

GENERAL TERMS & CONDITIONS

IMPORTANT: THIS IS A CLAIMS FIRST MADE POLICY WHICH INCLUDES DEFENSE COSTS WITHIN THE COVERAGE LIMITS. READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE.

I. COVERAGE: WHAT IS COVERED

- A. This policy covers any **Claim** first made against the **Insured** during the **Policy Period** or the Reporting Period (pursuant to Section V of this Coverage Section) arising from a **Wrongful Act**, subject to the terms, conditions, limitations and exclusions set forth in this Coverage Section and any attached Coverage Sections pursuant to Section I.B. and attached hereto. The policy has been issued in reliance upon the **Application**, which is deemed attached to and incorporated into this Policy and therefore forms part of this Policy.

Throughout this Policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations, and any other person or organization qualifying as an **Insured**. The words "we", "us" and "our" refer to the Insurers providing this insurance.

- B. **GENERAL TERMS & CONDITIONS.** This Coverage Section shall form the basis of the Policy but shall be null & void without the addition of at least one of the following Coverage Sections:

1. **DIRECTORS & OFFICERS LIABILITY.** Coverage is only available when elected on the Declarations and the appropriate Coverage Section is attached hereto.
2. **EMPLOYMENT PRACTICES LIABILITY.** Coverage is only available when elected on the Declarations and the appropriate Coverage Section is attached hereto.
3. **FIDUCIARY PRACTICES LIABILITY.** Coverage is only available when elected on the Declarations and the appropriate Coverage Section is attached hereto.

II. DEFENSE OF CLAIMS

- A. **Duty to Defend.** We have the right and duty to defend any **Claim** to which this Policy applies, even if the allegations are groundless or false. We will give consideration to your preference for defense counsel; *however*, the final decision rests with us. Our duty to defend any **Claim** ends when the Coverage Limits that apply have been exhausted by payment of **Loss**, which includes **Defense Costs**.
- B. **Consent to Settle.** We have the right to investigate and settle any **Claim** in the manner and to the extent that we believe is proper. We will not settle any **Claim** without your consent. If you refuse to consent to any settlement recommended by

us or our Authorized Representative and you elect to continue to defend the **Claim**, then our liability shall not exceed the amount for which the **Claim** could have been settled plus **Defense Costs** incurred with our consent up to the date of such settlement proposal, plus 80% of covered **Loss** incurred after the date of the proposed settlement, providing that 20% of such **Loss** is borne by the **Named Insured**.

- C. **Transfer of Control.** The **Insured(s)** may take over control of any outstanding **Claim** previously reported to us only if we agree or if a court orders the **Insured** to take over control. If we transfer control of the defense to the **Insured** for any reason other than the exhaustion of the Coverage Limits or pursuant to Section II.B. above, we will pay **Defense Costs** incurred following the transfer, subject to all other terms and limitations of this Policy.

Payment of **Defense Costs** are included in the Coverage Limits. They are not in addition to the Coverage Limits. If your Coverage Limits are exhausted, we will notify the **Insured** of any outstanding **Claim** so that the **Insured** can take over control of their defense.

During the transfer of control, we agree to take reasonable steps necessary to avoid any prejudice to the **Insured**. If we do so, you agree to pay reasonable expenses we incur for taking such steps after the Coverage Limits are exhausted.

III. GENERAL DEFINITIONS

- A. **Application** means all applications, attachments, information and materials submitted to the Insurers for this Policy or any Policy for which this Policy is a renewal or replacement. All such applications, attachments, information and materials are deemed attached to and incorporated into the Policy regardless of whether this material is provided directly or indirectly to the Insurer.
- B. **Change in Control** means:
1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
 2. the obtaining by any one person, entity or affiliated group of persons or entities of the right to elect, appoint or designate over fifty percent (50%) of the directors of the **Named Insured**.
- C. **Claim** means:
1. a written demand for money damages;
 2. a charge, administrative complaint or other commencement of a formal federal, state or local administrative proceeding;
 3. a civil complaint, action or lawsuit; or
 4. an arbitration proceeding to which any Insured must submit or to which any **Insured** submits with our consent.

A **Claim** is first made when it is first received by **Management Personnel** or when it is deemed first made pursuant to Section IX.B., whichever is earlier.

D. **Continuity Date** means, with respect to each Coverage Section purchased, the earliest date that coverage similar to that afforded by such Coverage Section incepted and was maintained continuously by the **Named Insured**.

E. **Defense Costs** mean those reasonable and necessary expenses incurred by an attorney retained by us or by the **Insured** with our consent for the investigation, settlement or defense of a specific **Claim**, including attorney fees and expenses, court costs, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the Coverage Limits of this Policy that apply; we have no obligation to furnish any bonds).

Defense Costs do not include: 1) salaries and expenses of our employees, including our in-house and/or coverage attorneys and/or our independent adjusters; 2) salaries and/or expenses of any **Insured** or employee of any **Insured**; or 3) any amount incurred by you or any **Insured** before notice of the **Claim** was given to our Authorized Representative, as shown in the Declarations, or otherwise incurred without our consent.

F. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event or transaction or series of facts, circumstances, situations, events or transactions.

G. **Insured** means:

1. the **Named Insured** and any **Subsidiary** (collectively referred to herein as the "**Insured Entity**");
2. any **Insured Person**;
3. the estate, heirs, legal representatives or assigns of an **Insured Person** if the **Insured Person** is deceased or is adjudicated or declared incompetent, insolvent or bankrupt; or
4. the lawful spouse or domestic partner of an **Insured Person**, but only for a **Claim** brought against such spouse solely by reason of his/her relationship to the **Insured Person** or his/her ownership interest in marital community property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured** to the spouse or domestic partner. The Policy does not provide any coverage for a **Claim** made against the spouse or domestic partner of an **Insured Person** for any act or omission of the spouse or domestic partner.

H. **Insured Person** shall have the meaning given to that term in each Coverage Section attached hereto.

I. **Loss** means damages, monetary judgments (including pre-judgment and post-judgment interest), monetary settlements, statutory attorney fees, and **Defense Costs**. **Loss** shall also include **Punitive Damages**, subject to the Coverage Limit as stated on the Declarations page of this Policy.

Loss shall not include:

1. non-monetary relief;
2. costs incurred by an **Insured** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any person;

3. matters which may be deemed uninsurable according to the law under which this Policy is construed;
4. amounts owed under any contract;
5. taxes; or
6. civil or criminal fines or penalties.

With respect to insurability, including the insurability of **Punitive Damages**, the applicable law will be the law most favorable to the **Insured**, provided that law has a reasonable relationship to the **Claim** as: 1) the law of the jurisdiction where the **Named Insured** or any **Subsidiary** is incorporated or has its principal place of business; 2) the law of the jurisdiction where the **Claim** is pending; or 3) the law of the jurisdiction where any **Wrongful Act** underlying such **Claim** took place.

- J. **Management Personnel** means any owner, director, officer, partner, president, chief executive officer, chief financial officer, chief operating officer, executive director, general or office manager, in-house attorney, head of risk management or any person performing the human resources function of the **Named Insured** or any **Subsidiary**.
- K. **Named Insured** means the company named in Item 1. of the Declarations.
- L. **Outside Non-Profit Entity** means any non-profit organization which is exempt from taxation under the Internal Revenue Code (as amended).
- M. **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 3. of the Declarations, or its earlier cancellation date and hour, if any.
- N. **Pollutants** means:
1. any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any state or local counterpart, including, but not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials; or
 2. any other hazardous substance, emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.
- O. **Punitive Damages** means punitive damages, exemplary damages and additional damages resulting from the multiplication of compensatory damages.
- P. **Subsidiary (Subsidiaries)** means any and all entities so long as such entity is more than 50% owned directly or indirectly by the **Named Insured**:
1. on or before the inception date of this Policy; or
 2. subsequent to the inception date of this Policy by reason of being created or acquired by you or any of your **Subsidiaries**; provided, however, if the total assets or the total number of employees of such entity is greater than twenty percent (20%) of the total assets or the total number of employees of the **Named Insured** listed on the **Application** for this Policy, absent payment of additional premium determined by us, such entity is an **Insured** only from the date of formation or acquisition until the lesser of ninety (90) days or the remainder of the **Policy Period**.

None of the provisions of Section III.P.2 shall apply to a partnership or joint venture. Such entities remain uninsured unless they were listed in the **Application**.

Notwithstanding the foregoing, no coverage is provided under this Policy for any **Claim** made against a **Subsidiary** or any of its **Insured Persons** for a **Wrongful Act** by any such **Subsidiary** or **Insured Person** (i) that occurred before the **Named Insured** directly or indirectly acquired or formed more than 50% of such **Subsidiary** or (ii) that occurred after the **Named Insured** ceased to own directly or indirectly more than 50% of such **Subsidiary**.

- Q. **Wrongful Act** shall have the meaning given to that term in each Coverage Section attached hereto.

IV. **EXCLUSIONS**

This Policy does not cover any **Loss** resulting from any **Claim** based upon, arising out of, directly or indirectly connected or related to, or in any way involving:

- A. stock options, including, without limitation, accounting for vested or unvested stock options, and/or the actual or alleged improper dating or pricing or structure of stock options;
- B. any **Insured's** assumption of another's liability in a contract or agreement, except to the extent that any **Insured** would have been liable absent such contract or agreement;
- C. any **Wrongful Act** which any **Insured** had knowledge of before the **Continuity Date** of the Policy, as shown in the Declarations, or any **Wrongful Act** which was the subject of notice under any prior policy;
- D. any prior and/or pending litigation as of the **Continuity Date**, or any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, regardless of the legal theory upon which such **Claim** is predicated;
- E. any deliberately fraudulent or dishonest act of an **Insured Person** or deliberate violation of any foreign, federal, state, or local statute, ordinance, rule or regulation committed by or with the knowledge or consent of any **Insured Person**, if such fraudulent or dishonest act or violation of any foreign, federal, state, or local statute, ordinance, rule or regulation is established by a final adjudication adverse to, or admission by, an **Insured Person**; provided, however, the actual or alleged conduct or intent of any **Insured Person** will not be imputed to any other **Insured Person** in determining the applicability of this exclusion;
- F. any actual or alleged bodily injury, emotional distress, mental anguish, humiliation, sickness, disease, death, assault or battery, including sexual assault and sexual battery, or damage to or destruction of tangible property, including the loss of use of property; provided, however, this exclusion shall not apply to emotional distress, mental anguish or humiliation alleged in any **Claim** for a **Wrongful Act** under the Employment Practices Liability Coverage Section, if such Coverage Section is purchased; or

- H. any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

V. WHEN COVERAGE IS PROVIDED

- A. This Policy applies only to **Claims** that are first made against you during the **Policy Period** or, if applicable, Automatic 60-Day or Optional Extended Reporting Period. A **Claim** is considered to be first made on the date a **Management Personnel** is served or first receives notice of a **Claim**. More than one **Claim** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** will be deemed to be a "single **Claim**", which will be deemed to have been first made on the date that the first of such **Claims** is received by any **Management Personnel** or the date the first of such **Claims** is deemed first made pursuant to Section IX.B., whichever is earlier.

- B. Automatic 60-Day Reporting Period. An Automatic 60-Day Reporting Period will apply only if this Policy is non-renewed by us. Coverage under the Automatic 60-Day Reporting Period may not be cancelled. However, the Automatic 60-Day Reporting Period will not apply to any **Claims** if the **Insureds** have other insurance that would provide coverage for the **Claim**, even if the limits of such other insurance have been exhausted. A change in the premium, terms or conditions we require shall not be deemed non-renewal by us.

Coverage under the Automatic 60-Day Reporting Period is limited to **Claims** first made during that 60 day period for a **Wrongful Act** which occurred before the **Policy Period** ended and which are otherwise covered by this Policy.

The Automatic 60-Day Reporting Period does not extend the **Policy Period**, or change the scope of coverage provided. We will consider any **Claim** because of a **Wrongful Act** which was first made during the Automatic 60-Day Reporting Period to have been made on the last date on which this Policy is in effect.

The Automatic 60-Day Reporting Period does not apply if the Policy is cancelled by us or if the **Insured** purchases the Optional Extended Reporting Period.

- C. Optional Extended Reporting Period. If this Policy is non-renewed by us or cancelled by you, you can purchase an Optional Extended Reporting Period of either twelve (12) months, twenty-four (24) months or thirty-six (36) months from the end of the **Policy Period**. The Optional Extended Reporting Period is not available if the Policy is cancelled by us.

Coverage under the Optional Extended Reporting Period is limited to **Claims** first made during the Optional Extended Period for a **Wrongful Act** which occurred before the **Policy Period** ends and which are otherwise covered by this Policy.

There shall be no Optional Extended Reporting Period unless we receive a written request for it within fifteen (15) days after the **Policy Period** ends, nor will it take effect unless the additional premium is paid within thirty (30) days after the **Policy Period** ends. Once the additional premium is paid, the Optional Extended Reporting Period may not be cancelled and the premium will be fully earned.

The additional premium for a twelve (12) month Optional Extended Reporting Period will be one hundred percent (100%) of the premium charged for the last **Policy Period**. The additional premium for a twenty four (24) month Optional Extended Reporting Period will be one hundred and fifty percent (150%) of the premium charged for the last **Policy Period**. The additional premium for a thirty-six (36) month Optional Extended Reporting Period will be one hundred and seventy-five percent (175%) of the premium charged for the last **Policy Period**.

However, the Optional Extended Reporting Period will not apply to any **Claim** if any **Insured** subsequently obtains other insurance that provides coverage for the **Claim**, but only to the extent that the limits of such other insurance have not been exhausted.

- D. Coverage Limits For Automatic or Optional Extended Reporting Periods. The Coverage Limits that apply to the Policy at the end of the **Policy Period** shall not be renewed or increased in any way by the Automatic 60-Day Reporting Period or an Optional Extended Reporting Period.
- E. Changes of Control of Named Insured. If, during the **Policy Period**, a **Change in Control** occurs, coverage under this Policy with respect to such **Named Insured** will continue in full force and effect with respect to any **Wrongful Act** committed before such change of control. There shall be no coverage for any **Wrongful Act** which takes place after such **Change of Control**. After any such **Change of Control**, this Policy may not be cancelled by you, regardless of Section IX.H, and the entire Premium for the Policy will be deemed fully earned.

You shall give our Authorized Representative written notification of the change of control as soon as practicable, but in no event later than thirty (30) days after the effective date of the change.

VI. WHERE COVERAGE IS PROVIDED

This Policy covers **Claims** made or brought anywhere in the world for **Wrongful Acts** that happen anywhere in the world.

VII. COVERAGE LIMITS

A. Shared Total Aggregate Limit or Coverage Sections Limits

If the Shared Total Aggregate Limit of Liability is indicated as purchased in Item 4.a. of the Declarations page, then the amount shown in Item 4.a. of the Declarations page is the most we will pay for all **Loss** under the Policy, regardless of the number of **Claims** or the Coverage Sections purchased.

If the Shared Total Aggregate Limit of Liability is not indicated as purchased in Item 4.a. of the Declarations page, then as to each Coverage Section and Coverage indicated as purchased in Item 4.b. of the Declarations page the applicable amount set forth in Item 4.b. for such Coverage Section and Coverage is the most we will pay for all **Loss** under such Coverage Section and Coverage, regardless of the number of **Claims**.

B. Punitive Damages Limit

Subject to Section VII.A. above, and referenced by Item 4.d. of the Declarations page, **Punitive Damages** shall be part of and not in addition to the applicable Limit(s) set forth in Item 4.a. or 4.b. of the Declarations page, regardless of the number of **Claims** or the Coverage Sections purchased.

C. Effect of Policy Period Extension

If the **Policy Period** is extended, the Coverage Limits, as shown on the Declarations page, shall not in any way increase.

VIII. SELF INSURED RETENTION

Our obligation to pay under the Policy applies only to the amount of covered **Loss** in excess of any Self Insured Retention amount, as shown in the Declarations, and the Coverage Limits will not be reduced by the amount of such Self Insured Retention.

The Self Insured Retention amount will apply separately to each **Claim** made; however, it will only apply once to all **Interrelated Claims**.

IX. CONDITIONS

We have no duty to provide coverage under this Policy unless as a condition precedent there has been full compliance with all of the conditions contained in this Policy.

A. Notification of a Claim. As a condition precedent to coverage, the **Insureds** must provide written notification of any **Claim** to our Authorized Representative, as shown in the Declarations of this Policy, as soon as practicable after any **Management Personnel** becomes aware of such **Claim**.

B. Notification of a Potential Claim. If during the Policy Period any **Insured** first becomes aware of:

1. an oral complaint alleging a **Wrongful Act** committed by an **Insured**; or
2. circumstances which could give rise to a **Claim**

and the **Insured** provides written notice of such oral complaint or circumstances to our Authorized Representative during the **Policy Period**, then any **Claim** arising from such oral complaint or circumstances will be deemed to have been first made on the date such written notice was received by our Authorized Representative. To be effective, such written notice must include: 1) a detailed description of the oral complaint or circumstances; 2) the nature of the **Wrongful Act**; 3) the nature of the alleged or potential damage; 4) the names of the actual or potential claimants; and 5) the manner in which the **Insured** first became aware of the oral complaint or circumstances.

C. Cooperation. You and/or any other **Insured** must:

1. authorize us or our Authorized Representative, as shown in the Declarations, to obtain records and other information relevant to evaluating all **Claims** in terms of liability, damages, defenses, and coverage;

2. co-operate with us, defense counsel and our Authorized Representative, as shown in the Declarations, in the investigation and defense of any **Claim**;
 3. provide us or our Authorized Representative with all assistance and information we or they reasonably request, including, but not limited to:
 - a) the identity of the claimant(s);
 - b) the identity of the **Insured(s)** who allegedly committed the **Wrongful Acts**;
 - c) the identity of any witnesses to the **Wrongful Act(s)**;
 - d) the date(s) the alleged **Wrongful Act(s)** took place;
 - e) copies of any demands, notices, summons or legal papers received by any **Insured** in connection with the **Claim**; and
 - f) all other information and documentation we or our Authorized Representative deem necessary to our evaluation of all **Claims** in terms of liability, damages, defenses and coverage.
 4. take no action, or fail to take any action, that prejudices your rights, the rights of any **Insured**, or our rights with respect to any **Claim**.
- D. Prior Written Consent. No **Insured** will, except at their own cost, settle, offer to settle, admit any liability, voluntarily make any payment, assume any obligation, or incur any expenses or **Defense Costs** without our prior written consent. Any **Loss** (including, but not limited to, increased settlement amounts or additional **Defense Costs**) incurred as a result of conduct by any **Insured** without our consent will also be the sole responsibility of the **Insured**.
- E. Legal Action Against Us:
1. No action shall lie against us unless, as a condition precedent: a) the **Insureds** shall have fully complied with all of the terms of this Policy; and b) 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** (or the **Third Party Claimant**) and us. Nothing contained in this Policy shall give any person or entity any right to join us as a party to any **Claim** against any of the **Insureds** to determine their liability. No **Insured** shall attempt to implead us in any judicial or administrative proceeding.
 2. Assignment of interest under this Policy shall not bind us unless we consent in writing to such an assignment.
- F. Other Insurance. If other valid and collectable insurance is available to any **Insured(s)** covering a **Loss** also covered by this Policy, other than insurance that is specifically stated to be in excess of this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance. In no event shall this Policy be subject to the terms, conditions or limitations of any other insurance policy.

G. Premium:

1. The Premium shown in the Declarations, is for the **Policy Period** shown in the Declarations.
2. The Policy is subject to a minimum earned premium of twenty five percent (25%) of the total Premium shown in the Declarations.

H. Cancellation. You may cancel this Policy by mailing to us written notice stating when thereafter such cancellation shall be effective. We may cancel this Policy for non-payment of premium only by mailing to the **Named Insured**, at the address shown in the Declarations, written notice stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

If you cancel, earned premium shall be computed in accordance with the short rate table set forth in Section X.M. If we cancel for non-payment of premium, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

I. Representations in Application and Severability. In granting coverage under this Policy, we have relied upon the **Application**, which shall be deemed incorporated into and constituting part of this Policy. The **Application** is the basis for coverage under this Policy and was material to our acceptance of the risk of issuing this Policy.

In the event any information or representation in the **Application** is not true or accurate, this Policy shall be void as to the **Named Insured** and all **Subsidiaries** and as to any **Insured Person** who had knowledge of such falsity or inaccuracy.

J. Transfer of Rights of Recovery Against Others to Us/Subrogation. If the **Insured** has rights to recover all or part of any payments we have made under this Policy, those rights are transferred to us; the **Insured** must do nothing after a **Loss** to impair them. At our request, the Insured will bring suit or transfer those rights to us and help us to enforce them.

K. Bankruptcy. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve us of our obligations under this Policy.

L. False or Fraudulent Claims. If any Insured proffers any **Claim** knowing the same to be false or fraudulent coverage for the **Claim** shall be forfeited and such **Insured** shall have no rights whatsoever under this Policy. To the extent we have paid any **Loss** for the **Claim** prior to discovering that the **Claim** is false or fraudulent, you shall repay the entire amount paid by us for the **Claim** within ninety (90) days of a demand by us for repayment.

M. Allocation:

1. In the event that a **Claim** is made against any **Insured** resulting in **Loss** covered by this Policy and loss not covered by this Policy (1) because of the covered and uncovered matters and/or (2) because a **Claim** is made

against both (a) the **Insured** and (b) other uninsured parties, then the Insurers and the **Insured** shall use all reasonable efforts to agree upon a fair and proper allocation of such amount between covered Loss and uncovered loss. As a guideline in determining a fair and proper allocation between covered **Loss** and uncovered loss, the relative liability of all persons or entities that caused or contributed to the damages incurred by the claimant, relative damages exposures, and the relative benefits obtained by the **Insured** and the uninsured persons and entities shall be taken into account. The existence of any allegations excluded from or otherwise outside the scope of the Policy's coverage shall further be taken into account in determining a fair and proper allocation.

2. If the Insurers and the **Insured** cannot agree on an allocation of **Loss**, the Insurers shall pay **Defense Costs** which the Insurers in their discretion reasonably believe to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined.
In any arbitration, suit or other proceeding to determine an appropriate allocation, no presumption shall exist concerning what is a fair and proper allocation for **Defense Costs** or other portion of **Loss**. Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior payments to the contrary.
3. As respects any payment of **Defense Costs**, in the event of a final adjudication which establishes that the Insurers have no liability for such **Defense Costs** under the terms, conditions, limitations, restrictions and exclusions of this Policy, the **Insured** agrees to repay the Insurers, upon demand, all **Defense Costs** paid by the Insurers.
4. Any allocation of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to allocation of other **Loss** on account of such **Claim**.
5. In the event that a **Claim** is made against the **Insured** such that **Loss** resulting therefrom is covered in full by this Policy, or conversely, the loss resulting therefrom is completely uncovered by this Policy, then such **Claim** and all resulting **Loss** (or loss) shall not be subject to allocation.

N. Short Rate Cancellation Table. In the event of cancellation of this Policy by the **Named Insured** the earned premium shall be computed as follows:

SHORT RATE CANCELLATION TABLE

i. For insurances written for one year:

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1 - 54	25	192 - 196	63
55 - 58	26	197 - 200	64
59 - 62 (2 months)	27	201 - 205	65
63 - 65	28	206 - 209	66
66 - 69	29	210 - 214 (7 months)	67
70 - 73	30	215 - 218	68
74 - 76	31	219 - 223	69
77 - 80	32	224 - 228	70
81 - 83	33	229 - 232	71

84 - 87	.....	34	233 – 237	.....	72
88 - 91	(3 months)	35	238 – 241	.....	73
92 - 94	.....	36	242 – 246	(8 months)	74
95 - 98	.....	37	247 – 250	.....	75
99 - 102	.....	38	251 – 255	.....	76
103 - 105	.....	39	256 – 260	.....	77
106 - 109	.....	40	261 – 264	.....	78
110 - 113	.....	41	265 – 269	.....	79
114 - 116	.....	42	270 – 273	(9 months)	80
117 - 120	.....	43	238 – 241	.....	73
121 - 124	(4 months)	44	274 – 278	.....	81
125 - 127	.....	45	279 – 282	.....	82
128 - 131	.....	46	283 – 287	.....	83
132 - 135	.....	47	288 – 291	.....	84
136 - 138	.....	48	292 – 296	.....	85
139 - 142	.....	49	297 – 301	.....	86
143 - 146	.....	50	302 – 305	(10 months)	87
147 - 149	.....	51	306 – 310	.....	88
150 - 153	(5 months)	52	311 – 314	.....	89
154 - 156	.....	53	315 – 319	.....	90
157 - 160	.....	54	320 – 323	.....	91
161 - 164	.....	55	324 - 328	.....	92
165 - 167	.....	56	329 - 332	.....	93
168 - 171	.....	57	333 - 337	(11 months)	94
172 - 175	.....	58	338 - 342	.....	95
176 - 178	.....	59	343 - 346	.....	96
179 - 182	(6 months)	60	347 - 351	.....	97
183 - 187	.....	61	352 - 355	.....	98
188 - 191	.....	62	356 - 360	.....	99

2. For Insurances written for more or less than one year:-

- a) If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
- b) If insurance has been in force for more than 12 months:
 - (i) Determine full annual premium as for an insurance written for a term of one year.
 - (ii) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
 - (iii) Add premium produced in accordance with items (i) and (ii) to obtain earned premium during full period insurance has been in force.



5STAR[®] PRIVATE COMPANY LIABILITY INSURANCE
Effected with Certain Underwriters at Lloyd's, London through

5STAR SPECIALTY PROGRAMS
CHICAGO, ILLINOIS

DIRECTORS & OFFICERS LIABILITY COVERAGE SECTION

I. INSURING CLAUSE: WHAT IS COVERED

- A. We will pay **Loss** on behalf of the **Insured Person** resulting from any **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Coverage Section, except for **Loss** for which the **Insured Entity** indemnifies such **Insured Person** or is unable to indemnify such **Insured Person** solely by reason of the **Insured Entity's** financial insolvency.
- B. We will pay **Loss** on behalf of the **Insured Entity** which the **Insured Entity** is required or permitted to pay as indemnification to any of the **Insured Person** resulting from any **Claim** for a **Wrongful Act** first made against the **Insured Person** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Coverage Section.
- C. We will pay **Loss** on behalf of the **Insured Entity** resulting from any **Claim** for a **Wrongful Act** first made against the **Insured Entity** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Coverage Section.

II. DEFINITIONS:

- A. **Claim** shall have the same meaning as set forth in the General Terms & Conditions Coverage Section and for the purpose of this Coverage Section, shall also mean any complaint, writ, indictment, information or other proceeding in which any **Insured** is alleged to have committed or engaged in a criminal offense or violation of a foreign, federal, state or local penal law. Coverage for such criminal **Claim** shall be limited to **Defense Costs** only. In the event that a final adjudication establishes the guilt of any **Insured**, the **Insured** shall be obligated to repay to us all **Defense Costs** which were paid by us on behalf of such **Insured**.
- B. **Directors and Officers** means all persons who were, are, or shall be duly elected or appointed directors or officers of the **Insured Entity**, including the functional equivalent to directors or officers of the **Named Insured** or any **Subsidiary** in the event such entity is incorporated or domiciled outside of the United States.
- C. **Insured Persons**, for purposes of this Coverage Section, mean **Directors and Officers** and all persons who were, are, or shall be in-house legal counsel or members of any duly constituted committee or advisory board of the **Insured Entity**.
- D. **Wrongful Act**, for purposes of this Coverage Section, means any actual or alleged

error, omission, misstatement, misleading statement, neglect, breach of duty or act:

1. by any of the **Insured Persons** while acting in their capacity as such;
2. by any of the **Insured Persons** while acting in their capacity as a director, officer, trustee, governor, executive director or similar position of any **Outside Non-Profit Entity**, subject to the limitations in Section III.C.;
3. with respect to Insuring Clause I.C. above, by the **Insured Entity**.

III. EXCLUSIONS

- A. This Coverage Section does not cover any **Loss** resulting from any **Claim** to the extent such **Claim** is for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Entity** or **Outside Non-Profit Entity**, which payment without such previous approval is in violation of applicable law.
- B. This Coverage Section does not cover any **Loss** resulting from any **Claim** brought by, on behalf of, or at the direction of any **Insured**, or any security holder of the **Insured Entity**, whether directly or derivatively, except and to the extent such **Claim**:
 1. is instigated and continued completely independent of and totally without the solicitation, assistance, participation or intervention of any **Insured**;
 2. is brought by any of the **Insured Persons** in the form of a cross claim, counterclaim, third party or other proceeding for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy; or
 3. is brought by an examiner, trustee, receiver, liquidator or rehabilitator of any **Insured Entity**.
- C. This Coverage Section does not cover any **Loss** resulting from any **Claim** based upon, arising out of, directly or indirectly connected or related to, or in any way involving the service of any of the **Insured Persons** in any other position or capacity; provided, however, that this exclusion shall not apply to the extent that:
 1. such **Claim** is based on the service of any of the **Insured Persons** as a director, officer, trustee, governor, executive director or similar position of any **Outside Non-Profit Entity** where such service is with the knowledge and consent of the **Named Insured**; and
 2. such **Outside Non-Profit Entity** is not permitted or required by law to provide indemnification to such **Insured Persons**; and
 3. such loss is not covered by insurance provided by any of the **Outside Non-Profit Entity's** insurers.
- D. This Coverage Section does not cover any **Loss** resulting from any **Claim** made against the **Insured Entity** for breach of any contract or agreement.
- E. This Coverage Section does not cover any **Loss** resulting from any **Claim** based upon, arising out of, directly or indirectly connected or related to, or in any way involving:
 1. any initial public offering undertaken and consummated by the **Named Insured** or any **Subsidiary**;

2. the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules or regulations of the Securities and Exchange Commission promulgated under either Act, or any other similar federal, state, or local law;
3. any equity or debt offering in excess of \$50 million which takes place during the **Policy Period** and is exempt from the registration requirements of the U.S. Securities and Exchange Commission, unless we have agreed in writing to extend coverage for **Wrongful Acts** in connection with such offering and the **Insured** has paid the premium required by us for such coverage extension;
4. any actual or alleged price fixing, restraint of trade, monopolization or unfair trade practices or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Act the Clayton Act, or any other federal statute involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, or of any rules or regulations promulgated under or in connection with any of the foregoing statutes, or of any similar provision of any federal, state or local statute, rule or regulation or common law;
5. any actual or alleged wrongful employment-related acts, including but not limited to actual or alleged discrimination, harassment, retaliation, wrongful termination, discharge or dismissal, wrongful hiring, demotion, discipline, evaluation, supervision, investigation or deprivation of career opportunity, or any employment-related infliction of emotional distress, anguish, or humiliation, libel, slander, disparagement, defamation, invasion of privacy, false imprisonment, detention, malicious prosecution or misrepresentation, or any actual or alleged violation of the Family Medical Leave Act or Uniformed Services Employment and Re-employment Rights Act or any similar foreign, federal, state or local law;
6. any actual or alleged discrimination against or harassment of, in any way, a natural person who is or was a customer, vendor, service provider or other business invitee of the **Insured**;
7. any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder and any amendments thereto, or of any similar provisions of federal, state, or local law or regulation; or
8. any actual or alleged infringement of any patent, copyright or trademark, trade name, trade secret, service mark, confidential or proprietary information, or any similar interest, or the violation or any law protecting such interests.

IV. RETENTIONS

- A. The retention set forth in Item 4.b. of the Declarations page applicable to Insuring Clause I.B. of this Coverage Section will apply to any **Loss** as to which indemnification by the **Insured Entity** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made solely by reason of the financial insolvency of the **Insured Entity**.
- B. The certificate of incorporation, charter, articles of association, or other organizational documents of the **Insured Entity** and each **Outside Entity**, including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

- C. If any **Claim** involves **Loss** under both Insuring Clauses I.B. and I.C. of this Coverage Section, only one retention will apply.

V. COVERAGE ENHANCEMENTS

In consideration of the premium charged, the following enhancements are included for purposes of the Directors & Officers Liability Coverage Section only:

A. Dedicated Side-A Limit

The **Insured Persons** shall have available to them an additional limit of \$500,000 ('Excess Side A Limit') available solely for **Loss** (including **Defense Costs**) resulting from any **Claim** under Insuring Clause I.A. of this Coverage Section in excess of the applicable Limit of Liability set forth in Item 4 of the Declarations and the limit of all insurance available that is specifically excess of this Policy, provided that such limits must be completely exhausted by actual payments thereunder by the applicable insurers of **Loss**, damages or defense expenses before we have any obligation to make any payment under such Excess Side A Limit.

B. Pollution Exclusion Carveback for Side A

For purposes of this Coverage Section only, Section IV.H of the General Terms & Condition Section shall not apply to any **Loss** under Insuring Clause I.A. of this Coverage Section incurred by any **Insured Person** resulting from any **Claim** made against any such **Insured Person**

C. Order of Payments

In the event that **Loss**, other than **Defense Costs**, resulting from any **Claim** made against both an **Insured Person** and the **Insured Entity** exceeds the remaining available Limit of Liability set forth in Item 4 of the Declarations, then the following shall apply:

1. We will first pay **Loss** from such **Claim** made against the **Insured Person** pursuant to Insuring Clause I.A. of this Coverage Section; then
2. to the extent that any amount of the applicable Limit of Liability shall remain available, we shall next pay **Loss** from such **Claim** made against the **Insured Person** pursuant to Insuring Clause I.B. of this Coverage Section; and
3. lastly, to the extent that any amount of the applicable Limit of Liability remains, we shall then pay **Loss** from such **Claim** made against the **Insured Entity** pursuant to Insuring Clause I.C. of this Coverage Section.

D. Severability & Imputation Intent

Section IX. CONDITIONS I. of the General Terms and Conditions Section shall not apply to this Coverage Section and, solely with respect to this Coverage Section, is replaced by the following:

- I. Representations in Application and Severability. In granting coverage under this Policy, we have relied upon the **Application**, which shall be deemed incorporated into and constituting part of this Policy. The **Application** is the basis for coverage under this Policy and was material to our acceptance of the

risk of issuing this Policy.

In the event any information or representation in the **Application** is not true or accurate, this Policy shall be void as to:

- A.** Any **Insured Person** who had knowledge of such falsity or inaccuracy (whether under Insuring Agreement A. or B. as to the **Insured Entity's** indemnification of such **Insured Person**); and
- B.** The **Named Insured** and all **Subsidiaries** with respect to Insuring Agreements B. and C., if the Chief Executive Officer, President or the Chairman of the Board of Directors of the **Named Insured** had knowledge of such falsity or inaccuracy.

In no other event shall the knowledge of any **Insured** as to any information or representation in the **Application** be imputed to any other **Insured**.

SPECIMEN

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

II. INSURING CLAUSE: WHAT IS COVERED

- A. We will pay **Loss** that the **Insured** is legally obligated to pay on account of a **Claim** for a **Wrongful Act** first made by a **Claimant** against an **Insured** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Section.
- B. If coverage for a **Third Party Event** is purchased, as evidenced by the schedule of Coverage Sections and Coverages Purchased in item 4.b) of the Declarations Page, we will pay **Loss** that the **Insured** is legally obligated to pay on account of a **Claim** for a **Third Party Event** first made by a **Third Party Claimant** against an **Insured** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Section.

II. DEFINITIONS

- A. **Claim** shall have the same meaning as set forth in the General Terms & Conditions section of the policy but for purposes of this coverage section, shall not include:
1. any labor or grievance arbitration pursuant to a collective bargaining agreement; or
 2. any complaint, writ, indictment, information or other proceeding in which any **Insured** is alleged to have committed or engaged in a criminal offense or violation of a foreign, federal, state or local penal law.
- B. **Claimant** means a current or former **Employee**, applicant for employment with an **Insured**, or the Equal Employment Opportunity Commission or a similar state or local agency acting on behalf of such current or former **Employee** or applicant for employment.
- C. **Discrimination** means termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment actions because of race, color, national origin, religion, age, sex, disability (including AIDS), pregnancy, sexual orientation, sexual preference, marital status, or any other basis prohibited by applicable foreign, federal, state or local law.
- D. **Employee** means any natural person whose labor or service is engaged by and directed by the **Insured Entity**. This includes full-time, part-time, volunteer, seasonal, temporary and leased employees. A natural person independent contractor will only be considered an **Employee** and therefore an **Insured Person** pursuant to Section II. G. of this Coverage Section when acting solely on behalf of the **Insured Entity** as a dedicated agent or representative. With regard to **Claims** for a **Wrongful Act** only, **Employee** shall also include: 1) employees leased to others; or 2) employees temporarily provided to another employer. Notwithstanding any of the foregoing, this Coverage Section does not cover any **Claim** arising from a

Third Party Event based upon, arising out of, directly or indirectly connected or related to, or in any way involving any actions, inactions or statements by any employee leased or temporarily provided to others.

This Coverage Section does not cover any **Claim** made by independent contractors seeking employee status, pay or benefits, including but not limited to over-time pay, vacation pay, severance, bonuses, commissions, profit-sharing, or any employee benefits.

E. **Harassment** means:

1. sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment; or
2. workplace harassment, including work related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment.

F. **Inappropriate Employment Conduct** means:

1. any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied employment contract or an implied covenant of good faith and fair dealing in an employment contract;
2. any actual or alleged wrongful hiring, demotion, discipline, evaluation, supervision and investigation of an **Employee**, or retaliation against an **Employee** (including, but not limited to, retaliation for whistle-blowing), or intentional interference with an employment contract;
3. any actual or alleged wrongful deprivation of a career opportunity, or wrongful failure to employ or promote, an **Employee**;
4. any actual or alleged employment related misrepresentation to an **Employee** or applicant for employment;
5. any actual or alleged employment related false imprisonment, detention or malicious prosecution;
6. any actual or alleged employment related libel, slander, defamation, disparagement or invasion of right of privacy;
7. any actual or alleged violation of the Family Medical Leave Act or Uniformed Services Employment and Re-employment Rights Act or any similar foreign, federal, state or local law; or
8. any actual or alleged employment related wrongful infliction of emotional distress, mental anguish or humiliation.

Inappropriate Employment Conduct shall not include any allegations other than those set forth above.

G. **Insured Person**, for purposes of this Coverage Section, shall also mean any directors, officers, natural person partners or trustees, or **Employees** of the **Named Insured** or any **Subsidiary**.

H. **Loss** shall have the same meaning as defined in the General Terms & Conditions section of the policy but for purposes of this coverage section shall not include:

1. any actual or alleged insurance, employee or retirement plan benefits;
 2. costs associated with eliminating non-essential duties from the job description of a **Claimant**; costs associated with providing any person with reasonable workplace accommodations; or costs associated with lost productivity by an employer as the result of making a reasonable workplace accommodation for any person;
 3. any actual or alleged amounts owed under foreign, federal, state, or local wage, hour or overtime laws;
 4. any actual or alleged compensation earned in the course of employment, including pay, salaries, commissions, bonuses, stock, stock options, deferred compensation, profit sharing or any type of perquisite or benefits including but not limited to vacation, holiday, and/or sick pay, or insurance plan enrollment or payments; or
 5. severance payments.
- I. **Third Party Claimant** means any natural person who is a customer, vendor, service provider or other business invitee of the **Insured** who makes a **Claim** for a **Third Party Event**.
- J. **Third Party Event** means actual or alleged acts of discrimination against or harassment of a **Third Party Claimant** by an **Insured**. For purposes of Section I.B. of this Coverage Section:
1. "discrimination" means actual or alleged differential treatment of a **Third Party Claimant** based upon the **Third Party Claimant's** race, color, national origin, religion, age, sex, disability (including AIDS), pregnancy, sexual orientation, sexual preference, marital status, or any class of persons protected by applicable foreign, federal, state or local law; and
 2. "harassment" means conduct towards a **Third Party Claimant** that creates a hostile or offensive environment, including, but not limited to, sexual harassment, unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature towards a **Third Party Claimant**.
- K. **Wrongful Act**, for purposes of this Coverage Section, means actual or alleged acts of **Discrimination, Harassment, and/or Inappropriate Employment Conduct** by an **Insured** against an **Employee, former Employee** or applicant for employment. If Section I.B. coverage is purchased, then solely with respect to the coverage afforded by Section I.B. **Wrongful Act** shall also mean a **Third Party Event**,

III. **EXCLUSIONS: WHAT IS NOT COVERED**

This Coverage Section does not cover any **Loss** resulting from any **Claim** based upon, arising out of, directly or indirectly connected or related to, or in any way involving:

- A. any law or regulation or duty pertaining to worker's compensation, disability benefits, social security benefits, or unemployment compensation, or any similar law or regulation or duty; provided, however, this exclusion does not apply to any **Claim** made against an **Insured** by a **Claimant** for retaliation on account of the filing of a workers' compensation claim, a claim for disability benefits, a claim for social security benefits, a claim for unemployment compensation, or a claim under any similar law;

- B. the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, or any amendments to or regulations pursuant to such Acts, or any similar foreign, federal, state or local laws or regulations; provided, however, this exclusion does not apply to any **Claim** for any actual or alleged retaliatory treatment on account of the exercise of rights pursuant to any such law; or
- C. any lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations or any protections contained within the National Labor Relations Act; provided, however, this exclusion does not apply to any **Claim** made against the **Insured** by a **Claimant** for retaliation against protected labor activities, including but not limited to strikes, picket lines, organizing, labor negotiations or any other activities protected by the National Labor Relations Act.

SPECIMEN

FIDUCIARY PRACTICES LIABILITY COVERAGE SECTION

III. INSURING CLAUSE: WHAT IS COVERED

- A. We will pay **Loss** that the **Insured** is legally obligated to pay on account of a **Claim** for a **Wrongful Act** first made against an **Insured** during the **Policy Period** or any applicable Reporting Period per Section V of the General Terms & Conditions Coverage Section.

II. DEFINITIONS

- A. **Administration** shall mean the interpretation and handling of records associated with, effecting enrollment, termination, or cancellation of, and giving council to, any employee with respect to any **Employee Benefit Plan**.
- B. **Claim** shall have the same meaning as defined in the General Terms & Conditions section of the policy but for purposes of this coverage section, shall also include:
3. a written demand for non-monetary damages or relief made against any **Insured**; or
 4. a formal or regulatory proceeding against any **Insured** commenced by the filing of a complaint, charge, or the return of indictment, or fact-finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation, Internal Revenue Service, or foreign equivalent.
- C. **Employee Benefit Plan** shall mean:
1. any **Pension Benefit Plan** or **Welfare Benefit Plan**;
 2. any government-mandated insurance programs for workers' compensation, unemployment, social security, or disability benefits; or
 3. any other benefit plan sponsored solely by the **Named Insured** not subject to Title I of **ERISA**;
- but only for **Wrongful Acts** committed while sponsored by and under the control of the **Named Insured** and only if listed in attachment to the Application. **Employee Benefit Plan** shall not mean any multi-employer plans.
- D. **ERISA** means the Employee Retirement Income Security Act of 1974 and any amendments thereto.
- E. **Insured Person**, for purposes of this Coverage Section, shall mean any **Employee Benefit Plan** and all persons who were, are, or shall be director, officer, employee, trustee or partner of the **Named Insured**.
- F. **Loss** shall have the same meaning as defined in the General Terms & Conditions section of the policy but for purposes of this coverage section, shall also include civil penalties up to five percent (5%) pursuant to Section 502(i) of **ERISA**, and civil penalties up to twenty percent (20%) towards any settlement or judgment pursuant to Section 502(l) of **ERISA**.

- G. **Pension Benefit Plan** shall mean only any single-employer pension benefit plan as defined by **ERISA** sponsored solely by the **Named Insured**.
- H. **Welfare Benefit Plan** shall mean only any single-employer employee welfare benefit plan as defined by **ERISA** sponsored solely by the **Named Insured**.
- I. **Wrongful Act**, for purposes of this Coverage Section, means any actual or alleged:
 - a. breach by an **Insured** of the duties, responsibilities or obligations imposed on fiduciaries of any **Employee Benefits Plan** by **ERISA** or the common law or statutory law of any jurisdiction governing such plan;
 - 2. negligent act, error or omission by an **Insured** in the **Administration** of any **Employee Benefits Plan**; or
 - 5. any other matter claimed against an **Insured** solely by reason of their service as a fiduciary of any **Employee Benefit Plan**.

III. **EXCLUSIONS: WHAT IS NOT COVERED**

- A. This Coverage Section does not cover any **Loss**, other than **Defense Costs**, resulting from any **Claim**:
 - 1. for failure to comply with any law, rule or regulation concerning workers' compensation, unemployment, social security, or disability benefits; provided however, this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the:
 - a) Consolidated Omnibus Budget Reconciliation Act of 1985, and any amendments thereto; or
 - b) Health Insurance Portability and Accountability Act of 1996, and any amendments thereto;
 - 2. for failure to collect any contributions owed to any **Employee Benefit Plan** from any employer or for the return of any assets to any employer if such amounts are or could be chargeable to an **Employee Benefit Plan**, unless such failure is due to the negligence of an **Insured Person**; or
 - 3. for benefits paid or payable to a participant or beneficiary of any **Employee Benefit Plan** if such benefits are paid or may be lawfully paid from the assets of any **Employee Benefit Plan** unless, and to the extent such benefits are payable as a personal obligation of an **Insured Person** and recovery of the benefits is based upon a covered **Wrongful Act**.
- B. This Coverage Section does not cover any **Loss** resulting from any **Claim** based upon, arising out of, directly or indirectly connected or related to, or in any way involving any **Wrongful Act** that occurred:
 - 1. on or before the date in which the **Employee Benefit Plan** was created, acquired, or otherwise merged with or into an existing **Employee Benefit Plan** of the **Named Insured**; or
 - 2. subsequent to the date in which any **Employee Benefit Plan** was sold, spun-off, or terminated.