in writing of such **Voluntary Compliance**

**Notice** but in no event later than the last day of the **Policy Period** or the **Optional Extension Period**, if purchased.

- E. The **Professional Entity** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of any incident (or reasonably suspected incident) described in Clause I.W.5.(a) or (b) of the General Terms and Conditions as soon as practicable after an **Executive Officer** first becomes aware of such incident but in no event later than 60 days after the end of the **Policy Period**.

Notwithstanding the foregoing, if the **Professional Entity** reasonably believes that the **Privacy Notification Costs** provided as a result of such incident or suspected incident are not likely to meet or exceed the Retention, then such incident or suspected incident may be reported at the **Professional Entity's** option, but unless such incident or suspected incident is reported in accordance with the first paragraph of this Clause V.E., there shall be no coverage for **Privacy Notification Costs** in connection with such incident or suspected incident.

- F. If the **Insureds** become aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim, Investigation or Inquiry**, and if the **Insureds** during the **Policy Period** give written notice to Underwriters of:
1. the specific fact, circumstance or situation;
  2. the **Insureds** involved;
  3. the consequences which have resulted or may result therefrom; and
  4. the circumstances by which the **Insureds** first became aware thereof,

then any **Claim, Investigation or Inquiry** made subsequently arising out of such specific fact, circumstance or situation shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

- G. Notice to Underwriters provided for in Clause V. shall be given to the firm shown under Item I. of the Declarations.

## VI. OTHER INSURANCE

The **Insureds** and Underwriters agree that all coverage under this Policy, subject to its terms, is excess over and will not contribute with all other valid and collectible Management Liability, Employment Practices Liability, General Liability, Fiduciary Liability or Information Security and Privacy Liability insurance, whenever purchased, whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise, unless such other insurance is written as specific excess insurance over the Limit of Liability provided by this Policy.

However, the coverage under Coverage Part 5: Information Security and Privacy Liability, subject to its terms, is also excess over and will not contribute with all other valid and collectible Professional Liability insurance, whenever purchased, whether such other insurance is stated to be



primary, contributing, excess, contingent or otherwise, unless such other insurance is written as specific excess insurance over the Limit of Liability provided by this Policy. Solely in the event that any covered loss, definition or condition in Coverage Part 5: Information Security and Privacy Liability is broader in meaning or scope than any covered loss, definition or condition of such Professional Liability insurance, coverage under Coverage Part 5: Information Security and Privacy Liability shall become primary insurance to such Professional Liability Insurance but only in respect of such covered loss, definition or condition.

## VII. REPRESENTATIONS AND SEVERABILITY

The particulars and statements contained in the **Application** are incorporated into and constitute a part of this Policy.

By acceptance of this Policy, the **Insureds** agree:

- A. that the statements in the **Application** are their representations and that this Policy is issued in reliance upon the truth of such representations; and
- B. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall be void and of no effect whatsoever solely with respect to:
  - 1. those **Insured Persons** who made or had knowledge of such misrepresentations; and
  - 2. the **Professional Entity** if such misrepresentations were made by any **Executive Officer** of the **Named Entity**.

Notwithstanding the above:

- (i) the **Application** shall be construed as a separate application for coverage by each of the **Insured Persons** and no knowledge possessed by any of the **Insured Persons** shall be imputed to any other natural person; and
- (ii) Underwriters shall not be entitled to void Insuring Clause I.A. of any Coverage Part (other than Coverage Part 5: Information Security and Privacy Liability) in whole or in part, or to rescind Insuring Clause I.A. of any Coverage Part (other than Coverage Part 5: Information Security and Privacy Liability) at any time.

## VIII. ADJUSTMENT CLAUSE

- A. This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Professional Entity**:
  - 1. acquires any other entity or acquires substantially all of the assets of another entity,

2. merges with another entity such that the **Professional Entity** is the surviving entity,
3. becomes a sponsor of a **Plan**, whether by acquisition of a **Subsidiary** or another entity, merger with another entity where the **Professional Entity** is the surviving entity or by its own creation, or
4. acquires an individual or group of individuals who formerly practiced at another entity,

coverage shall be afforded for any **Loss** in any way involving the assets acquired or the assets, liabilities, partners, shareholders, members, trustees, directors, officers, board members, executives or **Employees** of the entity acquired or merged with or the sponsored **Plan** or the group of individuals who formerly practiced at another entity but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken on or after the acquisition or merger date or the date the **Plan** was so sponsored.

Notwithstanding the foregoing, if, as an immediate result of such acquisition, merger or sponsorship, the number of partners, shareholders, members, trustees, directors, officers, board members, executives or **Employees** of the **Professional Entity** increases by 10% or more as compared to the number at the inception date of this Policy, then coverage for any **Loss** in any way involving the assets acquired or the assets, liabilities, partners, shareholders, members, trustees, directors, officers, board members, executives or **Employees** of the entity acquired or merged with or the sponsored **Plan** or the group of individuals who formerly practiced at another entity shall only be afforded for a period of 90 days and shall only apply with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken on or after the acquisition or merger date or the date the **Plan** was so sponsored. Coverage beyond such 90-day period shall only be available if:

- (i) written notice of such acquisition, merger or sponsorship is given to Underwriters by the **Named Entity**;
  - (ii) the **Named Entity** provides Underwriters with such information in connection therewith as Underwriters may deem necessary;
  - (iii) the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and
  - (iv) Underwriters, at their sole discretion, agree to provide such coverage.
- B. In the event any entity ceased to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity and to such

**Subsidiary** but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the time such entity ceased to be a **Subsidiary**.

- C. In the event any **Plan** ceases to be sponsored by the **Professional Entity** or ceased to be sponsored jointly by the **Professional Entity** and a labor organization after the inception date of this Policy, or in the event the **Professional Entity** terminates, sells or spins off any **Plan** before or after the inception date of this Policy, or of any policy issued by the Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such **Plan** and to such **Plan** but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the time such **Plan** ceased to be sponsored or is terminated, sold or spun-off. The **Insureds** shall give notice to the Underwriters of cessation of sponsorship as soon as practicable together with such information as the Underwriters may require.
- D. In the event any **Plan** is merged with another **Plan** during the **Policy Period**, this Policy, subject to its terms, shall continue to provide coverage for both **Plans**.

In the event a **Plan** is merged with another plan for which coverage is not provided under this Policy, this Policy, subject to its terms, shall continue to provide coverage only for the covered **Plan** but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the merger date.

- E. In the event of a **Takeover** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed or any conduct undertaken or allegedly undertaken prior to the **Takeover**.

## IX. CANCELLATION CLAUSE

- A. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Entity**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. Underwriters may cancel this Policy only for nonpayment of premium by mailing to the **Named Entity** written notice stating when, not less than 30 days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.

- C. If this Policy is cancelled pursuant to A. hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to B. hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.

**X. NAMED ENTITY AUTHORIZATION CLAUSE**

By acceptance of this Policy, the **Insureds** agree that the **Named Entity** will act on their behalf with respect to the giving of all notices to Underwriters, the receiving of notices from Underwriters, the payment of the premium and the receipt of any return premium.

**XI. VALUATION AND CURRENCY CLAUSE**

All premiums, limits, retentions and **Loss** under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars or if **Costs, Charges and Expenses** or **Inquiry Costs** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date such **Costs, Charges and Expenses** or **Inquiry Costs** are paid.

**XII. BANKRUPTCY CLAUSE**

Bankruptcy or insolvency of the **Professional Entity** or any of the **Insured Persons** shall not relieve Underwriters of any of their obligations under this Policy.

If a liquidation or reorganization proceeding is commenced by the **Professional Entity** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim, Investigation, Inquiry** or incident under this Policy, Underwriters and the **Insureds** hereby agree not to oppose or object to any efforts by Underwriters or any of the **Insureds** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

**XIII. RECOVERY CLAUSE**

In the event the Underwriters recover amounts they have paid under this Policy, the Underwriters will reinstate the Limit of Liability of this Policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The Underwriters assume no duty to seek a recovery of any amounts paid under this Policy.

#### XIV. EXTENSIONS TO THE POLICY PERIOD

##### A. **Optional Extension Period**

If this Policy is not renewed by the **Named Entity** or by Underwriters, then the **Named Entity** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item G.1. of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made, **Investigation** first commenced or **Inquiry** first received during the period of time set forth in Item G.2. of the Declarations after the Policy expiration date, but only with respect to any **Wrongful Act** committed or any conduct undertaken before such date.

##### B. **Predetermined Run-Off Period**

In the event of a **Takeover**, the **Named Entity** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item H.1. of the Declarations of the total premium for this Policy (less any unearned premium calculated at pro rata for the period from the date of such **Takeover**), to an extension of the coverage granted by this Policy with respect to any **Claim** first made, **Investigation** first commenced or **Inquiry** first received during the period of time set forth in Item H.2. of the Declarations after the date of such **Takeover**, but only with respect to any **Wrongful Act** committed or any conduct undertaken before the date of such **Takeover**.

##### C. Extension Conditions

1. As a condition precedent to the right to purchase the **Optional Extension Period** or the **Predetermined Run-Off Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** or the **Predetermined Run-Off Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** or the **Predetermined Run-Off Period** is given to Underwriters within 30 days after the Policy expiration date or the date of the **Takeover**. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period** or the **Predetermined Run-Off Period**.
2. In the event of the purchase of the **Optional Extension Period** or the **Predetermined Run-Off Period**, the entire premium therefor shall be deemed earned at its commencement.
3. The **Optional Extension Period** and the **Predetermined Run-Off Period** shall not apply to the coverage afforded under Insuring Clause I.B. of Coverage Part 5: Information Security and Privacy Liability.
4. The exercise of the **Optional Extension Period** or the **Predetermined Run-Off Period** shall not in any way increase or reinstate the Limits of Liability of Underwriters.

## **XV. ASSISTANCE, COOPERATION AND SUBROGATION**

The **Insureds** and their defense counsel agree to provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request, and they further agree that, after a **Claim** has been made against them, an **Investigation** has been commenced against them or an **Inquiry** has been received by any of the **Insured Persons**, they shall not take any action which in any way increases Underwriters' exposure under this Policy. The failure of any of the **Insured Persons** to give Underwriters or their counsel the information, assistance and cooperation that they may reasonably request shall not impair the rights of any other natural person under this Policy.

In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery therefor against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

Notwithstanding the foregoing, Underwriters agree to waive their rights of subrogation against any of the **Insured Persons** except where a final non-appealable adjudication in any action or proceeding (other than an action or proceeding initiated by Underwriters to determine coverage under this Policy) adverse to the relevant **Insured Persons** establishes that the relevant **Insured Persons** have committed a deliberately fraudulent or deliberately criminal act or omission.

## **XVI. ALLOCATION**

If both **Loss** covered by this Policy and loss uncovered by this Policy are incurred, either because the **Claim, Investigation, Inquiry** or incident includes both covered and uncovered allegations or because it includes both insured and uninsured parties, then such covered **Loss** and uncovered **Loss** shall be allocated based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim, Investigation, Inquiry** or incident as between the insured and uninsured parties exposure to uncovered loss, and the **Insureds** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

## **XVII. ARBITRATION AND DISPUTE RESOLUTION**

In the event of a dispute between the **Insureds** and Underwriters involving this Policy, the parties shall first attempt to resolve the dispute through non-binding arbitration. Either the **Insureds** or Underwriters may request arbitration by sending notice to the other party. In the notice the party shall identify its choice for an arbitrator and location for arbitration. Within 30 days of receiving such notice, the other party shall identify its choice for an arbitrator. The third arbitrator shall then be selected by the previous two arbitrators within 30 days of the selection of the second arbitrator. The arbitrators shall have knowledge of insurance law and the area of law implicated in the underlying action. The parties shall submit the dispute to the panel with written and oral

evidence at a hearing to take place within 30 days of the selection of the third arbitrator. Except to the extent otherwise provided, the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. A decision shall be issued within 30 days of the conclusion of the hearing. Each party shall bear the expenses of their respective arbitrator and share equally the expenses of the third arbitrator and any other costs of arbitration.

#### **XVIII. ASSIGNMENTS AND ACTION AGAINST UNDERWRITERS**

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim, Investigation** or **Inquiry** against the **Insureds** to determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim, Investigation** or **Inquiry**. Assignment of interest under this Policy shall not bind Underwriters unless their consent is endorsed hereon.

#### **XIX. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Policy.

#### **XX. SERVICE OF SUIT**

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters at the request of any of the **Insureds** will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the firm shown under Item J. of the Declarations, and that in such suit instituted against any one of the Underwriters upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The firm shown under Item J. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of any of the **Insureds** to give a written undertaking to such **Insured** that it will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to the statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or

Director of Insurance or other officers specified for that purpose in the statute, or any of their successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any of the **Insureds** arising out of this Policy, and hereby designate the firm shown under Item J. of the Declarations as the firm to whom the said officer is authorized to mail such process or a true copy thereof.

**XXI. CHOICE OF LAW**

Except with respect to the insurability of damages under Clause I.L., any dispute involving this Policy shall be resolved by applying the law of the state designated in Item M. of the Declarations.



**Coverage Part 1: Management Liability**

**I. INSURING CLAUSES**

A. Underwriters shall pay on behalf of the **Insured Persons**:

1. **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
2. **Loss** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**; or
3. **Inquiry Costs** resulting from any **Inquiry** first received by the **Insured Persons** during the **Policy Period**.

B. Underwriters shall pay on behalf of the **Professional Entity**:

1. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
2. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**; or
3. **Inquiry Costs** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Inquiry** first received by the **Insured Persons** during the **Policy Period**.

C. Underwriters shall pay on behalf of the **Professional Entity**:

1. **Loss** resulting from any **Claim** first made against the **Professional Entity** during the **Policy Period** for a **Wrongful Act**; or
2. **Loss** resulting from any **Investigation** of the **Professional Entity** first commenced during the **Policy Period**.

**II. ATTACHMENT OF LIABILITY FOR POSITIONS IN A JOINT VENTURE**

Coverage under this Coverage Part for any of the **Insured Persons** who are serving in an elected position of a **Joint Venture** shall only apply excess of the **Joint Venture's** insurance and to the extent **Loss** is not indemnified by the **Joint Venture**.

### III. DEFINITIONS

The following terms whenever used in this Coverage Part or elsewhere in this Policy in boldface type shall have the meanings indicated.

A. **“Inquiry”** means:

1. a request or demand by the **Professional Entity** or a **Regulatory Authority** for any of the **Insured Persons** to appear for an interview or meeting or to provide sworn testimony or to produce documents in connection with an inquiry or investigation by a **Regulatory Authority**, or
2. a request or demand by any court-appointed trustee, examiner, receiver, liquidator, conservator, rehabilitator or similar official of the **Professional Entity** for any of the **Insured Persons** to appear for an interview or meeting or to provide sworn testimony or to produce documents in connection with any bankruptcy proceeding by or against the **Professional Entity**,

regarding such **Insured Person’s** capacity as such or the business of the **Professional Entity**, but shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulatory entity.

B. **“Inquiry Costs”** means reasonable and necessary fees and expenses incurred by the **Insured Persons** solely in connection with such **Insured Persons** preparation for and response to an **Inquiry**, but shall not include:

1. salaries, wages, overhead or benefit expenses associated with any **Insured Persons**; or
2. costs of complying with any discovery or other request seeking documents (including electronic information) in the possession or control of the **Professional Entity** or for which the **Professional Entity** has the direct financial responsibility to produce.

### IV. EXCLUSIONS

The Exclusions set forth below shall apply only to this Coverage Part of the Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim, Investigation or Inquiry**:

- A. for actual or alleged sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of use thereof), bodily injury, assault, battery, invasion of privacy, mental anguish, emotional distress, libel, slander or defamation; provided, however, this exclusion shall not apply to the coverage afforded under Insuring Clause I.A.;

- B. for any actual or alleged violation of:
1. any workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefit law,
  2. the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments promulgated thereto, or
  3. any **Wage and Hour Law**;
- C. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
1. is brought and maintained independently by any of the **Insured Persons**, other than any present or former member of the executive or management committee or similar body of the **Professional Entity**, without the assistance, participation, solicitation or intervention of the **Professional Entity** or any present or former members of the executive or management committee or similar body of the **Professional Entity**,
  2. is brought by any of the **Insureds** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy,
  3. is brought by any former member of the executive or management committee or similar body of the **Professional Entity** who has not served in such capacity for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** independently without the assistance, participation, solicitation or intervention of the **Professional Entity** or any present or other former members of the executive or management committee or similar body of the **Professional Entity** who are serving or have served in such capacity within such three (3) year period,
  4. is brought by the bankruptcy trustee or examiner of the **Professional Entity** or any assignee of such trustee or examiner, or any receiver, conservator, rehabilitator, or liquidator or comparable authority of the **Professional Entity**;
  5. is brought against an **Insured Person** protected as a whistleblower under any applicable law, or
  6. is brought by any of the **Insured Persons** of any **Professional Entity** which is operating or incorporated outside the United States of America, its territories and possessions, or Canada, other than any present or former member of the executive

or management committee or similar body of the **Professional Entity**, provided that such **Claim** is brought by such **Insured Person** outside the United States of America, its territories and possessions, or Canada;

- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, service as a partner, shareholder, member, trustee, director, officer, board member, executive or employee with any entity other than the **Professional Entity**;
- E. against the **Professional Entity** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any actual or alleged infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress, or misappropriation of trade secret;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the rendering or failing to render services for others in such **Insured Person's** capacity as an **Attorney** or in any other professional capacity; provided, however, that this exclusion shall not apply to any **Wrongful Act** by any of the **Insured Persons** whilst acting in his or her capacity as a general counsel to the **Professional Entity**;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any failure or omission on the part of any of the **Insureds** to effect or maintain adequate insurance; provided, however, this exclusion shall not apply:
  - 1. to **Costs, Charges and Expenses** incurred in connection with any **Claim** or **Investigation** under Insuring Clause I.A., or
  - 2. where the **Insureds** have made every reasonable effort to effect or maintain such insurance but coverage limits have nonetheless been reduced as a result of a restriction in available insurance capacity; or
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Employment Practices**.

**Coverage Part 2: Outside Position Liability**

**I. INSURING CLAUSES**

A. Underwriters shall pay on behalf of the **Insured Persons**:

1. **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
2. **Loss** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**.

B. Underwriters shall pay on behalf of the **Professional Entity**:

1. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
2. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**.

**II. ATTACHMENT OF LIABILITY**

Coverage under this Coverage Part shall only apply excess of the **Outside Entity's** insurance and to the extent **Loss** is not indemnified by the **Outside Entity**.

**III. DEFINITIONS**

The following terms whenever used in this Coverage Part or elsewhere in this Policy in boldface type shall have the meanings indicated.

A. **“Outside Entity”** means:

1. any entity named in Item K. of the Declarations;
2. any non-profit organization, community chest, fund or foundation; or
3. any for-profit organization whose securities are not publicly owned or traded where the **Insured Persons** serve with such organization at the specific request of the **Professional Entity**,

but shall not include the **Professional Entity**.

**IV. EXCLUSIONS**

The Exclusions set forth below shall apply only to this Coverage Part of the Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim** or **Investigation**:

- A. for actual or alleged sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of use thereof), bodily injury, assault, battery, invasion of privacy, mental anguish, emotional distress, libel, slander or defamation; provided, however, this exclusion shall not apply to the coverage afforded under Insuring Clause I.A.;
- B. for any actual or alleged violation of:
  - 1. any workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefit law,
  - 2. the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments promulgated thereto, or
  - 3. any **Wage and Hour Law**;
- C. by, on behalf of, or at the direction of any of the **Insureds**, any **Outside Entity** or any present or former partner, shareholder, member, trustee, director, officer, board member, executive or employee of the **Outside Entity**, except and to the extent such **Claim**:
  - 1. is brought derivatively by a partner, shareholder, member, trustee, director, officer, board member, executive or employee of the **Professional Entity** or such **Outside Entity**, who, when such **Claim** is first made, is acting independently of all of the **Insureds**, the **Outside Entity** and any present or former partner, shareholder, member, trustee, director, officer, board member, executive or employee of the **Outside Entity**,
  - 2. is brought by any of the **Insureds** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy,
  - 3. is brought by the bankruptcy trustee or examiner of the **Outside Entity** or any assignee of such trustee or examiner, or any receiver, conservator, rehabilitator, or liquidator or comparable authority of the **Outside Entity**, or
  - 4. is brought against an **Insured Person** protected as a whistleblower under any

applicable law;

- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** committed or any conduct undertaken prior to the date on which any **Insured Person** began serving with the **Outside Entity** or subsequent to the date on which any **Insured Person** ceased serving with the **Outside Entity**;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the public offering of shares in any **Outside Entity**;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the rendering or failing to render services for others in such **Insured Person's** capacity as an **Attorney** or in any other professional capacity; or
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Employment Practices**.

**Coverage Part 3: Employment Practices Liability**

**I. INSURING CLAUSES**

- A. Underwriters shall pay on behalf of the **Insured Persons Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**.
- B. Underwriters shall pay on behalf of the **Professional Entity Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**.
- C. Underwriters shall pay on behalf of the **Professional Entity Loss** resulting from any **Claim** first made against the **Professional Entity** during the **Policy Period** for a **Wrongful Act**.
- D. Underwriters shall pay on behalf of the **Insureds Costs, Charges and Expenses** only resulting from any **Wage and Hour Claim** first made against the **Insureds** during the **Policy Period**.

Coverage under this Insuring Clause I.D. shall not apply to **Loss**, other than **Costs, Charges and Expenses**.

- E. Underwriters shall pay **Employment Event Loss** incurred by the **Professional Entity** solely with respect to an **Employment Event** first occurring during the **Policy Period**, from first dollar, provided, that the payment of **Employment Event Loss** shall not waive the Underwriters' rights under this Policy or at law.

Coverage under this Insuring Clause I.E. shall apply regardless of whether a **Claim** is ever made against the **Insureds** arising from such **Employment Event** and, in the case where a **Claim** is made, regardless of whether the **Employment Event Loss** is incurred prior to or subsequent to the making of the **Claim**.

**II. DEFINITIONS**

The following terms whenever used in this Coverage Part or elsewhere in this Policy in boldface type shall have the meanings indicated.

- A. **“Discrimination”** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote (including wrongful failure to advance, offer or grant partnership or shareholder status), denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis prohibited by federal, state or local law, including the Genetic Information Nondiscrimination Act of 2008.



- B. **“Employment Advisor”** means any public relations firm, security firm or mental health professional selected by the **Insureds** with the Underwriters’ prior written consent, such consent not to be unreasonably withheld.
- C. **“Employment Event”** means any of the following events, which shall be deemed to commence (i) when an **Executive Officer** first believes in good faith that it is more likely than not that such event will occur within the next sixty (60) days, or (ii) with respect to 5. below, when the event occurs, whichever is earlier:
1. layoff/termination of 20% or greater of the **Professional Entity’s** workforce;
  2. acquisition of an organization which necessitates a material change in employment status or terms of employment of 20% or greater of the **Professional Entity’s** workforce;
  3. the public announcement of allegations of **Discrimination** or **Harassment** implicating an **Executive Officer**; or a **Claim** alleging **Inappropriate Third Party Conduct**;
  4. receipt by the **Professional Entity** of notice that a civil rights organization, public interest group or similar organization is investigating the **Professional Entity** for violations of state or federal employment laws or is distributing literature which accuses the **Professional Entity** of violations of state or federal employment laws;
  5. a workplace disaster resulting in loss of life or the imminent threat of or actual use of a lethal weapon which occurs on the **Professional Entity’s** premises, including without limitation, flood, fire, or workplace violence.

An **Employment Event** shall conclude ninety (90) days after it first commences or when the **Employment Event** Sublimit of Liability set forth in Item C.3.(iii) of the Declarations has been exhausted.

- D. **“Employment Event Loss”** means reasonable fees and expenses charged by an **Employment Advisor** in connection with:
1. advising the **Professional Entity** with respect to minimizing potential loss or liability on account of an **Employment Event**;
  2. retaining an independent security consultant or for independent security guard services with respect to an **Employment Event** described in Definition II.C.1., 2. or 5.;
  3. managing or administering disclosures to clients, customers, suppliers, investors or the public regarding an **Employment Event**; or
  4. providing counseling to any **Employee** on account of an **Employment Event**,

but shall not include salaries, wages, overhead or benefit expenses associated with any **Insured Persons** or the **Professional Entity's** overhead expenses.

E. **“Harassment”** means any actual or alleged unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct, including bullying, of a sexual or non-sexual nature, where such harassment is based on a factor or category prohibited by law (including race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis prohibited by federal, state or local law), that:

1. explicitly or implicitly are made a condition of employment,
2. are used as a basis for employment decisions, or
3. create a work environment that interferes with performance.

F. **“Inappropriate Employment Conduct”** means any of the following:

1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing of an implied employment contract;
2. allegations of wrongful demotion or wrongful, excessive or unfair discipline;
3. allegations of misrepresentation;
4. allegations of wrongful infliction of emotional distress, humiliation, or mental anguish;
5. allegations of false imprisonment, detention or malicious prosecution;
6. allegations of libel, slander, disparagement, defamation of character or any invasion of right of privacy;
7. allegations of wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies or procedures;
8. allegations of wrongful deprivation of career opportunity, wrongful failure or refusal to provide equal treatment, negligent evaluation or failure to grant tenure, partnership or seniority;
9. allegations of a violation of the Family and Medical Leave Act;
10. allegations of a violation of the Uniformed Services Employment and Reemployment Rights Act;
11. allegations of an abusive or hostile work environment;

12. allegations of negligent hiring or negligent supervision of others, including wrongful failure to provide adequate training, in connection with 1. through 11. above; or
13. allegations of a breach of an express written employment contract as long as another act described in 1. through 12. above is also alleged,

made by an **Employee** or applicant for employment of the **Professional Entity**.

- G. **“Inappropriate Third-Party Conduct”** means actual or alleged acts of discrimination or harassment by any of the **Insured Persons** in their capacity as such, or, solely with respect to Insuring Clause I.C., by the **Professional Entity** against any natural person who is not an **Employee** or an applicant for employment of the **Professional Entity**, where such discrimination or harassment is based on a factor or category prohibited by law (including race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin or other basis prohibited by federal, state or local law).
- H. **“Retaliation”** means any actual or alleged **Discrimination** or **Harassment** or **Inappropriate Employment Conduct** against an **Employee** on account of such **Employee's** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- I. **“Wage and Hour Claim”** means any **Claim** solely alleging violations of any **Wage and Hour Law**.
- J. **“Wage and Hour Law”** means any federal, state, statutory, regulatory, local or common law relating to any wage and hour practice, including, but not limited to, any failure to provide rest or meal periods; failure to provide or pay for vacation, off-the-clock work, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of **Employees** as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages; the failure to pay minimum wage or other underpayment of wages, improper deductions from pay; improper credit for food, lodging or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any person; and any allegation related to the foregoing for conversion, unjust enrichment, consumer or employment protection laws, unfair business practices, including but not limited to, the Fair Labor Standards Act.
- K. **“Wrongful Employment Practices”** means:
1. (a) **Discrimination** or **Harassment**;
  - (b) **Inappropriate Employment Conduct**; or
  - (c) **Retaliation**,

by any of the **Insured Persons** or, solely with respect to Insuring Clause I.C., by the **Professional Entity** against an **Employee** or an applicant for employment of the **Professional Entity**; or

2. **Inappropriate Third-Party Conduct.**

**"Wrongful Employment Practices"** shall include any of the acts described above by any of the **Insured Persons** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises.

If Coverage Part 2: Outside Position Liability is purchased, **"Wrongful Employment Practices"** shall also include any of the acts described in 1. above by any of the **Insured Persons** while acting in their capacity as a partner, member, trustee, director, officer, board member or executive of any **Outside Entity** against an employee or an applicant for employment of such **Outside Entity**. The coverage afforded herein shall only apply excess of the **Outside Entity's** insurance and any indemnification available to such **Insured Persons** from the **Outside Entity**.

**III. EXCLUSIONS**

The Exclusions set forth below shall apply only to this Coverage Part of the Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim**:

- A. for actual or alleged damage to or destruction of tangible property (including loss of use thereof) or, for sickness, disease, death, false arrest, false imprisonment, bodily injury, assault, battery, provided, however, this exclusion shall not apply to that portion of a **Claim** for **Inappropriate Employment Conduct** alleging invasion of privacy, mental anguish, emotional distress, libel, slander or defamation;
- B. for any actual or alleged violation of:
  - 1. any workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefit law,
  - 2. the Employee Retirement Income Security Act of 1974 (with the exception of Section 510 of ERISA), the Fair Labor Standards Act (with the exception of the Equal Pay Act and the coverage afforded under Insuring Clause I.D.), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments promulgated thereto, or
  - 3. any **Wage and Hour Law**;

provided, however:

- (a) this exclusion shall not apply to any **Claim** based on an **Employee's** allegations of **Retaliation**; and
  - (b) part 3. of this exclusion shall not apply to the coverage afforded under Insuring Clause I.D.;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving service as a partner, shareholder, member, trustee, director, officer, board member, executive or employee with any entity other than the **Professional Entity** or an **Outside Entity**;
- D. under Insuring Clause I.D., that alleges violations of any **Wage and Hour Law**, if any **Executive Officer** was made aware of such violations of the **Wage and Hour Law** prior to the inception date of the Policy;

The following Exclusions shall apply to this Coverage Part of the Policy when Coverage Part 2: Outside Position Liability is also purchased:

- E. by, on behalf of, or at the direction of any **Outside Entity** or any present or former partner, shareholder, member, trustee, director, officer, board member or executive of the **Outside Entity**; or
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** committed or any conduct undertaken prior to the date on which any **Insured Person** began serving with the **Outside Entity** or subsequent to the date on which any **Insured Person** ceased serving with the **Outside Entity**.

**Coverage Part 4: Fiduciary Liability**

**I. INSURING CLAUSES**

- A. Underwriters shall pay on behalf of the **Insured Persons**:
1. **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
  2. **Loss** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**.
- B. Underwriters shall pay on behalf of the **Professional Entity**:
1. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act**; or
  2. **Loss** which the **Professional Entity** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Investigation** of the **Insured Persons** first commenced during the **Policy Period**.
- C. Underwriters shall pay on behalf of the **Professional Entity**:
1. **Loss** resulting from any **Claim** first made against the **Professional Entity** during the **Policy Period** for a **Wrongful Act**; or
  2. **Loss** resulting from any **Investigation** of the **Professional Entity** first commenced during the **Policy Period**.
- D. Underwriters shall pay on behalf of the **Insureds** any **Voluntary Compliance Fees and Costs, Charges and Expenses** resulting from any **Voluntary Compliance Notice** first reported to Underwriters during the **Policy Period**.

**II. DEFINITIONS**

The following terms whenever used in this Coverage Part or elsewhere in this Policy in boldface type shall have the meanings indicated.

- A. **“Administration”** means one or more of the following administrative duties or activities with respect to a **Plan**:
1. counseling or advising participants or beneficiaries;
  2. providing interpretations;

3. handling of records; or
  4. affecting enrollment, notification, termination, amendment or cancellation of participants or beneficiaries.
- B. “**Administrator**” means a natural person with responsibility for **Administration** and any third party which is included in the definition of **Administrator** by written endorsement attached hereto, but only with respect to a **Plan**.
- C. “**Benefits**” means any obligation under a **Plan** to a participant or beneficiary of a **Plan**.
- D. “**ERISA**” means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), and any amendment or revision thereto, or any similar common or statutory law of the United States, Canada or any state, foreign or other jurisdiction to which a **Plan** is subject, but shall not include any law concerning worker’s compensation, unemployment insurance, social security, government mandated disability benefits or similar law.
- E. “**Fiduciary**” means a fiduciary of a **Plan** as defined in **ERISA**.
- F. “**Plan**” means any plan, fund or program, regardless of whether it is subject to regulation under Title I of **ERISA** or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986, as amended, and which is:
1. a welfare plan as defined in **ERISA** sponsored solely by the **Professional Entity** or sponsored jointly by the **Professional Entity** and a labor organization, solely for the benefit of the **Employees** of the **Professional Entity**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy provided that the provisions of Clause VIII.A. of the General Terms and Conditions must be fulfilled;
  2. a pension plan as defined in **ERISA** sponsored solely by the **Professional Entity** or sponsored jointly by the **Professional Entity** and a labor organization, solely for the benefit of the **Employees** of the **Professional Entity**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy provided that the provisions of Clause VIII.A. of the General Terms and Conditions must be fulfilled;
  3. a plan which is both a welfare plan and a pension plan as defined in **ERISA** sponsored solely by the **Professional Entity** or sponsored jointly by the **Professional Entity** and a labor organization solely for the benefit of the **Employees** of the **Professional Entity**, and which is so sponsored prior to the inception date of this Policy or becomes so sponsored after the inception date of this Policy provided that the provisions of Clause VIII.A. of the General Terms and Conditions must be fulfilled;

4. a government-mandated program for unemployment insurance, workers compensation, social security or disability benefits for **Employees** of the **Professional Entity**; or
5. any other employee benefit plan that is not subject to Title I of **ERISA**, including any fringe benefit or excess benefit plan, that was, is, or becomes sponsored solely by the **Professional Entity** exclusively for the benefit of **Employees** of the **Professional Entity**,

provided, that this Policy only provides coverage for any **Wrongful Act** committed or any conduct undertaken while the **Professional Entity** sponsored or jointly sponsored such plan.

- G. **“Voluntary Compliance Fees”** means any costs of corrections, fees, penalties or sanctions imposed by law under a **Voluntary Compliance Program** that any of the **Insureds** become legally obligated to pay as a result of a **Wrongful Act**, but shall not include any other costs, charges, expenses, fees, penalties, sanctions, assessments, damages, taxes or matters that may be deemed to be uninsurable under the law pursuant to which this Policy shall be construed.
- H. **“Voluntary Compliance Notice”** means a written notice given by the **Insureds** to the Underwriters indicating any of the **Insureds** intent to participate in a **Voluntary Compliance Program**, but shall not include any of the **Insureds** participation in any **Voluntary Compliance Program** initiated prior to the Inception Date of this Policy.
- I. **“Voluntary Compliance Program”** means any voluntary compliance resolution program or similar voluntary settlement program administered by the Internal Revenue Service or Department of Labor of the United States, including, but not limited to, the Employee Plans Compliance Resolution System, the Self Correction Program, the Audit Closing Agreement Plan, the Delinquent Filer Voluntary Compliance program and the Voluntary Fiduciary Correction program.

### III. EXCLUSIONS

The Exclusions set forth below shall apply only to this Coverage Part of the Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim** or **Investigation**:

- A. for actual or alleged sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of use thereof), bodily injury, assault, battery, invasion of privacy, mental anguish, emotional distress, libel, slander or defamation;
- B. for any actual or alleged violation of:



1. any workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefit law,
  2. the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments promulgated thereto; or
  2. any **Wage and Hour Law**;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving service as a **Fiduciary** or **Administrator** of any plan, fund or program other than a **Plan**;
- D. for the failure to collect contributions owed to any **Plan** from any employer unless such failure is due to the negligence of any of **Insureds**;
- E. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving discrimination in violation of any law other than **ERISA** or any similar act.

**Coverage Part 5: Information Security and Privacy Liability**

**I. INSURING CLAUSES**

- A. Underwriters shall pay on behalf of the **Insureds Loss** resulting from any **Claim**, including a **Claim** for violation of a **Privacy Law**, first made against the **Insureds** during the **Policy Period** for a **Wrongful Act**.
- B. Underwriters shall pay to the **Professional Entity Privacy Notification Costs** resulting from the **Professional Entity's** legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Clause I.W.5.(a) or (b) of the General Terms and Conditions that is discovered by any of the **Insureds** during the **Policy Period**.
- C. Underwriters shall pay on behalf of the **Insureds Costs, Charges and Expenses and Penalties** resulting from any **Claim** in the form of a **Regulatory Proceeding** first made against the **Insureds** during the **Policy Period** for a violation of a **Privacy Law** and caused by an incident described in Clause I.W.5.(a), (b) or (c) of the General Terms and Conditions.

**II. DEFINITIONS**

The following terms whenever used in this Coverage Part or elsewhere in this Policy in boldface type shall have the meanings indicated.

- A. **“Breach Notice Law”** means:
  - 1. any United States federal, state, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person;
  - 2. any Canadian national, provincial, or territory statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person; and
  - 3. a foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person.
- B. **“Call Center Services”** means the provision of a call center to answer calls, from individuals to whom notice of an incident is provided pursuant to Clause II.K.3. of this Coverage Part, during standard business hours for a period of up to ninety (90) days following notification (or longer if required by applicable law or regulation) of such incident.
- C. **“Computer Expert Services”** means costs for a computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may

require the **Professional Entity** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons.

- D. “**Computer Security**” means software, computer or network hardware devices, as well as the **Professional Entity's** written information security policies and procedures, the function or purpose of which is to prevent **Unauthorized Access or Use**, a denial of service attack against **Computer Systems**, infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**. **Computer Security** includes anti-virus and intrusion detection software, firewalls and electronic systems that provide access control to **Computer Systems** through the use of passwords, biometric or similar identification of authorized users.
- E. “**Computer Systems**” means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Professional Entity**; or
  2. systems operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Professional Entity** or for processing, maintaining, hosting or storing the **Professional Entity's** electronic data, pursuant to written contract with the **Professional Entity** for such service.
- F. “**Credit Monitoring Product**” means a product, to be approved by the Underwriters, that provides one (1) year of credit file monitoring, plus mailing and other reasonable third party administrative costs associated with offering such product to individuals whose **Personally Identifiable Information** was compromised or reasonably believed to be compromised as a result of a theft, loss or **Unauthorized Disclosure** in an incident that gives rise to notification of such individual pursuant to Clause II.K.3. of this Coverage Part.
- G. “**Identity Monitoring Product**” means the offering of a product or service, to be approved by the Underwriters, that monitors the internet for the possible presence of an individual’s **Personally Identifiable Information** that was compromised or reasonably believed to be compromised as a result of theft, loss or **Unauthorized Disclosure** in the incident giving rise to notification of such individual pursuant to Clause II.K.3. of this Coverage Part.
- H. “**Legal Services** means fees charged by an attorney:
1. to determine the applicability of and actions necessary for the **Professional Entity** to comply with **Breach Notice Laws** due to an actual or reasonably suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**; and
  2. to provide necessary legal advice to the **Professional Entity** in responding to actual or suspected theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**.
- I. “**Penalties**” means:
1. any civil fine or money penalty payable to a governmental entity that was

imposed in a **Regulatory Proceeding** by the Federal Trade Commission, Federal Communications Commission, or any other federal, state, local or foreign governmental entity, in such entity's regulatory or official capacity; the insurability of **Penalties** shall be in accordance with the law in the applicable venue that most favors coverage for such **Penalties**; and

2. amounts which the **Insureds** are legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to an adverse judgment or settlement of a **Regulatory Proceeding** (including such amounts required to be paid into a "Consumer Redress Fund"); but and shall not include payments to charitable organizations or disposition of such funds other than for payment of consumer claims for losses caused by an event covered pursuant to Insuring Clause I.A.;

but shall not mean (a) costs to remediate or improve **Computer Systems**, (b) costs to establish, implement, maintain, improve or remediate security or privacy practices, procedures, programs or policies, (c) audit, assessment, compliance or reporting costs, or (d) costs to protect the confidentiality, integrity and/or security of **Personally Identifiable Information** from theft, loss or disclosure, even if it is in response to a regulatory proceeding or investigation.

J. **"Personally Identifiable Information"** means:

1. information concerning the individual that constitutes "nonpublic personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
2. medical or health care information concerning the individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;
3. information concerning the individual that is defined as private personal information under statutes enacted to protect such information in foreign countries, for **Claims** subject to the law of such jurisdiction;
4. information concerning the individual that is defined as private personal information under a **Breach Notice Law**;
5. education records as defined by the Family Educational Rights and Privacy Act (FERPA), which are directly related to an individual's attendance as a student; or
6. the individual's drivers license or state identification number; social security number; unpublished telephone number; and credit, debit or other financial account numbers in combination with associated security codes, access codes, passwords or pins if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information.

**Personally Identifiable Information** does not include publicly available information that is lawfully made available to the general public from government records.

- K. **“Privacy Notification Costs”** means the reasonable and necessary costs incurred by the **Professional Entity** for the following services within one (1) year of the reporting of the incident or suspected incident to the Underwriters:
1. **Computer Expert Services;**
  2. **Legal Services;**
  3. to provide notification to:
    - (a) individuals who are required to be notified by the **Professional Entity** under the applicable **Breach Notice Law**; or
    - (b) in the Underwriters’ discretion, individuals affected by an incident in which their **Personally Identifiable Information** has been subject to theft, loss or **Unauthorized Disclosure** in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual;
  4. **Call Center Services;**
  5. up to one hundred thousand United States dollars (USD 100,000) for the costs of a public relations consultancy for the purpose of averting or mitigating material damage to the **Professional Entity’s** reputation; and
  6. costs of a **Credit Monitoring Product** or **Identity Monitoring Product**, to be approved by the Underwriters, provided all such costs payable under this subsection 6. must be incurred within one (1) year of discovery of such theft, loss or **Unauthorized Disclosure** of information and be for the purpose of mitigating potential **Loss** resulting from such theft, loss or **Unauthorized Disclosure** of information.
- Privacy Notification Costs** will only be paid in excess of the applicable Retention and shall not include salaries, wages, overhead or benefit expenses associated with the **Professional Entity**.
- L. **“Privacy Law”** means a federal, state or foreign statute or regulation requiring the **Professional Entity** to protect the confidentiality and/or security of **Personally Identifiable Information**.
- M. **“Regulatory Proceeding”** a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of the Federal Trade Commission, Federal Communications Commission, or any federal, state, local or foreign governmental entity in such entity’s regulatory or official capacity in connection with such proceeding.
- N. **“Security Breach”** means:
1. **Unauthorized Access or Use of Computer Systems**, including **Unauthorized**

**Access or Use** resulting from the theft of a password from a **Computer System** or from any **Insured**;

2. a denial of service attack against **Computer Systems** or computer systems that are owned, operated or controlled by any of the **Insureds**; or
3. infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**,

whether any of the foregoing is a specifically targeted attack or a generally distributed attack.

A series of continuing **Security Breaches**, related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a continuing failure of **Computer Security** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

- O. **“Third Party Information”** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insureds** subject to a mutually executed written confidentiality agreement or which the **Professional Entity** is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.
- P. **“Unauthorized Access or Use”** means the gaining of access to or use of **Computer Systems** by an unauthorized person or persons or the use of **Computer Systems** in an unauthorized manner.
- Q. **“Unauthorized Disclosure”** means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Professional Entity** and is without knowledge of, consent, or acquiescence of any **Executive Officer**.

### III. EXCLUSIONS

The Exclusions set forth below shall apply only to this Coverage Part of the Policy.

Underwriters shall not be liable to make any payment in connection with that portion of any **Claim** or incident:

- A. for actual or alleged sickness, disease, death, false arrest, false imprisonment, damage to or destruction of tangible property (including loss of use thereof), bodily injury, assault, battery, mental anguish, emotional distress, libel, slander or defamation; provided that electronic data shall not be considered tangible property for the purpose of this exclusion;
- B. for any actual or alleged violation of:
  1. any workers’ compensation, disability benefits, unemployment compensation law, social security or other employment benefit law,

2. the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments promulgated thereto, or
3. any **Wage and Hour Law**;

provided, however, that this exclusion shall not apply to any otherwise covered **Claim** under Insuring Clause I.A., or to **Privacy Notification Costs** covered under Insuring Clause I.B., that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**, provided that no **Executive Officer** participated, or is alleged to have participated or colluded, in such theft, loss or **Unauthorized Disclosure**;

- C. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim** is covered under Insuring Clause I.A. and is made by a current or former **Employee**;
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, service as a partner, shareholder, member, trustee, director, officer, board member, executive or employee with any entity other than the **Professional Entity**;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any actual or alleged infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress, or misappropriation of trade secret;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Employment Practices**.
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written; provided, however, this exclusion shall not apply to:
  1. the coverage provided pursuant to Insuring Clause I.A. for an incident described in Clause I.W.5.(a) of the General Terms and Conditions to any obligation of the **Professional Entity** to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information**; or
  2. to the extent the **Insureds** would have been liable in the absence of such contract or agreement;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged antitrust violation, restraint of trade, unfair

competition, or false or deceptive or misleading advertising or violation of the Sherman Antitrust Act, the Clayton Act, or the Robinson-Patman Act, as amended;

- I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged false, deceptive or unfair trade practices; provided, however, that this exclusion shall not apply to any **Claim** or incident that results from a theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information**, provided that no **Executive Officer** participated or is alleged to have participated or colluded in such theft, loss or **Unauthorized Disclosure**;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  - 1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** or other personal information by, on behalf of, or with the consent or cooperation of the **Professional Entity**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Information**; provided, however, that this exclusion shall not apply to the actual or alleged unlawful collection or acquisition or retention of **Personally Identifiable Information** by a person or entity that is not an **Insured** and without the knowledge of the **Professional Entity**; or
  - 2. the distribution of unsolicited email, direct mail, text messages or facsimiles, wire tapping, eavesdropping, audio or video recording, or telemarketing, if such distribution, wire tapping or recording is done by or on behalf of the **Professional Entity**;
- K. brought about or contributed to by any intentional **Security Breach** or intentional or knowing violation of the law, if committed by any of the **Insureds**, or by others if the **Insured Persons** colluded or participated in any such conduct or activity; as determined by a final adjudication in any action or proceeding (other than an action or proceeding initiated by Underwriters to determine coverage under this Policy);
- L. under Insuring Clause I.A. for an incident described in Clause I.W.5.(b) of the General Terms and Conditions, based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any theft of or **Unauthorized Disclosure** of data;
- M. brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any other state, federal, local or foreign governmental entity, in such entity's regulatory or official capacity; provided, however, that this exclusion shall not apply to an otherwise covered **Claim** under Insuring Clause I.C., or to **Privacy Notification Costs** covered under Insuring Clause I.B. to the extent such **Privacy Notification Costs** are incurred to provide services that are legally required to comply with a **Breach Notice Law**;
- N. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:



1. any trading losses, trading liabilities or change in value of accounts;
  2. any loss, transfer or theft of monies, securities or tangible property of others in the care, custody or control of the **Professional Entity**;
  3. the monetary value of any transactions or electronic fund transfers by or on behalf of any of the **Insureds** which is lost, diminished, or damaged during transfer from, into or between accounts; or
  4. the value of coupons, price discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
- O. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
- P. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any theft, loss or disclosure of **Third Party Information** by any of the **Insureds**.