

HUDSON INSURANCE COMPANY

100 William Street, 5th Floor, New York, NY 10038 hereinafter "Insurer"

PRIVATE DEFENDER POLICY DECLARATIONS

NOTICE: THE LIABILITY COVERAGE PARTS SCHEDULED IN ITEM 3 OF THE DECLARATIONS PROVIDE CLAIMS MADE COVERAGE. EXCEPT AS OTHERWISE SPECIFIED HEREIN, COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND PAYMENT OF DEFENSE COSTS REDUCE THE LIMIT OF LIABILITY. KNOWLEDGE OF A CLAIM MUST BE HAD BY CERTAIN INDIVIDUALS EMPLOYED WITHIN THE NAMED INSURED ORGANIZATION BEFORE ANY OBLIGATION TO REPORT SUCH CLAIM TO THE INSURER ATTACHES. NOTICE OF SUCH CLAIM MUST THEN BE GIVEN TO THE INSURER AS SOON AS PRACTICABLE, BUT IN NO EVENT LATER THAN NINETY (90) CALENDAR DAYS AFTER THE TERMINATION OF THE POLICY PERIOD, OR ANY DISCOVERY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Policy No.

ITEM 1: **Named Insured:**

Address:

ITEM 2: **Policy Period:**

(A) Inception Date:

(B) Expiration Date:

12:01 a.m. local time at the address shown in ITEM 1

ITEM 3: **Liability Coverage Part Grants:**

Only those **Liability Coverage Parts** and optional coverages granted and marked "Yes" are included in this Policy.

A Combined Aggregate Limit of Liability for All **Liability Coverage Parts** of \$ _____ has been granted: Yes _____ No _____

Defense Outside the Limit of Liability of _____% of the Limit of Liability stated in each **Liability Coverage Part** is hereby granted for the following Coverage Parts:

	Yes	No
D&O	_____	_____
EPL	_____	_____
Fiduciary	_____	_____

If both the Combined Aggregate Limit of Liability For All **Liability Coverage Parts** and the Defense Outside the Limit of Liability (___%) options are selected, the maximum aggregate defense outside the limits paid by the Insurer shall be equal to ___% of the Combined Aggregate Limit of Liability For All **Liability Coverage Parts**.

Additional Limit of Liability under the Directors, Officers and Company Liability Coverage Part for Insuring Agreement I. (A) Claims under section IV. Is granted? Yes ____ No ____

Director, Officers and Company Liability Coverage Part: Granted: Yes ____ No ____

1. Limit of Liability:

- a. \$ _____ aggregate Limit of Liability for all **Loss** under this Coverage Part
- b. \$ _____ additional aggregate for **Claims** covered pursuant to Section IV. under this Coverage Part (if granted), subject to the maximum limit set forth in 1.e. below
- c. \$ _____ additional aggregate for all **Defense Costs** (if granted), subject to the maximum limit set forth in 1.e. below
- d. \$ _____ sub-limit of liability (if granted) under Insuring Agreement I (D)
- e. \$ _____ maximum aggregate Limit of Liability for this Coverage Part

2. Retention:

- a. \$ _____ each Claim under Insuring Agreement I (A)
- b. \$ _____ each Claim under Insuring Agreement I (B)
- c. \$ _____ each Claim under Insuring Agreement I (C)
- d. \$ _____ each Claim under Insuring Agreement I (D)

3. Prior or Pending Date:

Employment Practices Liability Coverage Part: Granted: Yes ____ No ____

1. Limit of Liability:

- a. \$ _____ aggregate Limit of Liability for all **Loss** under this Coverage Part
- b. \$ _____ additional aggregate for all Defense Costs (if granted), subject to the maximum limit set forth in 1.c. below
- c. \$ _____ maximum aggregate for this Coverage Part

2. Retention:

_____ each **Employment Practices Claim**

3. Prior or Pending Date:

4. **Third Party Claim** Sublimits Coverage Granted: Yes ____ No ____

- a. **Third Party Claim** Prior or Pending Date: _____ (applicable only if **Third Party**

Claim Coverage is granted)

- b. **Third Party Claim** Sub-limit of Liability of \$_____ (applicable only if **Third Party Claim Sublimits** Coverage is granted and part of and not in addition to the limit set forth in 1. a. above)
- c. **Third Party Claim** Retention \$_____ (applicable only if **Third Party Claim** Coverage is granted)

Fiduciary Liability Coverage Part: Granted: Yes _____ No _____

- 1. Limit of Liability:
 - a. \$_____ aggregate for all **Loss** under this Coverage Part
 - b. \$_____ additional aggregate for **Defense Costs** (if granted), subject to the maximum limit set forth in 1.c. below
 - c. \$_____ maximum aggregate for this Coverage Part
- 2. Retention: \$_____ each **Claim** under this Coverage Part
- 3. Prior or Pending Date:
- 4. Settlement Program Coverage Granted: Yes _____ No _____

If "Yes", a sub-limit of liability of \$100,000 shall apply and shall be subject to a Retention of \$_____ each Claim. The sublimit is part of and not in addition to the limit set forth in 1. a. above.

- 5. HIPAA Sub-limit of liability

The following sub-limit of liability shall apply: \$_____ and shall be subject to the Retention in paragraph number 2 above and be part of and not in addition to the limit set forth in 1. a. above.

ITEM 4: Discovery Period:

(A) Duration:

(B) Premium*:

*The Premium for the Discovery Period granted shall be the indicated percentage of the sum of the annual premium specified for all **Liability Coverage Parts** plus the annualized amounts of any additional premiums charged during the **Policy Period**. The Discovery Period is not applicable to and not available for the **Crime Coverage Part**.

ITEM 5: Endorsements:

This Policy includes the following endorsements at issuance:

ITEM 6: Crime Coverage Part Granted: Yes _____ No _____

In consideration of the payment of premium and subject to all the terms of the Policy the Insurer

agrees to provide the following **Crime Coverage Part**.

1. Coverages, Limits of Insurance, Retentions:

Insuring Agreements, Limits of Insurance and Retention Amounts shown below are subject to all of the terms of this **Crime Coverage Part** that apply.

	Limit(s) of Insurance	Retention Amount(s)
Insuring Agreements Forming Part of This Crime Coverage Part		
1. Employee Theft	\$	\$
2. Depositors Forgery or Alteration	\$	\$
3. Inside The Premises – Money, Securities and Other Property	\$	\$
4. Outside The Premises – Money, Securities and Other Property	\$	\$
5. Computer and Funds Transfer Fraud	\$	\$
6. Money Orders and Counterfeit Currency	\$	\$

- 2. Cancellation of Prior Insurance:** By acceptance of this **Crime Coverage Part** you give us notice of canceling prior policies or bonds numbered _____. The cancellation(s) is effective at the time this **Crime Coverage Part** becomes effective.

ITEM 7: Address For Notices to Insurer:

Send Claims related notices to:

Hudson Financial Products
ATTN: **Claims Department**
100 William Street
New York, NY 10038

or **HFP-Claims@HudsonInsGroup.com**

Send all other notices to:

Hudson Financial Products
ATTN: **Underwriting**
100 William Street
New York, NY 10038

or **HFP-PrivateUnderwriting@HudsonInsGroup.com**

ITEM 8: Premium:

In witness whereof, the Insurer has caused this Policy to be signed by its President and Secretary, but it shall not be valid unless also signed by a duly authorized representative of the Insurer.

Authorized Representative

PRIVATE DEFENDER POLICY

GENERAL TERMS AND CONDITIONS PART

EXCEPT WITH RESPECT TO THE CRIME COVERAGE PART, THIS IS A CLAIMS MADE INSURANCE POLICY WITH DEFENSE EXPENSES INCLUDED WITHIN THE LIMIT OF LIABILITY. PLEASE CAREFULLY REVIEW THE ENTIRE POLICY.

In consideration of the payment of the premium it is agreed that this Policy shall be comprised of the Declarations, this General Terms and Conditions Part, all Coverage Parts granted within the Declarations (including any endorsements and other attachments), and the **Application** and shall hereinafter be referenced as "this Policy". In addition the Insurer and the **Insureds** agree as follows with respect to this Part and all Coverage Parts of this Policy.

I. GENERAL TERMS AND CONDITIONS

All Coverage Parts included in this Policy are subject to the General Terms and Conditions set forth in this Part of the Policy. If any provision in these General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of such Coverage Part. The terms and conditions of each Coverage Part shall apply only to such Coverage Part, unless otherwise specifically stated to the contrary.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) **"Affiliate"** means any insurance company controlling, controlled by or under common control with the Insurer.

(B) **"Application"** means the application for this Policy, which shall be deemed to be a part of this Policy and attached to it, regardless of physical attachment, including any materials or information submitted therewith or made available to the Insurer during the underwriting process, which application shall be on file with the Insurer.

Application shall also mean the application for any policy in an uninterrupted series of policies issued by the Insurer or any **Affiliate** of which this Policy is a renewal or replacement.

(C) **"Claim"** shall have the meaning specified for such term in each Coverage Part.

(D) **"Company"** means:

- (1) the **Named Insured**; or
- (2) any **Subsidiary**.

Company shall include any such entity as a Debtor in Possession as that term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.

Company shall also include any such entity in its capacity as a general partner of a **Controlled Partnership**.

- (E) "**Controlled Partnership**" means a limited partnership in which and so long as the **Named Insured** owns or controls, directly or indirectly, more than 50% of the limited partnership interest and in which a **Company** is the sole general partner.
- (F) "**Defense Costs**" means all reasonable and necessary legal fees and expenses incurred in the defense or investigation of any **Claim** after such **Claim** has been made, and shall also include the reasonable and necessary expenses in connection with any appeal of such **Claim** or in connection with an **Extradition**, but shall not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of any **Insured Person** or agents or **Employees** of the **Company**.
- (G) "**Extradition**" means any formal and lawful process or proceeding commenced against an **Insured Person** located in any jurisdiction in an attempt to obtain the voluntary or involuntary surrender of such **Insured Person** to another jurisdiction in connection with a **Claim**.
- (H) "**Employee**" shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such.

Employee shall also mean any person leased to the **Company**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees. However, this definition of **Employee** shall hereby expressly not apply for purposes of the Crime Coverage Part of this Policy.
- (I) "**ERISA**" means the Employee Retirement Income Security Act of 1974 including any amendments thereto and any rules or regulations promulgated thereunder.

- (J) "**Financial Insolvency**" means the status of a **Company** as a result of the

appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such **Company**; or such **Company** becoming a Debtor in Possession.

- (K) **"Insured Executive"** means any or all of the following:
- (1) a past, present or future duly elected director, duly appointed officer or duly elected or appointed member of a board of managers of the **Company**, including any general counsel who is also an employee of the **Company** and other employed lawyers who are both employees and duly appointed officers of the **Company**;
 - (2) the functional equivalent of such director, officer or manager of the **Company** when serving in such capacity outside the United States of America; or
 - (3) any duly elected or appointed member of a Medical, Scientific, or Technology Advisory Board of the **Company** in such person's capacity in such position.
- (L) **"Insured Person"** shall have the meaning specified, if any, for such term in each Coverage Part.
- (M) **"Insureds"** shall have the meaning specified, if any, for such term in each Coverage Part.
- (N) **"Interrelated Wrongful Acts"** means **Wrongful Acts** that are logically, causally or otherwise related based upon, arising from, resulting from, or in consequence of the same or related facts, circumstances, situations, transactions, causes or events, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claims** under this Policy or any other policy in effect prior to the inception of the **Policy Period**.
- (O) **"Liability Coverage Part"** means the Directors and Officers Liability, Employment Practices Liability and Fiduciary Liability Coverage Parts, if granted and marked "YES" in **ITEM 3** of the Declarations.
- (P) **"Loss"** shall have the meaning specified, if any, for such term in each Coverage Part of this Policy.
- (Q) **"Named Insured"** means the entity named in **ITEM 1** of the Declarations.
- (R) **"Policy Period"** means the period set forth in **ITEM 2** of the Declarations, or any shorter period resulting from termination of this Policy pursuant to its terms and conditions.
- (S) **"Pollutants"** means any solid, liquid, gaseous or thermal irritant, nuisance or

contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** also means any substance located anywhere in the world identified on a list of hazardous substances or emissions issued by any federal agency or any state, local or foreign equivalent thereof.

(T) **"Subsidiary"** means any:

- (1) corporation in which and so long as the **Named Insured** owns or controls, directly or indirectly, more than 50% of the outstanding securities representing the right to vote for the election of the board of directors of such corporation;
- (2) limited liability company in which and so long as the **Named Insured** owns or controls, directly or indirectly, the right to elect, appoint or designate more than 50% of such entity's managers;
- (3) **Controlled Partnership**;
- (4) corporation operated as a joint venture in which and so long as the **Named Insured** owns or controls, directly or indirectly, exactly 50% of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such corporation, the **Named Insured** solely controls the management and operation of such corporation; or
- (5) foundation, charitable trust or political action committee in which and so long as such entity or organization is controlled by the **Named Insured** or any **Subsidiary** as defined (1) through (4) above.

(U) **"Wrongful Act"** shall have the meaning specified, if any, for such term in each Coverage Part.

III. **COVERAGE EXTENSIONS**

(A) **Spouses and Domestic Partners**

Coverage under this Policy shall extend to the lawful spouse or domestic partner of an **Insured Person** for a **Claim** made against such spouse or domestic partner, provided that:

- (1) the **Claim** arises solely from:
 - (a) such person's status as the spouse or domestic partner of an **Insured Person**; or

(b) such spouse's or domestic partner's ownership of property, and the property is sought solely as a source of recovery for a **Wrongful Act** by an **Insured Person**;

(2) the **Insured Person** is named in such **Claim** together with the spouse or domestic partner; and

(3) coverage of the spouse or domestic partner shall be on the same terms and conditions, including any applicable Retention, as apply to coverage of the **Insured Person** for such **Claim**.

No coverage shall apply to any **Loss** resulting from any act, error or omission of such spouse or domestic partner.

(B) Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** made against such **Insured Person**. No coverage shall apply to any **Loss** directly resulting from any act, error or omission of such estate, heirs, legal representatives or assigns.

IV. LIMIT OF LIABILITY

With respect to all Coverage Parts and **Liability Coverage Parts** of this Policy:

(A) The Limit of Liability for each **Liability Coverage Part** in **ITEM 3** of the Declarations shall be the maximum aggregate amount that the Insurer shall pay under such **Liability Coverage Part** for all **Loss** from all **Claims** covered under such **Liability Coverage Part**.

(B) Notwithstanding the above, if a Combined Aggregate Limit of Liability For All Coverage Parts is granted in **ITEM 3** of the Declarations, then:

(1) such single Limit of Liability shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** covered under all included Coverage Parts combined; and

(2) any amount specified as a Limit of Liability for any individual Coverage Part in **ITEM 3** of the Declarations shall be subject to, part of, and not in addition to, the amount stated as the Combined Aggregate Limit of Liability For All Coverage Parts.

(C) At such time as any Limit of Liability under any Coverage Part of this Policy is exhausted, the premium for this Policy shall be deemed fully earned.

V. DEFENSE COSTS

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the Insurer shall reduce each Limit of Liability.
- (B) Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations, then payment of **Defense Costs** shall be in addition to any applicable Limit of Liability, provided that:
- (1) if a Limit of Liability is specified for any individual **Liability Coverage Part** in **ITEM 3** of the Declarations, then the maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under such **Liability Coverage Part** shall be limited and capped by the percentage of the Limit of Liability indicated within **ITEM 3** of the Declarations .
 - (2) if a Combined Aggregate Limit of Liability For All Coverage Parts is included in **ITEM 3** of the Declarations, then:
 - (a) the single maximum aggregate amount that the Insurer shall pay for all **Defense Costs** from all **Claims** covered under all included **Liability Coverage Parts** combined shall be the percentage amount stated in **ITEM 3** of the Declarations and shall only be a percentage of the Combined Aggregate Limit of Liability For All **Liability Coverage Parts**; and
 - (b) any amount of **Defense Costs** available for any individual Coverage Part shall be subject to, part of, and not in addition to, the single maximum amount of **Defense Costs** available for all included Coverage Parts combined specified in Section V. (B) (2) (a), above; and
 - (3) if the amount available for Defense **Costs** in Sections V. (B) (1) or (2), above is exhausted by the payment of **Defense Costs**, then **Defense Costs** shall be paid by the Insurer solely from any remaining applicable Limit of Liability until the exhaustion of the applicable Limit of Liability.

VI. RETENTIONS

Solely with respect to the **Liability Coverage Parts** of this Policy:

- (A) The Insurer shall pay **Loss** only in excess of the Retention applicable to each **Claim** as specified in **ITEM 3** of the Declarations.
- (B) All Retentions shall be borne by the **Insureds** at their own risk, and shall not be insured under any other insurance policy.
- (C) Any **Defense Costs** incurred by the Insurer and paid at its discretion on behalf

of the **Insureds** shall be applied to the Retention. Although nothing in this provision affects the obligation, if any, of the Insurer to make any such payments, the **Insureds** shall reimburse the Insurer upon request for any **Defense Costs** paid that are within an applicable Retention.

- (D) If a **Claim** is covered under more than one **Liability Coverage Part**, the applicable Retention for each **Liability Coverage Part** shall be applied separately to such **Claim**, provided that the maximum Retention applied to such **Claim** shall not exceed the highest of all applicable Retentions.
- (E) No Retention shall apply to **Loss** incurred by any **Insured Person** that a **Company** is not legally permitted to indemnify, or for which the **Company** is unable to legally indemnify by reason of its **Financial Insolvency**.
- (F) If any **Company** is permitted or required by law to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on their behalf, and does not do so other than because of **Financial Insolvency**, then the **Company** and **Named Insured** shall be jointly and severally obliged to reimburse and hold harmless the Insurer for the Insurer's payment or advancement of such **Loss** up to the amount of the Retention that would have applied if such indemnification had been made.

VII. DEFENSE AND SETTLEMENT

Solely with respect to the **Liability Coverage Parts** of this Policy and unless specifically stated to the contrary within such Coverage Part:

- (A) The insurer shall have the right and duty to defend any **Claim** for which the **Insureds** give notice to the Insurer, even if such **Claim** is groundless, false or fraudulent. The Insurer may make any investigation of such **Claim** it deems appropriate.
- (B) The Insurer's duty to defend a **Claim** shall cease upon exhaustion of any applicable Limit of Liability.

Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations then the Insurer's duty to defend any **Claim** shall cease upon exhaustion of the maximum aggregate amount of **Defense Costs** available under Section V. DEFENSE COSTS, and any applicable Limit of Liability.
- (C) The **Insureds** shall not admit nor assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** regarding any **Claim** without the prior written consent of the Insurer, such consent not to be unreasonably withheld. The Insurer shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to

which it has not consented.

- (D) If with respect to any **Claim** the **Insureds** consent to the first settlement opportunity which is recommended by the Insurer and which is acceptable to the claimant, the applicable Retention for **Loss** on account of such **Claim** shall be retroactively reduced 10%. If the **Insureds** refuse to consent to a settlement opportunity acceptable to the claimant in accordance with the Insurer's recommendation, then with respect to all **Loss** (inclusive of **Defense Costs**) on account of such **Claim** which exceeds the amount for which such **Claim** could have been settled by the Insurer plus **Defense Costs** incurred prior to the date the **Insureds** first refused to consent to the proposed settlement of such **Claim**, the Insurer shall be liable under this Policy solely for 80% of the amount of **Loss** (inclusive of **Defense Costs**).
- (E) Notwithstanding the above, if Defense Outside the Limit of Liability is included in **ITEM 3** of the Declarations, then the Insurer may settle any **Claim** for a monetary amount that the Insurer deems reasonable and the consent of the **Insureds** shall not be required to settle such **Claim**.
- (F) As a condition precedent to any payment obligations of the Insurer under this Policy, the **Insureds**, severally according to their interests, shall provide the Insurer all information and cooperation as the Insurer may reasonably request to enable it to assess the causation, liability and damages issues and exposure with respect to such **Insureds**.

VIII. AWARENESS OF WRONGFUL ACT OR CIRCUMSTANCES AND NOTICE OF CLAIM AND OTHER MATTERS

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If, during the **Policy Period**, any **Insured** first becomes aware of a **Wrongful Act** or circumstances that might reasonably be expected to give rise to a **Claim** for a **Wrongful Act** and if, during such **Policy Period**, the **Insured** provides the **Insurer** with written notice of the specific circumstances and actual, alleged or potential **Wrongful Act**, the consequences which have resulted or may result from such **Wrongful Act** or circumstances (including but not limited to actual or potential damages), the identities or descriptions of potential claimants, and the manner in which the Insured first became aware of such circumstances or **Wrongful Act**, then, any **Claim** subsequently made arising from such **Wrongful Act** or circumstances will be treated as if it had been first made during the **Policy Period**.
- (B) Any and all **Claims** and **Securities Holder Derivative Demands** shall be reported to the Insurer as soon as practicable after they are first made against an **Insured** and first known by either the **Company's** chief executive officer, chief financial officer, chief operating officer, general counsel or risk

manager, but in no event later than ninety (90) days after the termination of the **Policy Period**, or **Discovery Period**, if applicable.

- (C) All notices intended for the Insurer under this Policy, whether with regard to **Claims, Wrongful Acts**, circumstances or any other matter pertaining to this policy, should be directed to the appropriate address set forth in **ITEM 7** of the Declarations.

IX. **DISCOVERY PERIOD**

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If either the **Named Insured** or the Insurer does not renew this Policy, the **Insureds** shall have the right, upon payment of the additional premium set forth in **ITEM 4** of the Declarations, to an extension of the insurance provided by this Policy with respect solely to any **Claim** first made during the Discovery Period set forth in **ITEM 4** of the Declarations, but only with respect to a **Wrongful Act** occurring prior to the termination of the **Policy Period**.
- (B) As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid in full. The right of the **Insureds** to purchase the Discovery Period will be immediately terminated if the Insurer does not receive written notice from or on behalf of an **Insured** advising that any or all **Insureds** wish to purchase the Discovery Period together with full payment of the premium for the Discovery Period on a non-refundable basis within thirty (30) days after the termination of the **Policy Period**.
- (C) The purchase of the Discovery Period will not in any way increase the Limit of Liability set forth in **ITEM 3** of the Declarations, and the Limit of Liability with respect to **Claims** made during the Discovery Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

This Section IX, DISCOVERY PERIOD, shall not apply to the Crime Coverage Part of this Policy.

X. **RELATED CLAIMS**

Solely with respect to all **Liability Coverage Parts** of this Policy:

All **Claims** based upon, arising from or in any way related to the same **Wrongful Act or Interrelated Wrongful Acts** shall be deemed to be a single **Claim** for all purposes under this Policy first made on the earliest date that:

- (A) any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;

- (B) notice of any **Wrongful Act** described above was given to the Insurer under this Policy pursuant to Section VIII. (A);
- (C) notice of any **Wrongful Act** described above was given under any prior insurance policy, whether issued by the Insurer, an **Affiliate** or any other insurance company.

XI. ALLOCATION

Solely with respect to all **Liability Coverage Parts** of this Policy:

Where **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Policy and also amounts that are not covered by this Policy because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage shall apply as follows:

- (A) 100% of **Defense Costs** shall be allocated to covered **Loss**; and
- (B) **Loss** other than **Defense Costs** shall be allocated between covered **Loss** and non-covered amounts based upon the relative legal exposure of all parties to such matters.

XII. OTHER INSURANCE

Except for the Employment Practices Liability Coverage Part, if **Loss** arising from any **Claim** is insured under any other valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

XIII. CANCELLATION AND NON-RENEWAL

- (A) The **Named Insured** as listed in **ITEM 1** of the Declarations or any duly authorized party acting on its behalf shall have the exclusive right to cancel this Policy on behalf of any or all **Insureds**. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in **ITEM 2 (B)** of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (B) The Insurer may cancel this Policy only for nonpayment of premium. In such event, the Insurer will deliver or mail written notice of cancellation to the **Named Insured** at the address stated in **ITEM 1** of the Declarations not less than twenty days (20) before the effective date of cancellation. The notice will state

the reason for cancellation.

- (C) The Insurer is under no obligation to renew this Policy upon its expiration. Upon the Insurer's election to non-renew this Policy, the Insurer will deliver or mail written notice of non-renewal to the **Named Insured**, at the address listed in **ITEM 1** of the Declarations at least sixty (60) days before the Expiration Date set forth in **ITEM 2 (B)** of the Declarations.

XIV. CHANGES IN EXPOSURE

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A) If, during the **Policy Period**, the **Company** consummates any of the following transactions:

- (1) makes an asset acquisition;
- (2) acquires any entity, including one that is a **Subsidiary**; or
- (3) assumes the liability of another entity,

then, insurance under this Policy shall only apply to a **Claim** for a **Wrongful Act** involving such assets or entities and first made against an **Insured**, provided that such **Wrongful Act** is committed or alleged to have been committed after such transaction closes.

- (B) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, such **Subsidiary** and its **Insured Persons** shall only be covered under this Policy with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such entity ceased to be a **Subsidiary**.

- (C) If, during the **Policy Period**, there is a "change in control" of the **Named Insured** listed in **ITEM 1** of the Declarations, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** occurring prior to the time of the "change in control". The entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of the "change in control" transaction.

"Change in control" means:

- (1) the merger or acquisition of the **Named Insured** listed in **ITEM 1** of the Declarations, or of all or substantially all of its assets, by any other entity such that another entity becomes the surviving entity; or
- (2) the acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than fifty percent

(50%) of the directors of the **Named Insured** listed in **ITEM 1** of the Declarations.

XV. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Company** and the **Insured Persons**. The **Company**, through its **Employees** or other agents, and the **Insured Persons** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require. The Insurer does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed.

XVI. REPRESENTATIONS AND SEVERABILITY

It is agreed by the **Insureds** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the Insurer and attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Insureds** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations; provided, 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 the Insurer under this Policy, this Policy shall be void and have no effect whatsoever with respect to those **Insureds** who made or had knowledge of such misrepresentations. Knowledge of any matter which may give rise to a **Claim** or any misrepresentation made by the **Company's** Chief Executive Officer or Chief Financial Officer shall be imputed to the **Company**, but will not be imputed to any **Insured Person** who had no knowledge of the matter which may give rise to a **Claim** or the misrepresentation with respect thereto.

XVII. ACTION AGAINST THE INSURER

Solely with respect to all **Liability Coverage Parts** of this Policy:

- (A)** Except for an action undertaken by or on behalf of an **Insured**, no action may be taken against the Insurer unless, as a condition precedent thereto:
 - (1)** there has been full compliance with all of the terms and conditions of this Policy; and
 - (2)** the amount of any liability of the Insured has been finally determined

either by judgment against such Insured after actual trial, or by written agreement of the Insured, the claimant and the Insurer.

- (B) Nothing contained herein shall give any person or entity the right to join the Insurer as a party to any **Claim** against an **Insured** to determine its liability, nor may an **Insured** implead or join the Insurer in any such **Claim**.
- (C) Assignment of the interest of any **Insured** under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

Solely with respect to the Crime Coverage Part of this Policy:

- (D) No legal action shall be taken against the Insurer involving loss unless the **Insured** has complied with all the terms of this Policy;
- (E) No legal action shall be taken against the insurer involving loss until ninety (90) days after the Insured has filed proof of loss with us; and
- (F) No legal action shall be taken against the insurer involving loss unless such action is brought within two (2) years from the date that the **Insured** discovers such loss.

XVIII. INSOLVENCY OF THE COMPANY AND WAIVER OF AUTOMATIC STAY IN BANKRUPTCY

In the event that an insolvency or bankruptcy proceeding is commenced by or against the **Company**, the **Company** waives and releases any automatic stay or injunction which may apply to its benefit and advantage in such proceeding in connection with this Policy or its proceeds, and agrees not to oppose or object to any efforts by the Insurer or any **Insured Person** to obtain relief from any such stay or injunction that may be applied against their interests.

However, the rights of an **Insured Person** or the **Company** under this Policy shall not otherwise be affected by the bankruptcy or insolvency of the **Company** or any other **Insured Person**.

XIX. AUTHORIZATION AND NOTICES

The **Named Insured** as set forth in **ITEM1** of the Declarations will act on behalf of any and all **Insureds** with respect to the giving and receiving of notices involving the Insurer and this Policy, as well as payment and any other action with regard to premiums.

XX. ENTIRE AGREEMENT

The Insureds agree that this Policy shall constitute the entire agreement between the Insurer and the **Insureds** in relation to the insurance afforded under the Policy.

Notice to any agent or knowledge possessed by any agent or other person acting or purporting to act on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement to the Policy signed by the Insurer.

XXI. HEADINGS, TITLES, NUMBER AND GENDER

Any headings or titles used with respect to any section or sub-section in this Policy are solely for descriptive convenience and shall not be construed as substantive provisions for purposes of interpreting any provision in the Policy.

Wherever used in this Policy, whether in defined or undefined terms, the singular number shall include the plural and vice versa. All personal pronouns shall include the female, male and neutral versions, regardless of which form is used, unless specific provision is made for a natural person as opposed to an entity.

XXII. TERRITORY AND CURRENCY

Insurance provided under this Policy shall apply to Claims that are made anywhere in the world.

The premiums, limits, Loss and other amounts set forth in this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of Loss under this Policy is stated in a currency other than United States of America dollars, payment under this Policy shall be made in such dollars at the applicable rate of currency 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.

XXIII. CONFORMITY TO STATUTE AND REGULATION

If any provision in this Policy conflicts with any mandatory applicable law, regulation or rule or the provisions of a state amendatory endorsement attached to this Policy as required by applicable state insurance law, regulation or rule, then the terms of such law, regulation, rule or amendatory endorsement shall apply in place of the Policy provision.

PRIVATE DEFENDER POLICY

DIRECTORS, OFFICERS AND COMPANY LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Executive and Employee Liability

Except for **Loss** which the Insurer pays pursuant to Insuring Agreement (B) of this Coverage Part, the Insurer will pay **Loss** on behalf of an **Insured Person**, which such **Insured Person** has become legally liable to pay as a result of a **Claim** first made against them during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

(B) Company Indemnification Liability

The Insurer will pay **Loss** on behalf of the **Company** for which the **Company** has, to the extent permitted or required by applicable law, indemnified an **Insured Person**, and which such **Insured Person** has become legally liable to pay as a result of a **Claim** first made against them during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

(C) Company Liability

The Insurer will pay **Loss** on behalf of the **Company**, which the **Company** has become legally liable to pay as a result of a **Claim** first made against it during the **Policy Period** or Discovery Period, if applicable, solely for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

(D) Securities Holder Derivative Demand Investigation Liability

The Insurer will pay **Investigative Costs** on behalf of the **Company** that the **Company** has incurred as a result of a **Securities Holder Derivative Demand** first made during the **Policy Period** or Discovery Period, if applicable.

Loss paid by the Insurer pursuant to this Insuring Agreement (D) shall be subject to the sub-limit of liability set forth in **ITEM 3** of the Declarations. This sub-limit shall be the maximum aggregate amount the Insurer shall pay under this Policy for all **Investigative Costs** as a result of any and all **Securities Holder Derivative Demands**. This sub-limit shall be subject to, part of, and not in addition to, the Limit of Liability set forth in **ITEM 3** of the Declarations.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) **"Claim"** means:

- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
- (2) a civil or criminal judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;
- (3) a formal civil, criminal, administrative, Extradition or regulatory proceeding (including a proceeding brought by, on behalf of or before the Securities Exchange Commission (SEC), Equal Employment Opportunity Commission (EEOC) or similar federal, state or local governmental agencies), including any appeal therefrom; or
- (4) solely with respect to an **Insured Person**, a formal investigation of such **Insured Person** in which such **Insured Person** has been identified by name in a subpoena, formal order or notice of investigation, including but not limited to a "Wells Notice" issued by the SEC, as someone against whom a civil or criminal lawsuit or other legal proceeding may later be commenced.

A **Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company**, **Insured Person** or their agent of a written demand, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.

(B) **"Insured"** means:

- (1) the **Company**; or
- (2) any **Insured Person**

(C) **"Insured Person"** means:

- (1) any **Insured Executive**; or
- (2) any **Employee**

- (D) **"Investigative Costs"** means reasonable and necessary expenses incurred by the **Company**, directly or indirectly through any duly constituted board or committee, incurred in the investigation of a **Securities Holder Derivative Demand**, provided that **Investigative Costs** shall not include salaries, wages, remuneration, and overhead or benefit expenses of or associated with any **Insured Person**.
- (E) **"Loss"** means judgment and settlement amounts (including pre- or post-judgment interest, punitive or exemplary damages, and the multiplied portion of any damages award, provided that such amounts are insurable pursuant to the law in any jurisdiction whose law may reasonably be applicable and which holds such amounts to be insurable), **Investigative Costs** pursuant to Insuring Agreement (D) of this Coverage Part, and **Defense Costs** that an **Insured** is legally liable to pay. In determining applicable law with respect to any amounts referenced in this Definition only the following factors shall be considered.
- the state in which the **Company** is incorporated;
 - the state in which the **Company** has its principal place of business;
 - the state in which the litigation awarding punitive or exemplary damages was filed and maintained; or
 - the state in which any **Wrongful Act** takes place and on which the punitive or exemplary damages award is predicated.

The Insurer shall not challenge any written opinion of counsel retained by or on behalf of an **Insured** asserting that the award of punitive or exemplary damages at issue is insurable, provided that such counsel is duly licensed to practice law in the jurisdiction whose law is opined to be applicable and such counsel agrees in writing that the Insurer is a party that may rely upon its opinion.

Loss shall also include taxes imposed by law upon any **Insured Executive** in his or her capacity as such solely in connection with any bankruptcy, receivership, conservatorship or liquidation of the **Company**, provided always that such taxes are insurable under applicable law.

With regard to any portion of a settlement or judgment that is predicated on liability arising under Section 11 or 12 of the Securities Act of 1933 or any amendments thereto, the Insurer shall not contend that such is uninsurable as a matter of law.

Loss shall in no event include the following:

1. taxes (other than when imposed as described above in this Definition), ;
 2. the cost of complying with any non-monetary relief;
 3. any amounts otherwise uninsurable pursuant to applicable law; and
 4. fines and penalties, except for civil penalties imposed upon an **Insured Executive** pursuant to the Foreign Corrupt Practices Act (FCPA).
- (F) **"Outside Capacity"** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of the **Company**.
- (G) **"Outside Entity"** means any entity, other than the **Company**, which is:
- (1) a not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
 - (2) an entity organized for a religious or charitable purpose under any not-for-profit statute; or
 - (3) an entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.
- (H) **"Securities Holder Derivative Demand"** means any written demand by a securities holder of the **Company**, in its capacity as such, upon the **Company** or one or more **Insured Executives** to commence a civil judicial proceeding against any **Insured Executives** for **Wrongful Acts** of such **Insured Executives**.
- (I) **"Wrongful Act"** means any actual or alleged:
- (1) error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed by an **Insured Person** in their capacity as such or in their **Outside Capacity**, or, with regard to Insuring Agreement (C) the **Company**; or
 - (2) matter claimed against an **Insured Person**, by reason of their serving in such capacity, including service in an **Outside Capacity**.

III. COVERAGE EXTENSION FOR OUTSIDE DIRECTORSHIP LIABILITY

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage is afforded for **Loss** resulting from any **Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be available and attach solely and specifically excess of all indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce by the amount of such payment obligation, the Limit of Liability available under this Policy for such **Claim**.

IV. ADDITIONAL LIMITS OF LIABILITY

Subject to the terms and conditions of this Policy and **Liability Coverage Part** and further subject to it being granted as indicated in **ITEM 3** of the Declarations, an additional aggregate Limit of Liability shall be available for **Loss** resulting from a **Claim** against any **Insured Executive**, provided that:

- (A) such Claim is covered under the Insuring Agreement set forth in Insuring Agreement (A) of this **Liability Coverage Part**;
- (B) such additional Limit shall apply solely in excess of all other insurance and indemnity available to pay **Loss** for such **Claim**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be fully exhausted by payment by the respective insurers thereunder prior to this additional Limit being made available to pay **Loss**; and
- (C) such additional Limit shall be subject to the maximum aggregate Limit of Liability for this **Liability Coverage Part** set forth in **ITEM 3** of the Declarations.

V. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not pay **Loss** in connection with any **Claim**:

- (A) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use or diminution of value thereof;
- (B) based upon, arising from, or in any way related to any prior or pending, suit or proceeding against any **Insureds** as of the Prior or Pending Date in **ITEM 3** of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged in such suit or proceeding;

(C) for any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other similar policy of which this **Liability Coverage Part** is effectively, in whole or in part, a renewal, replacement or which otherwise succeeds in time;

(D) based upon, arising from, or in any way related to any:

- (1) actual or alleged discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
- (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

However, this exclusion, IV. (D) shall not apply to **Loss** otherwise covered under the Insuring Agreement (A) of this Coverage Part.

(E) based upon, arising from, or in any way related to any:

- (1) unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
- (2) actual or alleged violation of, **ERISA**, the Fair Labor Standards Act (FLSA), Equal Pay Act (EPA), Worker Adjustment and Retraining Notification Act (WARN), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), or any similar law;

(F) based upon, arising from, or in any way related to the rendering of, or failure to render, any professional services for others, including, without limitation, services performed by any **Insureds** for or on behalf of a customer or client;

Exclusions (D), (E) and (F) above shall not apply to the portion of **Loss** directly resulting from: (i) a civil proceeding brought by a security holder of the **Company**, in their capacity as such, or derivatively on behalf of the **Company**, that is brought and maintained without the solicitation, assistance, or active participation of the **Company** or any Insured **Executive**; or (ii) a **Securities Holder Derivative Demand**.

(G) that is brought or maintained by or on behalf of the **Company**, **Outside Entity**, any director, officer or functionally equivalent position in an **Outside Entity** or any **Insured Person**, regardless of her or his capacity as such, except that this exclusion shall not apply to the following:

- (1) any **Claim** brought derivatively on behalf of the **Company** that is so brought and maintained without the solicitation, assistance, or active participation of any **Insured Person**;
 - (2) any **Claim** alleging a wrongful termination of employment;
 - (3) any **Claim** seeking contribution or indemnity, if such **Claim** directly results from another **Claim** that is otherwise covered under this Policy;
 - (4) any **Claim** made by or on behalf of an Examiner, Trustee, Receiver, or Liquidator, Creditors Committee of the **Company** or **Outside Entity** or any assignee thereof;
 - (5) any **Claim** brought by or with the assistance, participation or solicitation of any individual protected as a "whistleblower" under 18 U.S.C. § 1514 A of the Sarbanes-Oxley Act of 2002 or similar provisions in other federal, state or local law;
 - (6) any **Claim** brought by an **Insured Person** who has not served in such a position in the **Company** for at least thirty-six (36) months prior to the date such **Claim** is first made, provided always that such **Claim** is brought without the solicitation, participation or assistance of the **Company** or any **Insured Person** who is currently serving in such capacity or has so served within such thirty-six (36) month period; or
 - (7) any **Claim** brought and maintained by the Supervisory Board of the **Company** where the **Company** is chartered or incorporated in a civil law, as opposed to common law, jurisdiction outside the United States of America.
- (H) based upon, arising from, or in any way related to an **Insured Person's** service, at any time, as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than the **Company** even if such service is at the direction or request of the **Company**, provided that this exclusion shall not apply to coverage afforded under Section III. of this **Liability Coverage Part** for a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (I) based upon, arising from, or in any way related to any public listing or offering of securities of the **Company** or the purchase or sale of such securities subsequent to such public listing or offering; provided that this exclusion shall not apply to that portion of **Loss** directly resulting from:

- (1) a **Wrongful Act** in any private placement of the **Company's** securities exempted from the registration requirements of the Securities Act of 1933; or
 - (2) a civil proceeding brought and maintained by any security holders of the **Company** for the failure of the **Company** to undertake or complete an initial public offering or sale of securities of the **Company**;
- (J) for:
- (1) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by the **Company** or an **Insured Person**; or
 - (2) profit or remuneration gained by the **Company** or any **Insured Person** to which she, he or it is not legally entitled

provided that the acts or conduct underlying the foregoing exclusions in this Section IV. (J) are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying **Claim**. These exclusions shall not be applicable to that part of **Loss**, which is comprised of **Defense Costs**. Neither the intent, knowledge nor **Wrongful Act** of any **Insured Person** or the **Company** shall be imputed to any other **Insured Person** to determine the application of these exclusions.

VI. EXCLUSIONS SOLELY APPLICABLE TO INSURING AGREEMENT (C)

- (A) The **Insurer** shall not pay Loss under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:
- (1) liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
 - (2) employment-related **Wrongful Act**;
 - (3) discrimination or sexual harassment;
 - (4) false arrest or imprisonment, abuse of process, malicious prosecution, defamation (including libel and slander), invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium;

- (5) price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities; or
- (6) infringement, dilution or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property; provided, however that this exclusion shall not apply to the portion of Loss directly resulting from:
 - (a) a civil proceeding brought and maintained by a security holder(s) of an **Insured Entity**, in their capacity as such, or derivatively on behalf of the **Company**;
 - (b) **Securities Holder Derivative Demand**;
- (B) a settlement or judgment amount that represents the amount by which the purchase price or consideration is effectively increased in connection with a **Claim** alleging that the price or consideration paid or proposed to be paid in a transaction involving all or substantially all of the ownership interest in or assets of any entity is inadequate, as well as plaintiff counsel fees and costs awarded or settled as part of such **Claim**.

VII. SECURITIES OFFERINGS

If any public offering of a **Company's** securities that is not exempt from registration under the Securities Act of 1933 occurs during the **Policy Period**, the Insurer shall furnish the **Insureds** with a quote for insurance coverage of such offering, provided that:

- (A) at least thirty (30) days prior to the effective date of such offering, the **Insureds** shall give the Insurer written notice of such offering together with all information requested by the Insurer;
- (B) such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its absolute discretion, choose;
- (C) any coverage provided shall be on such forms as are in use by the Insurer for public companies at the time of such offering; and
- (D) if the **Insureds** choose to cancel this Policy to accept a coverage form offered in such quote, unearned premium for this Policy shall be calculated on a pro rata basis.

VIII. PRIORITY AND ORDER OF PAYMENTS

If any amount sought as **Loss** payable under this Policy exceeds the available Limits of Liability or is subject to competing claims of different **Insureds**, then **Loss** shall be paid not exceeding the available Limits of Liability in the following order of priority:

- (A) First to **Loss** covered under Insuring Agreement (A) of this Coverage Part;
- (B) Second to **Loss** covered under Insuring Agreements (B), (C), or (D) of this Coverage Part at the sole election of the **Company** as to the timing of payment and applicable Section.

PRIVATE DEFENDER POLICY

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Employment Practices Wrongful Act Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable, for an **Employment Practices Wrongful Act** by the **Insureds**.

(B) Third Party Wrongful Act Liability

If Third Party Claim Coverage is granted by the Insurer and included in **ITEM 3** of the Declarations, the Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable, for a **Third Party Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Claim Coverage Sublimit of Liability, Retention, and Prior or Pending Date in **ITEM 3** of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement (B) for all **Loss** from all **Claims** covered under this Insuring Agreement (B). Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) **"Benefits"** means perquisites, fringe benefits, deferred compensation and any other form of compensation (other than salaries, wages, or bonuses as a component of a front or back pay award).

(B) **"Claim"** means any,

(1) **Employment Practices Claim;** or

(2) **Third Party Claim.**

(C) **“Employment Practices Claim”** means any **Claim** brought by or on behalf of an **Employee**, an applicant for employment with the **Company**, or an **Independent Contractor** that is:

- (1) a written demand for monetary or non-monetary relief (including, as example, a written demand for reinstatement of employment), including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
- (2) a civil judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;
- (3) a formal administrative or regulatory proceeding (including a proceeding brought by, on behalf of or before the Equal Employment Opportunity Commission (EEOC) or similar federal, state or local governmental agencies, including any appeal therefrom.

“Employment Practices Claim” also means an audit conducted by the United States of America Office of Federal Contract Compliance Programs (OFCCP).

An **Employment Practices Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company**, **Insured Person** or their agent of a written demand, notice of violation or charges or service of summons, subpoena, order to show cause or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.

“Employment Practices Claim” shall not include any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

(D) **“Employment Practices Wrongful Act”** means any actual or alleged:

- (1) wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
- (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup,

or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law;

- (4) **Retaliation;**
- (5) breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising from a personnel manual, employee handbook, or policy statement; or
- (6) violation of the Family and Medical Leave Act.

Employment Practices Wrongful Act shall also mean the following, but only when alleged in addition to or as part of any **Employment Practices Wrongful Act** described above:

- (a) employment-related wrongful infliction of emotional distress;
 - (b) failure to create, provide for or enforce adequate or consistent employment-related policies and procedures;
 - (c) negligent retention, supervision, hiring or training; or
 - (d) employment-related invasion of privacy, defamation, or misrepresentation.
- (E) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to an **Independent Contractor Agreement**.
- (F) **“Independent Contractor Agreement”** means any written and express contract or agreement between an **Independent Contractor** and an **Insured Entity** specifying the terms of the **Insured Entity’s** engagement of such **Independent Contractor**.
- (G) **“Insured”** means:
 - (1) the **Company**; or
 - (2) any **Insured Person**.
- (H) **“Insured Person”** means any:
 - (1) **Employee**;
 - (2) **Insured Executive**; or
 - (3) solely with regard to Insuring Agreement (A), an **Independent**

Contractor, provided that within thirty (30) days of an **Employment Practices Claim** having been made against such **Independent Contractor** that the **Company** agrees in writing to indemnify such **Independent Contractor** for any **Loss** arising out of such **Claim**.

- (I) **“Loss”** means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, front pay and back pay, settlement amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

Loss also includes all damages, including liquidated damages, awarded under the Age Discrimination in Employment Act.

However, **Loss** shall not include:

- (1) taxes, fines or penalties imposed by law;
- (2) non-monetary relief;
- (3) **Benefits**;
- (4) future compensation for any person hired, promoted, or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**;
- (5) **Stock Benefits**;
- (6) costs associated with providing any accommodations required by the Americans with Disabilities Act or any similar law;
- (7) any other matters uninsurable pursuant to any applicable law: provided, however, that with respect to punitive, exemplary, multiple or liquidated damages, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.

- (J) **“Retaliation”** means adverse treatment of an **Employee** or **Independent Contractor** based upon such person:

- (1) exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, **ERISA**, or the Americans with Disabilities Act;
- (2) refusing to violate any law;
- (3) assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any **Insured**;

- (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
 - (5) filing any “whistle blower” claim against any **Insured** under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar law.
- (K) **“Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Employee** that grants stock, stock options or stock appreciation rights in the **Company** to such person, including, without limitation, restricted stock or any other stock grant. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- (L) **“Third Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**, and shall not include **Employees**.
- (M) **“Third Party Claim”** means any **Claim** brought by or on behalf of a **Third Party** that is:
- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
 - (2) a civil judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom;
 - (3) a formal administrative or regulatory proceeding.
- A **Third Party Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company**, **Insured Person** or their agent of a written demand, notice of violation or charges or service of summons, subpoena, order to show cause or similar document commencing an investigation, lawsuit or proceeding against such **Insured Person** or the **Company**.
- (N) **“Third Party Wrongful Act”** means any actual or alleged:
- (1) discrimination against a **Third Party** based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law; or
 - (2) sexual harassment against a **Third Party**, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature.

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

(A) The Insurer shall not pay **Loss** in connection with any **Claim**:

- (1) for bodily injury, sickness, disease, death, false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use or diminution of value thereof;
- (2) for any actual or alleged **Employment Practices Wrongful Act** or **Third Party Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such, or by any **Subsidiary**, if such **Wrongful Act** actually or allegedly occurred when such entity was not a **Subsidiary**;
- (3) based upon, arising from, or in any way related to any suit, or proceeding against any **Insured**, including any audit initiated by the OFCCP pending as of or commenced before the Prior or Pending Date in **ITEM 3** of the Declarations, or the same or substantially similar fact, circumstance, or situation underlying or alleged in such suit, proceeding, or audit;
- (4) for any **Employment Practices Wrongful Act** or **Third Party Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other similar policy of which this **Liability Coverage Part** is effectively, in whole or in part, a renewal, replacement or which otherwise succeeds in time;
- (5) based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;
- (6) for breach of any **Independent Contractor Agreement**;
- (7) based upon, arising from, or in any way related to unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
- (8) based upon, arising from, or in any way related to any actual or alleged violation of the Fair Labor Standards Act (FLSA) (except for Equal Pay Act (EPA)), Worker Adjustment and Retraining Notification Act (WARN), the National Labor Relations Act (NLRA), the Occupational Safety and Health Act (OSHA), the Consolidated Omnibus Budget Reconciliation Act of 1985

(COBRA), **ERISA**, or any similar federal, state or local law;

Provided that the exclusions set forth in this Section III. (A) (7) and (8) shall not apply to that portion of **Loss** that represents a specific amount the **Insureds** become legally obligated to pay solely predicated upon **Retaliation**.

- (9) based upon, arising from, or in any way related to liability incurred for breach of any oral, written, or implied employment contract; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract; provided, however, that this exclusion shall not apply to the portion of **Loss** representing **Defense Costs** incurred to defend against such liability.

IV. **EXCLUSION APPLICABLE TO INSURING AGREEMENT (B)**

Solely with respect to Insuring Agreement (B), the Insurer shall not pay **Loss** in connection with any **Third Party Claim** based upon, arising from or in any way related to any price discrimination or violation of any anti-trust law or any similar law designed to protect competition or prevent unfair trade practices.

V. **OTHER INSURANCE**

- (A) The coverage provided under this Policy for any **Employment Practices Claim** shall be primary.
- (B) Notwithstanding the above, the coverage provided under this Policy for any **Employment Practices Claim** made against a temporary, leased or loaned **Employee** or an **Independent Contractor** shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such **Claim**, whether such other policy or policies are stated to be primary contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this policy's Policy Number.
- (C) Other than as provided in Section V. (A) and V. (B), above, Section XII, **Other Insurance**, set forth in the General Terms and Conditions Part of this Policy shall apply.

VI. **COORDINATION OF COVERAGE**

If this **Liability Coverage Part** and either the Directors, Officers and Company Liability Coverage Part or Fiduciary Liability Coverage Part are included under this Policy, and a **Claim** is covered under this **Liability Coverage Part** and any such other **Liability Coverage Part**, Loss shall be first covered and paid under this **Liability Coverage Part**.

If notice of a **Claim** has been given under either the Directors, Officers and Company Liability Coverage Part or Fiduciary Liability Coverage Part and a determination is made by the Insurer that such **Claim** would be covered under this **Liability Coverage Part** if notice had been given under this **Liability Coverage Part**, then the **Insureds** shall be deemed to have given notice of such **Claim** under this **Liability Coverage Part** at the same time that notice was given under such other **Liability Coverage Part**.

SPECIMEN

PRIVATE DEFENDER POLICY

FIDUCIARY LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Fiduciary Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Fiduciary Claim** first made against the **Insureds** during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** may be legally liable.

(B) Settlement Programs (Optional)

If Settlement Program Coverage is granted in **ITEM 3** of the Declarations, the Insurer shall pay **Settlement Fees** on behalf of the **Insureds** resulting from a **Settlement Program** for which a **Settlement Program Notice** is received by the Insurer during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** by the **Insureds**.

This Insuring Agreement (B) shall be subject to a Sublimit of Liability of \$100,000. Such a Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement (B) for all **Loss** from all **Claims** covered under this Insuring Agreement (B). Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. This Insuring Agreement (B) shall also be subject to the Settlement Program Coverage Retention and Prior or Pending Date in **ITEM 3** of the Declarations.

II. DEFINITIONS

The following terms shall have the meanings specified below:

(A) "Claim" means any:

- (1) **Fiduciary Claim**; or
- (2) **Settlement Program Notice**.

(B) "Employee Stock Ownership Plan" means any plan that invests more than 10% of its assets in securities of the **Company**.

(C) **"Fiduciary Claim"** means:

- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation;
- (2) a civil or criminal judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom; or
- (3) a formal administrative or regulatory proceeding commenced by the filing or service of a notice of charges, formal investigative order or similar document, including an investigation by the Department of Labor or Pension Benefit Guaranty Corporation.

A **Fiduciary Claim** shall be deemed to have been first made at the earliest date of receipt by any **Insureds** or their agent of a written demand, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing an investigation, lawsuit or proceeding against such **Insureds**.

(D) **"Insured"** means:

- (1) the **Company**;
- (2) any **Insured Person**; or
- (3) any **Insured Plan**.

(E) **"Insured Person"** means any:

- (1) **Insured Executive**;
- (2) **Employee**; or
- (3) past or present natural person trustee of an **Insured Plan** while in such person's capacity as a trustee, which shall also include the functional equivalent of a trustee while serving in such a position outside of the United States of America.

(F) **"Insured Plan"** means any past, present, or future:

- (1) employee welfare benefit plan or employee pension benefit plan, as defined in **ERISA** and sponsored solely by the **Company**, or jointly by the **Company** and a labor organization, for the benefit of **Employees** only;
- (2) employee benefit plan, including an excess benefit plan, not subject to Title 1 of **ERISA**, sponsored solely by the **Company** for the benefit of **Employees** only;
- (3) government-mandated insurance program for unemployment, social security or disability benefits for **Employees** other than workers compensation; or
- (4) any other plan, fund, or program specifically included as an **Insured Plan** in a written endorsement issued by the Insurer to form a part of this Policy.

Notwithstanding the above, an **Insured Plan** shall not include any:

- (a) **Employee Stock Ownership Plan**; or
- (b) any multi-employer plan.

(G) **"Loss"** means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, settlement amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

Loss also includes punitive and exemplary damages and the multiple portion of any multiplied damage award where insurable by law.

However, **Loss** shall not include:

- (1) taxes, fines or penalties imposed by law; provided however, the foregoing shall not apply to:
 - (a) **Settlement Fees**, provided that Settlement Program Coverage is elected;

- (b) civil penalties of up to 5% imposed upon the **Insureds** pursuant to **ERISA** Section 502(i) or up to 20% imposed pursuant to **ERISA** Section 502(1);
 - (c) civil penalties imposed upon the **Insureds** under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Coverage for such civil penalties referred to in this subparagraph (G) (1) (c) is conditioned upon the following: (i) payment of such **Loss** shall be subject to the sub-limit of liability specified in **ITEM 3** of the Declarations and (ii) such sub-limit of liability shall be part of, and not in addition to, the Aggregate Limit of Liability for this **Liability Coverage Part** shown on the Declarations;
- (2) non-monetary relief; and
- (3) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive, exemplary, multiple or liquidated damages, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.
- (H) "**Settlement Fees**" mean any fees, penalties or sanctions imposed by law under a **Settlement Program** that any **Insureds** become legally obligated to pay as a result of a **Wrongful Act**. **Settlement Fees** shall not include costs of corrections, other than fees or penalties.
- (I) "**Settlement Program**" means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States of America Internal Revenue Service or any other governmental body that is entered into by the **Company**.
- (J) "**Settlement Program Notice**" means a prior written notice to the Insurer by the **Company** of its intent to enter into a **Settlement Program** that includes a detailed description of the **Wrongful Act** for which notice will be given under the **Settlement Program**.
- (K) "**Wrongful Act**" means any actual or alleged:
 - (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty constituting a violation of any responsibilities, obligations or duties imposed upon fiduciaries of an **Insured Plan** by **ERISA** or any similar law;

- (2) breach of the responsibilities, obligations or duties imposed upon an **Insured** by HIPAA;
- (3) error, misstatement, misleading statement, act, omission, neglect or breach of duty in counseling, providing interpretations, handling records, or effecting enrollment, termination or cancellation of **Employees**, participants, or beneficiaries under an **Insured Plan**; or
- (4) matter claimed against an **Insured** solely due to such **Insured** acting in the capacity of a fiduciary of an **Insured Plan**.

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

(A) The Insurer shall not pay **Loss** in connection with any **Claim**:

- (1) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use or diminution of value thereof;
- (2) based upon, arising from, or in any way related to any prior or pending suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in **ITEM 3** of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such suit or proceeding;
- (3) for any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other similar policy of which this **Liability Coverage Part** is effectively, in whole or in part, a renewal, replacement or which otherwise succeeds in time;
- (4) based upon, arising from, or in any way related to any:
 - (a) discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
 - (b) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (5) based upon, arising from, or in any way related to the liability of others assumed under any contract or agreement, provided that this exclusion shall not apply to liability:

- (a) that would have been incurred in the absence of such contract or agreement; or
 - (b) assumed under any agreement or declaration of trust under which any **Insured Plan** was established;
- (6) based upon, arising from, or in any way related to any:
 - (a) unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, or failure to grant meal and rest periods; or
 - (b) actual or alleged violation of the Fair Labor Standards Act, Equal Pay Act (FLSA), Worker Adjustment and Retraining Notification Act (WARN), or any rule or regulation promulgated thereunder, or similar federal, state, local or common laws, rules or regulations;
- (7) for:
 - (a) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by the **Company** or an **Insured Person**; or
 - (b) profit or remuneration gained by the **Company** or any **Insured Person** to which she, he or it is not legally entitled.

provided that the acts or conduct underlying the foregoing exclusions in this Section III. (7) are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying **Claim**. This Section III. (7) shall not be applicable to that part of **Loss**, which is comprised of **Defense Costs**. In addition, neither the intent, knowledge nor **Wrongful Act** of any **Insured Person** or the **Company** shall be imputed to any other **Insured Person** to determine the application of this Section III. (7).

- (B) Other than that portion of **Loss** that represents **Defense Costs** incurred to defend the following allegations or demands, the Insurer shall not pay **Loss** in connection with any **Claim**:
 - (1) for the actual or alleged failure to pay benefits pursuant to any **Insured Plan**, provided that this exclusion shall not apply to the extent that:

- (a) recovery of such benefits is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Insured Person**; or
 - (b) it is alleged there is a loss to an **Insured Plan** and/or to the accounts of such **Insured Plan's** participants by reason of a change in value of the investments held by such **Insured Plan**, regardless of whether the amounts sought in such **Claim** are characterized by plaintiffs or held by a court to be benefits due or damages for breach of fiduciary duty;
- (2) based upon, arising from, or in any way related to the actual or alleged failure to fund, or collect contributions owed to, an **Insured Plan**; or
 - (3) for return or reversion of any contributions or assets to the **Company** from an **Insured Plan**.

IV. WAIVER OF RECOURSE

The Insurer shall have no right of recourse against any **Insureds** for any payment of **Loss** made by the Insurer under this **Liability Coverage Part** because of a **Wrongful Act** by such **Insureds** if the premium for this Policy was paid for by a party other than an **Insured Plan**.

V. CHANGES IN EXPOSURE

- (A) This Section shall supplement, but not replace, Section XIV., **Changes in Exposure**, in the General Terms and Conditions Part of this Policy. That Section XIV. (A) shall also apply to any employee benefit plan of any newly merged or acquired entity and to any trustee of such plan to the extent that such plan and trustee would otherwise qualify as **Insureds** under this Policy. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring before the merger or acquisition of the entity or for any **Interrelated Wrongful Acts** thereto.
- (B) Section XIV. (B) of the General Terms and Conditions Part of this Policy shall also apply to any **Insured Plan** of a former **Subsidiary** and any trustee of such plan. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring after an entity ceases to be a **Subsidiary**.

VI. TERMINATED PLAN COVERAGE

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage shall be afforded for **Loss** resulting from any **Claim** against the **Insureds** for a **Wrongful Act** involving any **Insured Plan** terminated by the **Company**, including post-termination **Wrongful Acts**.

PRIVATE DEFENDER POLICY

CRIME COVERAGE PART

I. INSURING AGREEMENTS

Coverage for the **Insureds'** loss is provided under the following Insuring Agreements for monetary loss sustained by the **Company** directly resulting from an **Occurrence** that takes place during the **Policy Period**, except as otherwise provided in Section VI. (E) or (G) of this Coverage Part, and for which there is a Limit of Insurance shown in the Declarations.

(A) INSURING AGREEMENT 1. - EMPLOYEE THEFT

The Insurer will pay for loss of or damage to **Money, Securities and Other Property** that results directly from **Theft** by an **Employee**, whether or not identifiable, while acting alone or in collusion with other persons.

(B) INSURING AGREEMENT 2. - DEPOSITORS FORGERY OR ALTERATION

(1) The Insurer will pay for loss resulting directly from **Forgery** or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in **Money** that are:

(a) made or drawn upon an **Insured**; or

(b) made or drawn by one acting as an **Insured's** agent and drawn on an **Insured's** account or that are purported to have been so made or drawn.

(2) The Insurer will treat mechanically reproduced facsimile signatures the same as handwritten signatures.

(3) If an **Insured** is sued for refusing to pay any instrument in this Insuring Agreement (B) (1) above, on the basis that it has been forged or altered and the **Insured** has the Insurer's written consent to defend against that suit the Insurer will pay for any reasonable legal expenses that the **Insured** incurs and pays in such defense. The amount that the Insurer will pay is in addition to the Limit of Insurance applicable to this Insuring Agreement. If a Retention Amount applies to this Insuring Agreement, the Insurer will also apply it to the amount of legal expenses incurred in this Insuring Agreement.

(4) The **Insured** must include with its proof of loss any instrument involved in

that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss and describing both sides of said instrument.

(C) INSURING AGREEMENT 3. – INSIDE THE PREMISES – MONEY, SECURITIES AND OTHER PROPERTY

- (1)** The Insurer will pay for loss of **Money** and **Securities** inside the **Premises** or **Banking Premises** resulting directly from Theft, disappearance or destruction.
- (2)** The Insurer will pay for loss of or damage to **Other Property**:
 - (a)** inside the **Premises** resulting directly from an actual or attempted **Robbery** of a **Custodian**; or
 - (b)** inside the **Premises** in a safe or vault resulting directly from an actual or attempted Safe **Burglary**.
- (3)** The Insurer will pay for loss from damage to the **Premises** or its exterior resulting from an actual or attempted:
 - (a)** **Theft of Money or Securities**; or
 - (b)** **Robbery or Safe Burglary of Other Property**;if an **Insured** is the owner of the **Premises** or is liable for damage to it.
- (4)** The Insurer will pay for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the **Premises** resulting directly from an actual or attempted **Theft** or unlawful entry into those containers.

(D) INSURING AGREEMENT 4. - OUTSIDE THE PREMISES - MONEY, SECURITIES AND OTHER PROPERTY

- (1)** The Insurer will pay for loss of **Money** and **Securities** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from **Theft**, disappearance or destruction.
- (2)** The Insurer will pay for loss of or damage to **Other Property** outside the **Premises** in the care and custody of a **Messenger** or an armored motor vehicle company resulting directly from an actual or attempted **Robbery**.

(E) INSURING AGREEMENT 5. - COMPUTER AND FUNDS TRANSFER FRAUD

The Insurer will pay for loss of and loss from damage to **Money, Securities and Other Property** following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside the **Premises** or **Banking Premises**:

(1) to a person (other than a **Messenger**) outside those **Premises**; or

(2) to a place outside those **Premises**.

And, the Insurer will pay for loss of **Money** or **Securities** through **Funds Transfer Fraud** resulting directly from **Fraudulent Transfer Instructions** communicated to a **Financial Institution** and instructing such institution to pay, deliver, or transfer **Money** or **Securities** from an **Insured's Transfer Account**.

(F) INSURING AGREEMENT 6. - MONEY ORDERS AND COUNTERFEIT CURRENCY

The Insurer will pay for loss resulting directly from an **Insured's** having accepted in good faith and in the regular course of business, in exchange for merchandise, **Money** or services;

(1) money orders issued by any post office, express company or bank in the United States of America or Canada that are not paid upon presentation; and

(2) **Counterfeit** currency of the United States of America, Canada, or any other country in which an **Insured** maintains physical **Premises**.

Unless otherwise shown in the Declarations for this Coverage Part, the Limit of Insurance under this Insuring Agreement (6) is \$50,000. There is no Retention Amount applying to loss covered under this Insuring Agreement (6) unless otherwise shown in the Declarations for this Coverage Part.

II. LIMIT OF INSURANCE

The most that the Insurer will pay for monetary loss in any one **Occurrence** is the applicable Limit of Insurance shown in the Declarations.

III. RETENTION

The Insurer will not pay for loss in any one **Occurrence** unless the amount of the loss exceeds the Retention Amount shown in the Declarations. The **Insurer** will then pay the amount of loss in excess of the Retention Amount, up to the Limit of Insurance. In the event that more than one Retention Amount could apply to the same loss, only the highest Retention Amount will be applied.

IV. DEFINITIONS

- (A) **"Banking Premises"** means the interior portion of that part of any building occupied by a banking institution or similar safe depository.
- (B) **"Counterfeit"** means an imitation of an actual valid original that is intended to deceive and to be taken as an original.
- (C) **"Custodian"** means an **Insured**, or any of the **Insureds'** partners, or members or any **Employee** while having the care and custody of property inside the **Premises**, excluding any person while acting as a **Watchperson** or janitor.
- (D) **"Employee"** means:
- (1) a natural person:
 - (a) While in any **Insured's** service or for sixty (60) days after termination of such service; and
 - (b) whom the **Insured** compensates directly by salary, wages, commissions; and
 - (c) whom the **Insured** has the right to direct and control while performing services for it;
 - (2) a natural person who is:
 - (a) a trustee, officer, employee, administrator or manager of any **Employee Benefit Plan(s)** insured under this Coverage Part; or
 - (b) an **Insured's** director or trustee while that person is handling **Money** or **Securities** or **Other Property** of **Employee Benefit Plan(s)** insured under this Coverage Part;
 - (3) a natural person who is a director or trustee of an **Insured** while performing acts coming within the scope of the usual duties of an **Employee** or while acting as a member of any of an **Insured's** elected or appointed committees to perform on an **Insured's** behalf, as distinguished from general directorial acts;
 - (4) a natural person who is furnished temporarily to an **Insured** by a temporary employment service firm to substitute for a permanent **Employee** as defined in sub-paragraph (1) above who is on leave, or to

meet seasonal or short-term work load conditions and who such **Insured** has the right to direct and control while performing services for such **Insured**; provided, however, such persons are excluded while having care and custody of property outside the **Premises**;

- (5) a natural person who is leased to an **Insured** under a written agreement between such **Insured** and a labor leasing firm, to perform duties related to the conduct of such **Insured's** business;
- (6) a natural person who is a former **Employee** while retained as a consultant for an **Insured**;
- (7) a natural person who is a non-compensated officer of an **Insured**;
- (8) a natural person who is a volunteer of an **Insured** who is not compensated, other than one who is a fund solicitor, while performing services for the **Insured** that are usual to the duties of an **Employee**;
- (9) a natural person who is a former employee, director, partner, member or trustee of an **Insured** retained as a consultant while performing services for the **Insured**;
- (10) a natural person who is a guest student or intern of an **Insured** while pursuing studies or duties with the guidance or direction of such **Insured**;
- (11) a natural person who is an **Insured's** partner or limited liability member, but the Insurer will not pay for loss caused by any partner or limited liability member, unless the amount of the loss exceeds the sum of:
 - (a) any amounts an **Insured** owes that partner or limited liability member; and
 - (b) the value of that partner's partnership interest, or that limited liability member's ownership interest determined by the closing of the **Insured's** organization's books on the date of discovery of the loss by the **Insured's** organization by anyone not in collusion with the person causing the loss; and
 - (c) any applicable Retention Amount; then the Insurer will pay the amount of loss excess of that sum, up to the Limit of Insurance applicable to Insuring Agreement 1.

However, **Employee** does not mean any agent, broker, factor, commission merchant, consignee, or representative of the same general character, nor any

independent contractor (other than those specified in (6) and (9) above).

- (E) **"Employee Benefit Plan(s)"** means any welfare or pension plan(s) as defined in ERISA and which is sponsored by one or more of the **Insureds**.
- (F) **"Financial Institution"** means a bank, savings bank, savings and loan association or similar thrift institution, a stockbroker, mutual fund, liquid assets fund, or similar investment institution in which an **Insured** maintains a **Transfer Account**.
- (G) **"Forgery"** means the signing of the name of another person or organization with intent to deceive; provided, however, that it does not mean a signature that consists in whole or in part of one's own name signed with or without authority, in any capacity, for any reason.
- (H) **"Fraudulent Transfer Instructions"** means:
 - (1) fraudulent electronic, telegraphic, facsimile, cable, teletype or telephone instructions to a **Financial Institution** to debit a **Transfer Account** and to pay, transfer or deliver **Money** or **Securities** from such account and which instructions purport to have been authorized by an **Insured** but which have been fraudulently transmitted by another; or
 - (2) fraudulent written instructions to a **Financial Institution** to debit a **Transfer Account** and to pay, transfer or deliver **Money** or **Securities** from such account through an electronic funds transfer system at specified times or under specified conditions and which instructions purport to have been duly authorized by an **Insured** but which have been fraudulently issued, forged or altered by another.
- (I) **"Funds Transfer Fraud"** means **Theft** of **Money** or **Securities** from any of the **Insureds' Transfer Accounts** at a **Financial Institution** and occurring through **Fraudulent Transfer Instructions** communicated to such Financial Institution.
- (J) **"Insured"** shall mean the **Company**.
- (K) **"Investigative Expenses"** means reasonable expenses incurred and paid by an **Insured** in establishing the existence and amount of any direct loss covered under an Insuring Agreement within this Coverage Part. The reasonableness of such expenses shall be determined by the Insurer and shall not include any **Insured's** internal corporate obligations such as **Employee** wages or any other internal costs.
- (L) **"Messenger"** means an **Insured**, any of the **Insured's** partners or members or any **Employee** while having care and custody of property outside the **Premises**.

- (M) **"Money"** means currency, coins and bank notes in current use and having a face value and travelers checks, register checks and money orders held for sale to the general public.
- (N) **"Occurrence" means:**
- (1) as respects the Employee Theft Insuring Agreement, all loss caused by, or involving, one or more **Employees**, whether the result of a single act or a series of acts.
 - (2) as respects the **Forgery** or Alteration Insuring Agreement, all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.
 - (3) as respects all other Insuring Agreements, an act or series of related acts involving one or more persons or an act or event or a series of related acts or events not involving any person.
- (O) **"Other Property"** or "property" means any tangible property other than **Money** or **Securities** that has intrinsic value but does not include any property excluded under this Coverage Part. **Other Property** does not include trade secrets, proprietary information, confidential information or any copyrights, patents, trademarks, proprietary manufacturing or processing procedures or secret or confidential information, including but not limited to credit card numbers, bank account numbers or any similar information.
- (P) **"Premises"** means the interior of that portion of any building that an **Insured** occupies in conducting its business.
- (Q) **"Robbery"** means the unlawful taking of property from the care and custody of a person, by one who has caused or threatened to cause that person bodily harm or committed an obviously unlawful act witnessed by that person, to the deprivation of an **Insured**.
- (R) **"Safe Burglary"** means the unlawful taking of property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior, or, the taking of a safe or vault from inside the **Premises**.
- (S) **"Securities"** means negotiable or non-negotiable instruments or contracts representing either **Money** or property and includes tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use and evidences of debt issued in connection with credit or charge cards, which cards are not issued by an **Insured**. However, **Securities** do

not include **Money**.

- (T) **"Theft"** means the unlawful taking of **Money**, **Securities** or **Other Property** to the deprivation of an **Insured**.
- (U) **"Transfer Account"** means an account maintained by an **Insured** at a **Financial Institution** from which the **Insured** or its authorized representative may cause the payment, transfer or delivery of **Money** or **Securities** by any means described in the **Fraudulent Transfer Instructions** definition.
- (V) **"Watchperson"** means any person whom an **Insured** retains specifically to have the care and custody of property inside the **Premises** and who has no other duties.

V. EXCLUSIONS (Applying To All Insuring Agreements Unless Otherwise Specified)

This Coverage Part Does Not Apply To And The Insurer Will Not Pay For:

- (A) **Accounting or Arithmetical Errors or Omissions**
Loss resulting from accounting or arithmetical errors or omissions.
- (B) **Acts Committed By The Insured's Partners**
Loss resulting from **Theft**, or **Forgery** committed by any partner of an **Insured** whether acting alone or in collusion with others provided that, if such **Theft** or **Forgery** would otherwise be covered under Insuring Agreements 1 or 2 of this Coverage Part, this exclusion shall not apply to the extent coverage under this coverage section is excess of the amount of such partner's percentage ownership of such **Insured**, on the day immediately preceding the date of discovery, multiplied by such **Insured's** total assets as reflected in such **Insured's** most recent financial statement, whether quarterly or year-end, provided such statement has been audited or has been otherwise prepared by an independent Certified Public Accountant;
- (C) **Acts of Employees, Managers, Directors or Trustees**
Loss resulting from **Theft** or any other dishonest or criminal act committed by any of the **Insureds' Employees**, managers, directors or trustees whether acting alone or in collusion with other persons or while performing services for any **Insured** or otherwise, except when covered under Insuring Agreement 1.
- (D) **Employee Cancelled Under Prior Insurance**
Loss caused by any of any **Insured's Employees** or by any **Employee** of any **Insured's** predecessor in interest, for whom similar prior insurance has been

cancelled and not reinstated since the last cancellation.

(E) Exchanges or Purchases

Loss resulting from the giving or surrendering of **Money, Securities or Other Property** in any exchange or purchase.

(F) Fire

Loss from damage to the **Premises** resulting from fire, however caused, except for loss of or damage to **Money** or **Securities** and loss from damage to a safe or vault under Insuring Agreement 3.

(G) Governmental Action

Loss resulting from seizure or destruction of **Money, Securities or Other Property** by order of governmental authority.

(H) Indirect Loss

Loss that is an indirect result of any act or **Occurrence** covered by this **Coverage Part** including but not limited to loss resulting from:

- (1)** any **Insured's** inability to realize income that it would have realized had there been no loss of or damage to **Money, Securities or Other Property**.
- (2)** payment of damages of any type for which any **Insured** is legally liable; provided, however, that the Insurer will pay compensatory damages arising directly from a loss covered under this Coverage Part.
- (3)** payment of costs, fees or other expenses any **Insured** incurs in establishing either the existence of or the amount of loss under this Coverage Part, provided, however, that:
 - (a)** the Insurer will reimburse the **Insured** for **Investigative Expenses** up to \$5,000 (Five Thousand Dollars) it incurs per **Occurrence** subject to the Insurer's determination that such **Investigative Expenses** were reasonable and incurred in establishing either the existence or amount of such loss covered under this Coverage Part; and
 - (b)** the amount of direct covered loss exceeds the Retention Amount for the applicable Insuring Agreement.

Such reimbursement is part of, and not in addition to, the Limit of Insurance for the applicable Insuring Agreement.

(I) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon

(1) an inventory computation; or

(2) a profit and loss computation.

However, where the **Insured** establishes wholly apart from such inventory computations that it has sustained a loss covered under this Coverage Part, then the **Insured** may offer its inventory records and actual physical count of inventory in support of the amount of loss claimed.

(J) Legal Expenses

Expenses related to any legal action; provided however that this shall not apply to expenses covered under Insuring Agreement 2 that meet the following conditions precedent: The **Insured** shall immediately notify the Insurer of any claim or suit generating such expenses and shall not settle such claim or suit, or incur any related costs or expenses, without the Insurer's prior written authorization, nor shall the **Insured** admit liability in any such claim or suit. The Insurer shall have no duty to defend any such claim or suit, but shall have the right to investigate, negotiate or settle any such claim or suit or to take over the conduct of the defense thereof. Moreover, if, in the Insurer's discretion, the Insurer advances payments for such suit, the Insurer may require a written undertaking, on its terms and conditions, guaranteeing the repayment of any expenses it pays that are determined to be not covered hereunder.

(K) Money Operated Devices

Loss of **Money** contained in any money operated device unless a continuous recording instrument in the device records the amount of any **Money** deposited in it.

(L) Motor Vehicles or Equipment And Accessories

Loss of or damage to motor vehicles, trailers, or semi-trailers or equipment or accessories attached to them. This exclusion shall apply only to Insuring Agreement 4.

(M) Nuclear

Loss resulting directly or indirectly from:

(1) discharge, dispersal, release or escape of nuclear material, nuclear waste or radiation or any threat of such discharge, dispersal, release or escape; or

(2) direction, request or voluntary decision to test for, abate monitor, clean

up, remove, contain, treat, detoxify or neutralize nuclear material, nuclear waste or radiation

(N) Risks Inherent in Insurance Operations

Loss resulting directly or indirectly from contractual or extra contractual liability sustained by any **Insured** in connection with the issuance of contracts or purported contracts of insurance, indemnity or suretyship.

(O) Trading Losses

Loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities or Other Property**, whether in any **Insured's** name or in a genuine or fictitious account.

(P) Transfer or Surrender of Property

Loss of or damage to **Money, Securities or Other Property** after it has been transferred or surrendered to a person or place outside the **Premises or Banking Premises**:

- (1) on the basis of unauthorized instructions, unless covered under Insuring Agreement 5; or
- (2) as a result of a threat to do bodily harm to any person; or
- (3) as a result of a threat to do damage to any property.

But this Exclusion does not apply under Insuring Agreement 4 to loss of **Money, Securities** and **Other Property** while outside the **Premises or Banking Premises** in the care and custody of a **Messenger** if the **Insured**:

- (a) had no knowledge of any threat at the time that the conveyance began; or
- (b) had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

(Q) Vandalism

Loss from damages to the **Premises** or to the exterior of any safe, vault, cash box, cash drawer or cash register by vandalism or mischief.

(R) Voluntary Parting of Title To or Possession of Property

Loss resulting from any **Insured**, or anyone acting on its express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property. This exclusion shall apply only to Insuring

Agreements 3 and 4.

(S) War and Similar Actions

Loss resulting from war, whether or not declared, warlike action, insurrection, rebellion, or revolution, or any related act or incident.

(T) Warehouse Receipts Losses

Loss resulting from fraudulent or dishonest signing, issuing, canceling or failing to cancel, a warehouse receipt or any papers connected with it.

VI. GENERAL CONDITIONS

(A) ARMORED MOTOR VEHICLE COMPANIES

Under insuring Agreement 4 the Insurer will pay only for the amount of loss the **Insured** cannot recover:

- (1)** under its contract with the armored motor vehicle company; and
- (2)** from any insurance or indemnity carried by or for the benefit of customers of the armored motor vehicle company, or from the armored motor vehicle company.

(B) CANCELLATION AS TO ANY EMPLOYEE

Insuring Agreement 1 is cancelled with respect to loss or damage caused by **Theft** by an **Employee**:

- (1)** immediately upon discovery by a member of the Risk Management Department or any officer, manager, or supervisor of an **Insured's** not in collusion with the **Employee**, of **Theft** or any dishonest act in excess of \$1,000 committed by the **Employee** whether before or after becoming employed by the **Insured**; or
- (2)** on the date specified in a notice mailed by the Insurer to an **Insured**. The date will be at least thirty (30) days after the date of the mailing. The mailing of notice to the **Insured** at the fast mailing address known to the Insurer will be sufficient proof of notice- Delivery of notice is deemed to be the date of the mailing.

(C) CONCEALMENT, MISREPRESENTATION OR FRAUD

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

- (1) this Coverage Part;
- (2) the property covered under this Coverage Part;
- (3) any **Insured's** interest in the property covered under this Coverage Part;
or
- (4) a loss under this Coverage Part.

(D) CONSOLIDATION OR MERGER

If through consolidation or merger with, or purchase or acquisition of assets or liabilities of, some other entity, any additional persons become **Employees** or an **Insured** acquires the use and control of any additional **Premises**:

- (1) an **Insured** must give us written notice within ninety (90) days after the effective date of such consolidation or merger, or purchase or acquisition of assets or liabilities and obtain the Insurer's written consent to extend this insurance to such additional **Employees** or **Premises**. The Insurer may condition its consent upon payment of an additional premium; but there shall only be a premium charge if such merger or acquisition results in a 15%, or greater, increase in the number of **Employees**, assets or revenues acquired through the merger or acquisition.
- (2) For the first ninety (90) days after the effective date of such consolidation or merger, or purchase or acquisition of assets or liabilities, any insurance afforded for **Employees** or **Premises** also applies to these additional **Employees** or **Premises** for acts committed within this 90-day period.

(E) DISCOVERY

- (1) The Insurer will pay for loss which an **Insured** sustains through acts or events committed or occurring at any time and which are discovered by the **Insured** during the **Policy Period** or during the period provided in VI. General Conditions G. DISCOVERY - EXTENDED PERIOD TO DISCOVER LOSS.
- (2) Discovery of loss occurs when a member of the Risk Management Department or any officer, manager, or supervisor of an **Insured's** first becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Coverage Part has been, or may be incurred even though the exact amount or details of the loss may not then be known.

- (3) Discovery also occurs when an **Insured** receives notice of an actual or potential claim against it alleging facts, which if true, would constitute a covered loss under this policy.
- (4) No coverage will be available under this Coverage Part for any loss of which an **Insured** was aware prior to the inception date of this Coverage Part.

(F) DISCOVERY SUPERSEDING LOSS SUSTAINED COVERAGE - LIABILITY FOR PRIOR LOSSES

- (1) if this Coverage Part has replaced similar prior insurance written by a company other than the Insurer, and such other insurance provided a period of time to discover loss occurring prior to the termination or cancellation of that coverage, and a loss is discovered within the period provided by prior insurance to discover losses, the Insurer will not pay for such loss unless the amount exceeds the Limit of Insurance under said prior Policy. The Insurer will then only pay the **Insured** for any excess loss subject to the Insuring Agreements, Exclusions and General Conditions of this Coverage Part.
- (2) Any payment that the Insurer makes to an **Insured** under this insurance shall not exceed the difference between the amount of insurance under the **Insured's** prior Policy and the Limit of Insurance shown in the Declarations and the Insurer will not apply its Retention Amount to any excess loss payment.

(G) DISCOVERY - EXTENDED PERIOD TO DISCOVER LOSS

The Insurer will pay for loss that an **Insured** sustained prior to the effective date of termination or cancellation of this Coverage Part, which is discovered by the **Insured**.

- (1) no later than sixty (60) days from the date of the termination, cancellation or non-renewal; and
- (2) as respects any **Employee Benefit Plan(s)**, no later than one (1) year from the date of that termination, cancellation or non-renewal.

However, this extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the **Insured** to replace, in whole or in part, the insurance afforded by this Coverage Part, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

(H) DUTIES IN THE EVENT OF LOSS

After a member of the Risk Management Department or an officer, manager or supervisor of an **Insured's** discovers a loss or a situation which may result in a loss of or damage to **Money, Securities or Other Property**, the Risk Management Department member or officer, manager or supervisor must:

- (1)** notify the Insurer as soon as possible but no later than ninety (90) days after discovery of loss;
- (2)** submit to an examination under oath at the Insurer's request and give it a signed statement;
- (3)** give the Insurer a detailed, sworn proof of loss within one hundred twenty (120) days;
- (4)** cooperate with the Insurer in the investigation and settlement of any claim; and
- (5)** with respect to Insuring Agreements 3 and 4, notify the police if an **Insured** has reason to believe that its loss involves a violation of the law.

(I) EMPLOYEE BENEFIT PLANS PROVISION

- (1)** The Insurer will pay for loss of or damage to **Money, Securities or Other Property** of any **Employee Benefit Plan(s)** sponsored exclusively by any **Insured** resulting directly from **Theft** by an **Employee**. The Limit of Insurance applicable to any **Employee Benefit Plan** shall equal the lesser of ten percent (10%) of the **Employee Benefit Plan** assets as of the beginning of such **Employee Benefit Plan** fiscal year or five hundred thousand dollars (\$500,000). Such Limit shall be part of and not in addition to the Limit of Insurance for **Employee Theft** stated on the Declarations.
- (2)** Any payments the Insurer makes to an **Insured** for loss sustained by any **Employee Benefit Plan** will be held by that **Insured** for the use and benefit of the **Employee Benefit Plan** sustaining the loss.
- (3)** If two or more **Employee Benefit Plans** are insured under this Crime Coverage Part, any payment which the Insurer makes for loss sustained by two or more **Employee Benefit Plans**, or of commingled funds or **Other Property** of two or more **Employee Benefit Plans**, which arises out of one **Occurrence**, is to be shared by each **Employee Benefit Plan** sustaining loss in the proportion that the Limit of Insurance required for each **Employee Benefit Plan** bears to the total of those limits.

- (4) The Retention Amount which applies to the Employee Theft Insuring Agreement shall not apply to loss sustained by any **Employee Benefit Plans** subject to **ERISA** and which plan is covered under this insurance.

(J) JOINT INSURED

- (1) The **Company** will act for itself and for every other **Insured** for all purposes of this Coverage Part.
- (2) If any **Insured**, partner, member or officer of an **Insured** has knowledge of any information relevant to this Coverage Part, that knowledge is considered to be knowledge of every **Insured**.
- (3) An **Employee** of any **Insured** is considered to be an **Employee** of every **Insured**.
- (4) If this Coverage Part or any of its Insuring Agreements is cancelled, terminated or non-renewed as to any **Insured**, loss sustained by that **Insured** is covered only if discovered by the **Insured** during the period of time provided in VI. General Conditions G. DISCOVERY - EXTENDED PERIOD TO DISCOVER LOSS. This extended period to discover loss also terminates in accordance with paragraph (2) of that condition.
- (5) The Insurer will not pay a greater amount for loss sustained by more than one **Insured** than the Insurer would pay if all of the loss had been sustained by one **Insured**.

(K) OWNERSHIP OF PROPERTY; INTERESTS COVERED

- (1) The property covered under this Coverage Part is limited to **Money, Securities or Other Property**:
- (a) that an **Insured** owns or leases; or
- (b) that is owned by an **Insured's** client and which the **Insured** holds on its **Premises** or which is in the custody of one acting as the **Insured's Messenger** and while such **Money, Securities or Other Property** is in transit; or
- (c) for which an **Insured** is legally liable excepting loss of client **Money, Securities or Other Property** occurring on such client's **Premises**.

- (2) However, this Coverage Part is for the **Insureds'** benefit alone and no other person or organization has any rights or benefits. Any claim for a loss of client **Money, Securities** or **Other Property** occurring on an **Insured's Premises** or while in transit in the custody of a **Messenger** may only be made by an **Insured** in its proof of loss.

(L) **VALUATION**

- (1) Subject to the applicable Limit of Insurance, the Insurer will pay for:

- (a) loss of **Money** but only up to and including its face value. The Insurer may, at its option, pay for a loss of **Money** issued by any country other than the United States of America in either the face value in the **Money** issued in that country, or, in the United States of America dollar equivalent determined by the rate of exchange as stated in the Wall Street Journal on the day that the loss occurred.
- (b) loss of **Securities** but only up to and including their value as stated in the Wall Street Journal at the close of business on the day that the loss was discovered. However, the Insurer may, at its option, 1) pay the value of such **Securities**, 2) replace them in kind in which event an **Insured** must assign to the Insurer all its rights, title and interest in and to those **Securities** or 3) pay the cost of any Lost **Securities** Bond required in connection with issuing duplicates of the **Securities**. However, the Insurer will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of
- i. the value of the **Securities** as stated in the Wall Street Journal at the close of the business on the day the loss was discovered; or
 - ii. the Limit of Insurance.
- (c) loss of or damage to Other Property or loss from damage to the Premises or its exterior for the replacement cost of the property without deduction for depreciation, subject to (2.) below. However, the Insurer will not pay for more than the lesser of:
- i. the Limit of Insurance applicable to the lost or damaged property; or

- ii. the cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
 - iii. the amount that any **Insured** actually spends that is necessary to repair or replace the lost or damaged property.
- (2) The Insurer will not pay on a replacement cost basis for any loss or damage:
 - (a) until the lost or damaged property is actually repaired or replaced; and
 - (b) unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, the Insurer will pay based on actual cash value.
- (3) The Insurer may, at its option, pay for loss of or damage to property other than **Money** in the **Money** of the country in which the loss occurred or in the United States of America dollar equivalent of the **Money** of the country where the loss occurred determined by the rate of exchange on the day the loss was discovered. Any property that the Insurer pays for or replaces becomes its property.
- (4) Loss of or loss from damage to any books or records of account or other records, tapes, disks, or electronic media used by an **Insured** in the business but only if such books, records, tapes or disks are actually reproduced and then only for not more than the replacement cost of the blank books, pages, tapes and disks or other materials plus the cost of labor for the actual transcription or copying of data which an **Insured** shall furnish to reproduce such books, records, tapes or disks.

(M) RECORDS

The **Insured** must keep records of all property covered under this Coverage Part so that the Insurer can verify the amount of any loss.

(N) RECOVERIES

- (1) Any recoveries made before the resolution of all or any part of a claim under this policy shall be distributed/applied in the following order of priority:

- (a) to the party (either the **Insured** or Insurer) to reimburse it for the reasonable and necessary costs of obtaining the recovery; and then
 - (b) to the **Insured** to reduce the amount of covered loss.
- (2) Any recoveries made after the resolution of all or any part of a claim under this policy shall be distributed/applied in the following order of priority:
 - (a) to reimburse the party (either the **Insured** or Insurer) for the reasonable and necessary costs of obtaining the recovery; and then
 - (b) to the **Insured**, until reimbursed for any excess covered loss sustained that exceeds the Limit of Insurance and the Retention Amount, if any; and then
 - (c) to the Insurer, until reimbursed for the amount paid; and then
 - (d) to the **Insured**, until reimbursed for that part of the loss equal to the Retention Amount, if any; and then
 - (e) to the **Insured** for any loss not covered.
- (3) Recoveries do not include any recovery:
 - (a) from insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
 - (b) of original **Securities** after duplicates of them have been issued.

(O) Takeover of the Company

If any of the following takes place:

- (1) the **Company** merges into or consolidates with another entity such that the **Company** is not the surviving entity; or
- (2) all, or substantially all of the assets of the **Company** are acquired by another person or entity, group of persons or entities, or persons and entities acting in concert such that the **Company** is not the surviving

entity; or

- (3) more than 50% of the **Securities** representing the right to vote for the Company, board of directors or managers is acquired by another person or entity, group of persons or entities or persons and entities acting in concert,

Then, coverage under this Coverage Part shall immediately terminate as of the date of such transaction and any incident occurring upon or after such date shall not be covered hereunder.