

Employed Lawyers Select[®] Insurance Policy

Declarations



Administrative Office
 1400 American Lane
 Schaumburg, IL 60196

Policy Number:

Renewal of:

THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE. **CLAIMS** MUST FIRST BE MADE AGAINST THE **INSUREDS** AND REPORTED DURING THE **POLICY PERIOD**, OR ANY APPLICABLE **EXTENDED REPORTING PERIOD**, TO THE UNDERWRITER. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS, AND ANY RETENTION, SHALL BE REDUCED BY AMOUNTS INCURRED AS **DEFENSE COSTS**.

Item 1. Policyholder:

Mailing Address:

Item 2. Policy Period:

From: 12:01 A.M. on To: 12:01 A.M. on

Local time at the address of the **Policyholder** shown in Item 1.

Item 3. Aggregate Limit of Liability: \$

Aggregate each **Policy Period** for Insuring Clauses A and B combined.

Note: The Limits of Liability and Self-Insured Retentions are reduced or exhausted by **Defense Costs**.

Item 4. Coverage Schedule

Insuring Clause	Each Claim Limit of Liability	Self- Insured Retention (Each Claim)	Retroactive Date
A. Employed Lawyers Professional Liability Coverage		NIL	
B. Company Indemnity Coverage			

Item 5. Extended Reporting Period:

year(s) for

% of the annual premium

Item 6. Notices to Underwriter:

<p>A. Address for notice of Claims or potential Claims:</p> <p>Zurich North America Commercial Attn: Professional Programs Claims P. O. Box 968041 Schaumburg, IL 60196-8041 Facsimile: (866) 255-2962</p> <p>OR</p> <p>Phone: (800) 987-3373</p> <p>OR</p> <p>www.zurichna.com/zna/claims</p>	<p>B. Address for all other notices:</p> <p>Zurich North America Commercial -</p>
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Item 7. Endorsements Effective At Inception: SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS

Item 8. Premium:

Employed Lawyers Select[®] Insurance Policy



In consideration of payment of the premium and in reliance upon the statements made in the **Application**, which is made a part hereof, and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy (including any endorsements hereto), the Insurance Company shown in the Declarations (herein called the Underwriter) and the **Insureds** agree as follows:

I. INSURING CLAUSES

A. EMPLOYED LAWYERS PROFESSIONAL LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, and reported during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act** taking place on or after the Retroactive Date, as stated in Item 4 of the Declarations, and prior to the end of the **Policy Period**, subject to the Limits of Liability set forth in the Declarations.

B. COMPANY INDEMNITY COVERAGE

The Underwriter shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, and reported during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act** taking place on or after the Retroactive Date, as stated in Item 4 of the Declarations, and prior to the end of the **Policy Period**, subject to the Limits of Liability set forth in the Declarations.

II. EXTENSIONS

A. ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under this Policy but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

B. EXTENDED REPORTING PERIOD

If the Underwriter or **Policyholder** terminates or refuses to renew this Policy other than for nonpayment of premium, the **Insureds** shall have the right, upon payment of the additional premium set forth in Item 5 of the Declarations, to an extension of the coverage granted by this Policy for the **Extended Reporting Period** set forth in Item 5 of the Declarations following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. The **Extended Reporting Period** shall not exceed six years. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Underwriter within thirty (30) days following the effective date of termination or nonrenewal.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

The entire additional premium for the **Extended Reporting Period** shall be deemed fully earned at the inception of the **Extended Reporting Period**.

C. INDIVIDUAL INSURED PERSON EXTENDED COVERAGE

If the **Policyholder** is entitled to but does not exercise the **Extended Reporting Period**, any **Qualified Insured Person** shall have the right to elect an **Extended Reporting Period** for only such **Qualified Insured Person**. The extension of coverage pursuant to any such individual **Extended Reporting Period** shall apply only with respect to coverage under Insuring Clause A for **Claims** against the **Qualified Insured Person** who elected such extension of coverage, and shall not apply to Insuring Clause B or to any coverage afforded to any other **Insured** under this Policy.

This right of extension shall lapse unless written notice of such election is given by the **Qualified Insured Person** to the Underwriter within thirty (30) days after the earlier of (i) the **Policyholder's** right to exercise the **Extended Reporting Period** has expired, or (ii) the **Qualified Insured Person** ceases to be an **Employee**. Upon receipt of such written notice, the Underwriter shall promptly notify the **Qualified Insured Person** of the additional premium for such extension, and the extension of coverage for the **Qualified Insured Person** is conditioned upon the **Qualified Insured Person** paying such additional premium within fifteen (15) days after being notified of the amount of the additional premium.

III. DEFINITIONS

When used in this Policy, the following terms, whether in the singular or plural, are defined as follows:

A. **Application** means:

1. all materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insureds** to the Underwriter in connection with the Underwriter underwriting this Policy or any policy issued by the Underwriter of which this Policy is a direct or indirect renewal or replacement; and
2. all publicly available documents filed by the **Company** with the Securities and Exchange Commission during the twelve (12) months preceding inception of this Policy.

The **Application** is deemed attached to and incorporated into this Policy.

B. **Bodily Injury** means injury to the body, sickness, disease, or death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease, or death of any person.

However, **Bodily Injury** does not mean mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock to the extent that it arises out of or results from a **Wrongful Act**.

C. **Claim** means:

1. a written demand against any **Insured Person** for monetary damages or non-monetary or injunctive relief, including a written demand that the **Insured Person** toll or waive a statute of limitations;
2. a civil proceeding against any **Insured Person** commenced by the service of a complaint or similar pleading;
3. a judicial, administrative, bar association complaint or other proceeding against an **In-House Lawyer** including any proceeding concerning compliance with the Sarbanes-Oxley Act of 2002 and any amendments thereto or any rules, regulations or orders promulgated thereunder;
4. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured Person** is obligated to participate in such proceeding or if the **Insured Person** agrees to participate in such proceeding with the Underwriter's written consent, such consent not to be unreasonably withheld;
5. a **Securities Claim** against any **Insured Person**;
6. a criminal proceeding against any **Insured Person** in connection with a **Securities Claim** which is commenced by a return of an indictment, information, notice of charges or similar document; or
7. a civil, administrative or regulatory investigation of any **Insured Person** in connection with a **Securities Claim** which is commenced by the service of a subpoena upon such **Insured Person**;

for a **Wrongful Act**, including any appeal therefrom.

- D. **Company** means, collectively, the **Policyholder** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- E. **Controlling Interest** means the right of an **Insured Person** or a member of an **Insured Person's Immediate Family**, directly or indirectly, to:
1. own ten percent (10%) or more of an interest in an entity;
 2. vote ten percent (10%) or more of the issued and outstanding voting stock in an incorporated entity;
 3. elect ten percent (10%) or more of the directors of an incorporated entity;
 4. receive ten percent (10%) or more of the profits of an unincorporated entity; or
 5. act as general partner of a limited partnership, managing general partner of a general partnership, or comparable position in any business enterprise.
- F. **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or **Employees** of the **Company**) incurred by the **Insureds** after the **Claim** is first made (i) in defending or investigating **Claims**, including costs assessed against the **Insureds** in a **Claim** or the premium for appeal, attachment or similar bonds provided the Underwriter shall have no obligation to apply for or furnish such bonds, or (ii) at the Underwriter's request to assist the Underwriter in investigating a **Claim**.
- G. **Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- H. **Employee** means any past, present or future employee, including any part-time, seasonal and temporary employee of the **Company**.
- I. **Executive Officers** means with respect to any **Company** its president, chief executive officer, chief financial officer and in-house general counsel, or if a **Company** does not have one of such positions, any functionally-equivalent position in such **Company**.
- J. **Extended Reporting Period** means the period of the extended coverage described in Subsections II.B and II.C.
- K. **Financial Impairment** means the status of the **Company** resulting from the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession.
- L. **Immediate Family** means:
1. the **Insured Person**;
 2. the **Insured Person's** spouse or **Domestic Partner**;
 3. the **Insured Person's** parent(s), adoptive parent(s) or step-parent(s);
 4. the **Insured Person's** sibling(s) or step-sibling(s); and
 5. the **Insured Person's** child(ren), adoptive child(ren) or step-child(ren).
- M. **In-House Lawyer** means any attorney at law admitted to the bar in or otherwise licensed to practice law in any of the United States of America or its territories or possessions.
- N. **Insured Persons** means any:
1. **In-House Lawyer**;
 2. **Employee** who supports an **In-House Lawyer** in the performance of **Professional Services**;
 3. **Employee** whose duties include serving as a notary public, but only while acting in their capacity as a notary public under the supervision of an **In-House Lawyer**;
 4. person admitted to the bar in or otherwise licensed to practice law in any of the United States of America or its territories or possessions who works under the supervision of an **In-House Lawyer** pursuant to a written agreement between the **Company** and an employment contractor or agency to provide **Professional Services** to the **Company**; or

5. person admitted to the bar in or otherwise licensed to practice law in any of the United States of America or its territories or possessions who performs **Professional Services** for the **Company**, is indemnified by the **Company** under an independent contractor services agreement and is not employed by a law firm.
- O. **Insureds** means the **Insured Persons** and, solely with respect to Insuring Clause B, the **Company**.
- P. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- Q. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Defense Costs**.
- Loss** does not include any of the following, provided this sentence does not exclude **Defense Costs** with respect to any of the following:
1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
 2. taxes, fines or penalties imposed by law, except as provided in the next paragraph;
 3. any amount incurred by the **Company** that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a **Company** in connection with its purchase of any securities or assets; or
 4. matters uninsurable under the law pursuant to which this Policy is construed.
- Loss** does not exclude:
1. punitive, exemplary or multiple damages;
 2. civil money penalties assessed against an **Insured** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B); or
 3. civil money penalties assessed against an **Insured** for a violation of any federal, state, local or foreign election law if such violation is not knowing or willful;
- to the extent such damages or penalties are insurable under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Underwriter, this Policy or such **Claim** is located.
- R. **Managers** means any natural person who was, now is or shall become (i) a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company, and (ii) a general partner, managing partner or equivalent executive of a **Company** that is a partnership or joint venture.
- S. **Material Change** means an increase or decrease of more than fifty percent (50%) of the number of **Insured Persons**.
- T. **Moonlighting Services** means legal services performed by an **In-House Lawyer**, outside the scope of their employment with the **Company**, for natural person clients (including **Employees**) in connection with:
1. estate planning matters and administration;
 2. residential real estate closings;
 3. personal bankruptcies;
 4. incorporation of family businesses;
 5. traffic violations;
 6. trust administration;
 7. probate proceedings;
 8. matrimonial proceedings; or
 9. any other matters listed in an endorsement, if attached to this Policy.

Moonlighting Services does not include any legal services performed by an **In-House Lawyer** in their capacity as owner, principal, partner or employee of an entity that is not the **Company**.

- U. **Non-Indemnifiable Loss** means **Loss** for which the **Company** has not indemnified an **Insured Person** either because of insolvency or because the **Company** is not permitted or required to indemnify the **Insured Person** pursuant to law or contract or the bylaws or similar documents of the **Company**.
- V. **Personal Injury** means any:
 - 1. libel, slander or other defamatory or other form of disparagement;
 - 2. malicious prosecution;
 - 3. false arrest, detention or imprisonment;
 - 4. publication or utterance in violation of an individual's right of privacy; or
 - 5. wrongful entry or eviction or other invasion of the right of private occupancy.
- W. **Policy Period** means the period set forth in Item 2 of the Declarations, subject to prior termination in accordance with Subsection V.L.
- X. **Policyholder** means the organization designated in Item 1 of the Declarations.
- Y. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.
- Z. **Professional Services** means
 - 1. any legal professional services, including notary public services, which are performed by:
 - a. an **In-House Lawyer** in their capacity as an **Employee**;
 - b. any **Insured Persons**, but solely while acting under the supervision, and at the direction, of an **In-House Lawyer**;
 - 2. **Moonlighting Services**; or
 - 3. Pro bono legal services performed by an **In-House Lawyer** on a voluntary basis or as mandated by the **Company** or by the bar of which the **In-House Lawyer** is a member, for indigent clients or for not-for-profit public interest groups.
- AA. **Property Damage** means physical injury to tangible property, including all resulting loss of use of that property, or loss of use of tangible property that has not been physically injured.
- BB. **Qualified Insured Person** means an **Insured Person** whose employment by the **Company** is not terminated for cause or whose admission to the bar or license to practice law in any of the United States or its territories or possessions is not revoked or suspended for any reason.
- CC. **Securities Claim** means any **Claim** made against an **Insured Person** arising from **Professional Services** alleging a violation of any statutory or common law which in whole or in part is (i) brought by one or more securities holders of the **Company**, in their capacity as such, or (ii) based upon, arising out of or attributable to the purchase or sale of, or offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale, offer or solicitation involves a transaction with the **Company** or occurs in the open market (including without limitation any such **Claim** brought by the Securities and Exchange Commission or any other claimant); or any such **Claim** brought derivatively on behalf of the **Company** by a securityholder of the **Company**.

DD. **Subsidiary**, either in the singular or plural, means:

1. any organization, including any joint venture and partnership, in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors, **Managers** or equivalent executives is owned or controlled, directly or indirectly, in any combination, by one or more **Companies**;
2. any organization, including any joint venture and partnership, in which one or more **Companies**, in any combination, directly or indirectly have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, **Managers** or equivalent executives of such organization; and
3. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**.

EE. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, breach of duty or **Personal Injury** actually or allegedly committed or attempted by any of the **Insured Persons** in the performance of **Professional Services**.

IV. EXCLUSIONS

The Underwriter shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:

A. based upon, arising out of or attributable to:

1. with respect to all **Claims** other than **Securities Claims**, any:
 - a. dishonest, fraudulent, criminal, or malicious **Wrongful Act**, or any intentional or knowing violation of law by the **Insured**; or
 - b. the gaining of any profit, remuneration, or financial or non-financial advantage to which the **Insured** was not legally entitled;

provided, however, this Exclusion A.1. shall not apply to **Defense Costs** or the Underwriter's duty to defend any such **Claim** unless and until there is a judgment against, binding arbitration decision against, adverse admission under oath by, finding of fact against, or plea of *nolo contendere* or no contest by, the **Insured** which establishes such **Wrongful Act** occurred or such profit, remuneration, financial or non-financial advantage was gained, at which time the **Insured** shall reimburse the Underwriter for any **Defense Costs** paid by the Underwriter on behalf of such **Insured** resulting from such **Claim**;

2. with respect to **Securities Claims**, any:
 - a. deliberate criminal or deliberate fraudulent act; or
 - b. the gaining of any profit, remuneration, or financial or non-financial advantage to which the **Insured** was not legally entitled;

provided, however, this Exclusion A.2. shall not apply to **Defense Costs** or the Underwriter's duty to defend any such **Securities Claim** unless and until there is a judgment against, binding arbitration decision against, adverse admission under oath by, finding of fact against, or plea of *nolo contendere* or no contest by, the **Insured** which establishes such unlawful conduct occurred or such profit, remuneration, financial or non-financial advantage was gained, at which time the **Insured** shall reimburse the Underwriter for any **Defense Costs** paid by the Underwriter on behalf of such **Insured** resulting from such **Securities Claim**.

For purposes of determining the applicability of this Exclusion A:

1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
2. only facts pertaining to and knowledge possessed by any director or **Executive Officer** of a **Company** shall be imputed to all **Companies**;

- B. based upon, arising out of or attributable to:
1. any fact, circumstance, or situation which has been the subject of any written notice given under any insurance policy or any policy of which this Policy is a direct or indirect renewal or replacement, or any policy expiring prior to the inception date of this Policy;
 2. any act, error, omission, **Wrongful Act**, fact, circumstance or situation occurring prior to
 - a. the inception date of this Policy;
 - b. the inception date of the first policy in an uninterrupted series of
 - i. employed lawyers liability insurance policies; or
 - ii. directors and officers liability insurance policies containing an extension for employed lawyers continuously issued to the **Company** of which this Policy is a renewal, whichever inception date is the earliest; or
 - c. the Retroactive Date shown in Item 4 of the Declarations,
if on or before such earliest inception date or Retroactive Date the **Insured** knew or could have reasonably foreseen that such **Wrongful Act**, fact, circumstance or situation would give rise to a **Claim**; or
 3. any written demand, suit or proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the effective date of this Policy or the effective date of any policy issued by the Underwriter of which this Policy is a continuous renewal, replacement, or is alleging or derived from the same or substantially the same **Wrongful Act, Interrelated Wrongful Acts**, fact, circumstance or situation underlying or alleged therein;
- C. based upon, arising out of or attributable to any actual or alleged:
1. refusal to employ;
 2. termination of a person's employment, including constructive dismissal;
 3. violations of employment-related practices, policies, acts, or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, malicious prosecution; or
 4. other wrongful employment-related practices,
provided this exclusion applies:
 1. whether such conduct occurs before employment, during employment or after employment of that person; or
 2. whether the **Insured** may be liable as an employer or in any other capacity.
- Further provided, however, this exclusion shall not apply to the **Professional Services** provided by an **Insured Person** in connection with the employment of any individual or any employment practice, whether such **Professional Services** are provided to a third party or to the **Company**;
- D. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto or similar provisions of any federal, state or local statutory law or common law upon fiduciaries of any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the **Company**; provided, however, this exclusion shall not apply to **Claims** arising out of an **Insured Person** providing **Professional Services** to an ERISA fiduciary;
- E. based upon, arising out of or attributable to:
1. the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 2. any direction or request that the **Company** or the **Insured Persons** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

This pollution exclusion applies whether or not such **Pollutants** have any function in the **Insureds'** business, operations, premises, site or location and regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to any **Loss** associated with such **Pollutants**.

This pollution exclusion shall not apply to (i) **Claims** alleging any of the foregoing where the underlying **Professional Services** performed by an **Insured Person** giving rise to such **Claim** were not the direct immediate cause of the foregoing or (ii) any **Non-Indemnifiable Loss**;

- F. based upon, arising out of or attributable to **Bodily Injury** or **Property Damage**;
- G. by or on behalf of, or for the benefit of the **Company** or any **Insured Person** in any capacity, provided this exclusion shall not apply to:
 - 1. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** if the **Claim** is brought and maintained without the solicitation or active assistance or participation of the **Company** or any **Insured Person** or if the only such solicitation, assistance or participation by the **Company** and **Insured Persons** is (i) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (ii) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute;
 - 2. a **Claim** brought by an **Insured Person** who has not served as an **Insured Person** for at least three (3) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the solicitation, assistance or participation by the **Company** or any other **Insured Person** who is serving or has served as an **Insured Person** within such three (3) year period;
 - 3. a **Claim** for an employment-related **Wrongful Act** brought or maintained by an officer or **Employee** of the **Company**;
 - 4. **Defense Costs** incurred in connection with such **Claims** referred to in paragraphs 1, 2 and 3 above; or
 - 5. a **Claim** brought or maintained by or on behalf of a debtor in possession, bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for the **Company**, or any assignee of such debtor in possession, trustee, examiner, receiver, or similar official or creditors committee;
- H. for the return or restitution of fees, expenses or costs;
- I. based upon, arising out of or attributable to any notarized certification or acknowledgment of signature without the physical appearance before such notary public of the person who is or claims to be the person signing such instrument;
- J. based upon, arising out of, or attributable to any actual or alleged misappropriation of any patent or any trade secret;
- K. alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in, or assets of, any entity is inadequate;
- L. for unpaid wages or other compensation for hours worked or labor performed by any **Employee**, or for unlawful payroll deductions; provided that this exclusion shall not apply to **Defense Costs** in connection therewith;
- M. based upon, arising out of, or attributable to any acts whatsoever of an **Insured Person** in connection with a trust or estate when an **Insured Person** is a beneficiary or distributee of the trust or estate; provided that this exclusion shall not apply to a **Claim** brought by an **Insured Person** arising out of their right to receive benefits from the **Company**, provided, however, such **Claim** may not be related to or arise out of any actual or alleged **Wrongful Act** committed by such **Insured Person**;
- N. based upon, arising out of, or attributable to an **Insured Person's** capacity or status as an officer, director, partner, trustee, shareholder, manager or employee of a business enterprise other than the **Company**, charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust; or
- O. based upon, arising out of, or attributable to the alleged acts or omissions by an **Insured Person**, with or without compensation, for any business enterprise, whether for profit or not-for-profit, in which any **Insured Person** has a **Controlling Interest**.

V. GENERAL CONDITIONS AND LIMITATIONS

A. PRESUMPTIVE INDEMNIFICATION

If the **Company** is permitted or required by common or statutory law to indemnify the **Insured Persons** for **Loss** but fails or refuses to do so other than for reason of **Financial Impairment**, then, notwithstanding any other conditions, provisions or terms of this Policy to the contrary, any payment by the Underwriter of such **Loss** under Insuring Clause A shall be subject to the respective Insuring Clause B Self-Insured Retention set forth in Item 4 of the Declarations.

For purposes of this Subsection V.A, the shareholder and board of director resolutions of the **Company** shall be deemed to provide indemnification for such **Loss** to the fullest extent permitted by law.

B. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

1. Representations

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and complete, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth and completeness of such representations.

2. Severability

The **Application** shall be construed as a separate application for coverage by each of the **Insured Persons**. In the event the **Application** contains any misrepresentation or omission (i) made with the intent to deceive, or (ii) which materially affects either the acceptance of the risk or the hazard assumed by the Underwriter under this Policy, then this Policy shall be void *ab initio* as to any **Company** under Insuring Clause B to the extent such **Company** indemnifies an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**, whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission.

No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons** for purposes of this Subsection V.B.

3. Non-Rescindable Coverage

The Underwriter shall not have the right to rescind or void, in whole or in part, the coverage provided under Insuring Clause A for any reason.

C. LIMITS OF LIABILITY, SELF-INSURED RETENTION AND SINGLE CLAIMS

1. Limits of Liability

a. The Underwriter's maximum aggregate liability for all **Loss** on account of all **Claims** under Insuring Clauses A and B combined, shall be the Aggregate Limit of Liability set forth in Item 3 of the Declarations ("the Aggregate Limit of Liability").

b. Subject to the Aggregate Limit of Liability, the Underwriter's maximum liability for all **Loss** arising from each **Claim** under Insuring Clause A or B shall be the Each Claim Limit of Liability set forth in Item 4 of the Declarations. The Each Claim Limit of Liability is part of, and not in addition to, the Aggregate Limit of Liability.

c. **Defense Costs** are part of and not in addition to the Aggregate Limit of Liability, and the payment by the Underwriter of **Defense Costs** reduces such Limit of Liability. If the Aggregate Limit of Liability is exhausted by payment of **Loss**, the Underwriter's obligations under this Policy shall be completely fulfilled and extinguished. Subject to Subsection V.K, the Underwriter is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

d. The Limit of Liability for any **Extended Reporting Period** shall be part of and not in addition to the Aggregate Limit of Liability.

2. Self-Insured Retention

a. The Underwriter's liability under Insuring Clause B with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Self-Insured Retention set forth in Item 4

of the Declarations, and such Self-Insured Retention shall be borne by the **Company** uninsured and at its own risk.

- b. Except as provided in Subsection V.A, no Self-Insured Retention shall apply to any **Loss** covered under Insuring Clause A.
- c. Notwithstanding anything in the Policy to the contrary, no Self-Insured Retention shall apply to any **Securities Claim** that, pursuant to Subsection V.H, this Policy applies only as excess.

3. Single Claims

All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**.

D. CHANGES IN EXPOSURE

1. New Organizations

- a. If before or during the **Policy Period** the **Company** acquires or creates a new **Subsidiary** or acquires an entity by merger or consolidation, coverage under this Policy automatically shall apply to the new organization and its **Insured Persons** but only for **Wrongful Acts** taking place after such acquisition or creation, unless Subsection c. below applies.
- b. However, if the total assets of such newly acquired organization exceeds twenty percent (20%) of the total assets of the **Policyholder** as reflected in their respective most recent audited consolidated financial statements, or there is a **Material Change**, during the **Policy Period**, the coverage provided in Subsection a. above shall apply only if the Underwriter agrees to afford such coverage pursuant to Subsection c. below.
- c. Notwithstanding Subsections a. and b. above, the Underwriter may agree to extend coverage under this Policy to the new organization described in Subsection a. and its **Insured Persons** (i) for **Wrongful Acts** taking place prior to its acquisition or creation, or (ii) with respect to an acquisition or **Material Change** described in Subsection b. above, if, within ninety (90) days after the acquisition or **Material Change**, the **Policyholder** provides any additional information, pays any additional premium and agrees to any additional terms and conditions reasonably required by the Underwriter for such extension of coverage. In such event, the Underwriter shall issue an endorsement to this Policy confirming such coverage extension.

2. Acquisition of Policyholder

If during the **Policy Period**:

- a. the **Policyholder** merges into or consolidates with another organization; or
- b. another organization, or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors or equivalent executives of the **Policyholder**,

then coverage under this Policy shall continue until the later of:

- i. any subsequent date to which the Underwriter may agree by endorsement; or
- ii. termination of this Policy,

but only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition. As a condition precedent to any coverage extension pursuant to Subsection V.D.2.a.i above, the **Policyholder** shall give written notice of such merger, consolidation or acquisition to the Underwriter at the address shown in Item 6.B of the Declarations as soon as practicable but in no event later than forty-five (45) days after the effective date of such merger, consolidation or acquisition, the **Insureds** shall provide such information as the Underwriter may require, and the **Policyholder** shall pay any additional premium required by the Underwriter.

Any **Claim** made and reported during such coverage extension shall be considered made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

3. Cessation of Subsidiaries

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

E. DEFENSE AND SETTLEMENT

The Underwriter shall have the right and duty to defend **Claims** against the **Insured**, even if the allegations in the **Claim** are groundless, false, or fraudulent. The Underwriter's right and duty to defend includes, without limitation, the right and duty to select defense counsel. The **Underwriter's** duty to defend any such **Claim** or to pay **Loss** for such **Claim** ends when any Limit of Liability applicable to such **Claim** has been exhausted.

The Underwriter may investigate any such **Claim** as it deems necessary and make any settlement or compromise of such **Claim** as it deems expedient with the **Insured's** consent, but the Underwriter's right and duty to defend ends when the Aggregate Limit of Liability is exhausted by payment of **Loss**. If the Underwriter recommends a settlement of any such **Claim** acceptable to the claimant and the **Insured** refuses to consent to such settlement then, subject to the Aggregate Limit of Liability, the Underwriter's liability for such **Claim** will not exceed:

1. the amount for which such **Claim** could have been settled by the Underwriter plus **Defense Costs** up to the date the **Insured** refused to settle such **Claim**; plus
2. eighty percent (80%) of any **Loss** in excess of Subsection E.1 above incurred in such **Claim**. The remaining **Loss** will be uninsured and borne by the **Insured** at its own risk.

The **Insureds** agree not to settle any **Claim**, incur any **Defense Costs**, otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the Underwriter's prior written consent. The **Underwriter** shall not be liable for any settlement, **Defense Costs**, assumed obligation, or admission to which it has not consented. However, such consent shall not be required if the aggregate **Loss** is equal to or less than any applicable Self-Insured Retention shown in Item 4 of the Declarations. Neither the Underwriter nor the **Insureds** shall unreasonably withhold any consent referenced in this Subsection V.E.

As a condition precedent to their rights under this Policy, the **Insureds** shall provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery.

F. TERRITORY AND VALUATION

Coverage under this Policy shall extend to **Wrongful Acts** taking place, **Loss** incurred or **Claims** made anywhere in the world, to the extent legally permitted.

All premiums, limits, Self-Insured Retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

G. REPORTING AND NOTICE

1. Notice of Claims

As a condition precedent to their rights under this Policy, the **Insureds** shall give to the Underwriter written notice of any **Claim** made against the **Insureds** as soon as practicable after an employee of the **Company's** office of general counsel, risk management or functionally equivalent departments first learns of such **Claim**, but in no event later than (i) ninety (90) days after expiration of the **Policy Period**, or (ii) the expiration of the **Extended Reporting Period**, if exercised.

2. Notice of Potential Claims

If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insureds** become aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or the **Extended Reporting Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made

during the **Policy Period**. No coverage is afforded under this Policy for fees, expenses or other loss incurred in connection with such potential **Claim** prior to the time such notice results in a **Claim**.

3. Notice of In-House Lawyers outside the United States

If during the **Policy Period** new **In-House Lawyers** are appointed to work for the **Company** outside the United States or its territories and possessions, the **Company** shall give notice to the Underwriter within thirty (30) days of each such appointment.

4. As a condition precedent to exercising their rights under this Policy, the **Insureds** shall (i) include within any notice of **Claim** or circumstance a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Claim** or circumstances, and (ii) give to the Underwriter such information and cooperation as it may reasonably require.

5. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Policyholder** at the address as shown in Item 1 of the Declarations. Notice to the Underwriter shall be given to the respective address shown in Item 6 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

H. OTHER INSURANCE

If any **Loss** is insured under any other valid and collectible policy(ies) issued to any **Insured**, then this Policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy. Further, this Policy shall apply specifically as excess as to any **Securities Claims** also covered under any Directors and Officers Liability Insurance or similar insurance policy.

I. SUBROGATION

In the event of any payment under this Policy, the Underwriter shall be subrogated to the extent of such payment to all the **Insureds**' rights of recovery, including without limitation any right of recovery from the **Company** for **Loss** covered under Insuring Clause A. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the **Insureds**. In any subrogation claim against the **Company** to enforce the **Insured Persons**' right of indemnification, the shareholder and board of director resolutions of the **Company** shall be deemed to provide indemnification to the fullest extent permitted by law, and the Underwriter's recovery from the **Company** for **Loss** covered under Insuring Clause B shall not exceed the applicable Self-Insured Retention set forth in Item 4 of the Declarations. In no event shall the Underwriter exercise its right of subrogation against an **Insured Person** unless and to the extent Exclusion A in Section IV applies to such **Insured Person**.

J. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Underwriter.

The titles and headings to the various sections, subsections and endorsements of this Policy, as well as the schedule of endorsements attached to this Policy, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

K. PAYMENT PRIORITY

If the **Loss** due and owing by the Underwriter exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Underwriter shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

1. First, the Underwriter shall pay **Loss** covered under Insuring Clause A; and
2. Second, the Underwriter shall pay **Loss** covered under Insuring Clause B.

Subject to the foregoing paragraph, the Underwriter shall, upon receipt of a written request from the **Policyholder**, delay any payment of **Loss** due and owing under Insuring Clause B until such time as the **Policyholder** designates, provided the Underwriter's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

L. POLICY TERMINATION AND NONRENEWAL

This Policy shall terminate at the earliest of the expiration of the **Policy Period** shown in Item 2 of the Declarations or the effective date of cancellation, as described in Subsection 1. or 2. below.

1. The **Policyholder** may cancel this Policy by surrender of this Policy to the Underwriter or by giving prior written notice to the Underwriter stating when such cancellation shall take effect.
2. The Underwriter may cancel this Policy only for nonpayment of premium. In such event, the Underwriter shall give written notice thereof by certified mail to the **Policyholder** at the address in Item 1 of the Declarations and to the **Policyholder's** authorized agent, if any. Such notice shall state the reason for cancellation and the effective date thereof, which shall not be less than fifteen (15) days after mailing such notice. Proof of mailing shall be sufficient proof of notice.
3. In the event of cancellation, the Underwriter shall refund the unearned premium computed pro rata.
4. If the Underwriter elects not to renew this Policy, the Underwriter shall give to the **Policyholder** written notice of nonrenewal at least ninety (90) days prior to the effective date of this Policy's termination.

M. AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Policyholder** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices of **Claim** or termination, paying premiums and receiving any return premiums that may become due under this Policy, agreeing to endorsements, and giving or receiving notices provided for in this Policy (except notices to apply for the **Extended Reporting Period**), and the **Insureds** agree that the **Policyholder** shall act on their behalf.

N. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this Policy.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Company** and the **Insured Persons** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Underwriter, the **Company** or any **Insured Person** to obtain relief from any such stay or injunction.

O. MEDIATION

The **Insureds** and the Underwriter shall submit any dispute or controversy arising out of or relating to this Policy to non-binding mediation as described in this Subsection V.O. Unless otherwise agreed by the parties, any such non-binding mediation shall be administered by the American Arbitration Association in accordance with its then-prevailing Commercial Mediation Rules. The parties shall share equally the fees and expenses of the mediator.

If the dispute is not resolved in the mediation, then either party to the mediation may thereafter commence a judicial proceeding against the other party with respect to such dispute, provided that neither party may commence such a judicial proceeding prior to ninety (90) days following termination of the mediation.