



A capital stock company
(the "Insurer")

POLICY NUMBER: [Variable] REPLACEMENT OF POLICY NUMBER: [Variable]

Directors & Officers Statement

BROAD FORM MANAGEMENT LIABILITY INSURANCE POLICY

NOTICES: This policy provides claims-made coverage. Such coverage is generally limited to liability for (i) **Claims** first made against **Insureds**, and (ii) **Crises** first occurring, in each case, during the **Policy Period** or, if applicable, the **Discovery Period**. Coverage under this policy is conditioned upon notice being timely provided to the **Insurer** as required (see the Notice and Reporting clause for details). Covered **Defense Costs, Investigation and Response Costs, Clawback Assistance Costs** and **Asset Protection Costs** shall reduce the **Limits of Liability** available to pay judgments or settlements, and shall be applied against the retention amount. The **Insurer** does not assume any duty to defend. Please read this policy carefully and review its coverage with your insurance agent or broker.

DECLARATIONS

1. **NAMED ENTITY:** [Variable]
Named Entity Address: [Variable]

State of Formation: [Variable]
2. **POLICY PERIOD:** From: [Variable] To: [Variable]
The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Entity Address**.
3. **PREMIUM:** \$ [Variable]
4. **LIMIT OF LIABILITY:** \$ [Variable]
5. **RETENTION:** Not applicable to: (i) **Non-Indemnifiable Loss**, (ii) **Crisis Loss** or (iii) **Investigation and Response Costs**.
 - (a) **Securities Retention:** \$ [Variable]
 - (b) **Employment Practices Retention:** \$ [Variable]
 - (c) All other **Loss** to which a Retention applies: \$ [Variable]
If the **Organizations** fail or refuse to satisfy an applicable Retention, this policy shall advance the **Loss** of an **Insured Person** pursuant to the ADVANCEMENT Clause.

6. RELATED INVESTIGATION RESPONSE COSTS

This policy:

- does not provide **Related Investigation Response Costs** Coverage.
- provides **Related Investigation Response Costs** Coverage as set forth in the attached **Related Investigation Response Costs** Coverage endorsement which:

- (a) includes *Violation of Statute, Rule or Regulation Regulating Securities Coverage* **Securities Violation Known Wrongful Act Date:** xx/xx/xxxx
 does not include
- (b) includes *Violation of Any Law Other Than Securities or Foreign Corrupt Practices Law Coverage* **Other Law Violation Known Wrongful Act Date:** xx/xx/xxxx
 does not include
- (c) includes *Violation of Foreign Corrupt Practices Law Coverage* **Foreign Corrupt Practices Violation Known Wrongful Act Date:** xx/xx/xxxx
 does not include *Foreign Corrupt Practices Violation Coverage* sublimit: xxxx
- (d) includes *Lookback Coverage* **Lookback Known Wrongful Act Date:** xx/xx/xxxx
 does not include *Lookback Coverage* sublimit: xxxx

7. PASSPORT: This policy serves, or does not serve, as a master Passport policy.

8. INSURER

- (a) **Insurer Address:** [Variable]
- (b) **Claims Address:** By E-Mail: [Variable]
By Mail: [Variable]

In either case, reference the Policy Number.

9. CONTINUITY DATES

- (a) **Outside Entity Executive** Coverage--The date on which the **Executive** first served as an **Outside Entity Executive** of such **Outside Entity**.
- (b) All other coverage: [Variable]

10. TRIA PREMIUM, TAXES AND SURCHARGES

- (a) [TRIA Premium Var.]: \$ [Variable]
- (b) [Variable]: \$ [Variable]
- (c) [Variable]: \$ [Variable]
- (d) [Variable]: \$ [Variable]

["**TRIA Premium**"] means the premium for Certified Acts of Terrorism Coverage under Terrorism Risk Insurance Act 2002. The **TRIA Premium** amount indicated above is included in **Premium**. A copy of the TRIA disclosure sent with the original quote is attached hereto. [Variable]

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed below by its President, a Secretary and its duly authorized representative.

PRESIDENT

SECRETARY

AUTHORIZED REPRESENTATIVE

COUNTERSIGNATURE (Where Required)	DATE	COUNTERSIGNED AT
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Directors & Officers Statement

BROAD FORM MANAGEMENT LIABILITY INSURANCE POLICY

Guide

1. INSURING AGREEMENTS	1
A. <i>Insured Person Coverage</i>	1
B. <i>Indemnification Of Insured Person Coverage</i>	1
C. <i>Organization Coverage</i>	1
D. <i>Investigation And Response Costs Coverage</i>	1
E. <i>Crisis Coverage</i>	1
2. PROTECTIONS WHEN INDEMNIFICATION IS UNAVAILABLE.....	1
A. <i>Advancement</i>	1
B. <i>Order Of Payments</i>	2
C. <i>Bankruptcy And Insolvency</i>	2
3. EXTENSIONS	2
A. <i>Worldwide And Cross-Border</i>	2
B. <i>Spousal, Domestic Partner And Legal Representative</i>	3
4. EXCLUSIONS	3
A. <i>Exclusions</i>	3
B. <i>Severability Of Conduct Exclusion</i>	4
5. RETENTION	5
6. POLICY LIMITS	5
7. NOTICE AND REPORTING	5
8. DISCOVERY	6
9. DEFENSE AND SETTLEMENT.....	7
A. <i>For Claims</i>	7
B. <i>Pre-Authorized Securities Defense Attorneys</i>	7
C. <i>Allocation</i>	8
10. CHANGES TO ORGANIZATIONS.....	8
A. <i>Change In Control</i>	8
B. <i>Subsidiary Additions</i>	8
C. <i>Scope Of Subsidiary Coverage</i>	8
11. APPLICATION AND UNDERWRITING	8
A. <i>Application And Reliance</i>	8
B. <i>Non-Rescindable</i>	8
C. <i>Severability Of The Application</i>	9
12. GENERAL TERMS AND CONDITIONS	9
A. <i>Payments And Obligations Of Organizations And Others</i>	9
B. <i>Relationship Of Claims and Crises</i>	10
C. <i>Cancellation</i>	10
D. <i>Consent</i>	11
E. <i>Notice And Authority</i>	11
F. <i>Currency</i>	11
G. <i>Assignment</i>	11
H. <i>Disputes</i>	11
I. <i>Conformance To Law</i>	12
J. <i>Headings</i>	12
13. DEFINITIONS.....	13



In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this policy is provided solely with respect to: (1) **Claims** first made against an **Insured**; and (2) **Crises** first occurring, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this policy. Subject to the foregoing and the other terms, conditions and limitations of this policy, this policy affords the following coverage:

A. *Insured Person Coverage*

The **Insurer** shall pay the **Loss** of any **Insured Person** arising from any **Claim** made against such **Insured Person**, unless an **Organization** has indemnified or paid such **Loss**.

B. *Indemnification Of Insured Person Coverage*

The **Insurer** shall pay the **Loss** of an **Organization** arising from any **Claim** made against an **Insured Person**, but only to the extent that such **Organization** has indemnified such **Loss** of, or paid such **Loss** on behalf of, such **Insured Person**.

C. *Organization Coverage*

The **Insurer** shall pay the **Loss** of any **Organization** arising from any **Securities Claim** made against such **Organization**.

D. *Investigation And Response Costs Coverage*

The **Insurer** shall pay any **Investigation and Response Costs**. Such coverage shall be subject to a \$250,000 aggregate sublimit of liability.

E. *Crisis Coverage*

The **Insurer** shall pay the **Crisis Loss** of an **Organization** or **Executive** arising from any **Crisis**, subject to: (1) a \$100,000 aggregate sublimit of liability for all **Organizational Reputation Expenses**; and (2) a \$100,000 per **Executive** and a \$500,000 aggregate sublimit of liability for all **Personal Reputation Expenses**.

2. PROTECTIONS WHEN INDEMNIFICATION IS UNAVAILABLE

A. *Advancement*

If for any reason (including, but not limited to, insolvency) an **Organization** fails or refuses to advance, pay or indemnify any covered **Loss** of an **Insured Person** within the applicable Retention, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification by an **Organization** is deemed "failed" if it has been requested by an **Insured Person** in writing and:

- (1) an **Organization** has not provided or agreed to provide such advancement, payment or indemnification within sixty (60) days of such request; or
- (2) an **Organization** has agreed to provide such advancement, payment or indemnification, but is in default of such agreement.

Advancement, payment or indemnification by an **Organization** is deemed "refused" if an **Organization** gives written notice of the refusal to the **Insured Person**.



B. Order Of Payments

In the event that **Loss** covered under Insuring Agreement A. *Insured Person Coverage* becomes due concurrently with any other covered **Loss**, the **Insurer** shall pay such Insuring Agreement A. **Loss** before paying such other **Loss**.

The **Insurer** shall be entitled to pay **Loss** as it becomes due and payable under this policy without consideration of any future payment obligations.

C. Bankruptcy And Insolvency

Bankruptcy or insolvency of any **Organization** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this policy.

In such event, the **Insurer** and each **Organization** and **Insured Person** agree to cooperate in any efforts by the **Insurer** or any **Organization** or **Insured Person** to obtain relief for the benefit of the **Insured Persons** from any stay or injunction applicable to the payment of this policy's proceeds.

In the event that any **Insured** seeks any order, ruling or other determination from any court or other authority directing that amounts may be paid under this policy notwithstanding the bankruptcy or insolvency of any **Organization**, then all reasonable costs, charges, fees and expenses incurred by an **Insured** with respect to such request shall be considered **Defense Costs** within the meaning of this policy.

3. EXTENSIONS

A. Worldwide And Cross-Border

(1) *Worldwide Territory* The coverage afforded by this policy shall apply anywhere in the world.

(2) *Global Liberalization* For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, other than any jurisdiction in which a Passport foreign underlyer policy is bound in conjunction with this policy, the **Insurer** shall apply the terms and conditions of this policy as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization* Clause shall not apply to any: (a) provision of any policy addressing limits of liability (primary, excess or sublimits), retentions, other insurance, nonrenewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage; (b) claims made provisions; (c) limitation to coverage for any pending or prior litigation or administrative or regulatory proceeding or investigation; (d) exclusion added by endorsement to this policy (other than an exclusion in this policy form amended by endorsement); or (e) endorsement to this policy that specifically states that it will have worldwide effect.

(3) *Passport Master Policy Program* If the Passport option box has been checked on the Declarations, then this policy shall act as a master policy and the coverage afforded by this policy shall be provided in conjunction with each applicable Passport foreign underlyer policy issued in each jurisdiction selected by the **Named Entity**. The specific structure of the coverage provided by this master policy in conjunction with each Passport foreign underlyer policy is set forth in the Passport Structure endorsement attached to this policy.



B. Spousal, Domestic Partner And Legal Representative

Coverage under this policy shall extend to **Loss** of any:

- (1) spouse or domestic partner (as recognized under applicable law or the provisions of any formal program or policy established by an **Organization**) of an **Insured Person**; or any property interest of such spouse or domestic partner;
- (2) estate, heir or legal representative of an **Insured Person** in the event of such **Insured Person's** death, incapacity, insolvency or bankruptcy; or
- (3) property interest, including, but not limited to any trust or estate planning vehicle, of an **Insured Person**; but only if such **Loss** arises from a **Claim**: (a) for a **Wrongful Act** of such **Insured Person**; or (b) which is a **Compensation Clawback Claim, Insured Person Investigation, Extradition or Insured Person Inquiry** against the **Insured Person**.

No coverage is provided under this policy with respect to **Loss** arising from any **Wrongful Act** of any such spouse, domestic partner, estate, heir, legal representative or property interest.

4. EXCLUSIONS

A. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss**:

- (1) *Conduct* arising out of, based upon or attributable to any:
 - (a) remuneration, personal profit or other financial advantage to which the **Insured Person** was not legally entitled;
 - (b) remuneration, profit or other financial advantage to which the **Organization** was not legally entitled; or
 - (c) deliberate criminal or deliberate fraudulent act by the **Insured**;
if established by any final, non-appealable adjudication in the underlying action or proceeding; provided, however:
 - (i) *Conduct* exclusion subparts (a) and (b) shall not apply in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations; and
 - (ii) with respect to *Conduct* exclusion subpart (c), for acts or omissions which are treated as a criminal violation in a **Foreign Jurisdiction** that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred;
- (2) *Pending & Prior Litigation* arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (3) *Personal Injury* for any actual or alleged: (a) emotional distress or mental anguish of any person; (b) libel, slander, defamation or disparagement; or (c) invasion of privacy, including any violation of any right of privacy; provided, however, this exclusion shall not apply to any: (i) **Employment Practices Claim**; or (ii) **Securities Claim**;



- (4) *Bodily Injury & Property Damage* for any actual or alleged: (a) bodily injury (other than mental anguish or emotional distress, including humiliation); (b) sickness, disease or death of any person; or (c) damage to, destruction of or the loss of use of, any tangible property; provided, however, this exclusion shall not apply to: (i) **UK Corporate Manslaughter Act Defense Costs**; or (ii) any **Securities Claim**;
- (5) *Entity v. Insured* in connection with any **Claim** that is brought by or on behalf of any **Organization** against any **Insured**, or by any **Outside Entity** against any **Outside Entity Executive**; provided, however, this exclusion shall not apply:
- (a) to **Non-Indemnifiable Loss**;
 - (b) to **Loss of an Insured Person** in connection with a **Derivative Action**;
 - (c) to **Loss of an Organization** in connection with a **Derivative Action** that is not **Directed** by any **Organization** or any **Executive** of an **Organization**;
 - (d) to any proceeding purportedly brought derivatively on behalf of an **Outside Entity** by a security holder of such **Outside Entity** against an **Outside Entity Executive** of such **Outside Entity**;
 - (e) to any **Claim** brought during the time such **Organization** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in a **Foreign Jurisdiction**);
 - (f) to any **Claim** brought or maintained outside the United States, Canada or any other common law jurisdiction, to the extent applicable law requires such **Organization** to bring such **Claim**;
 - (g) to any **Compensation Clawback Claim**; or
 - (h) to **Insured Person Inquiry Costs**;
- (6) *ERISA* in connection with any plan sponsored by an **Organization** for any actual or alleged violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any domestic or foreign law, rule or regulation; provided, however, this exclusion shall not apply to the extent that the **Claim** is: (a) for **Retaliation**; or (b) a **Securities Claim**; or
- (7) *Compensation & Labor Liability* for any actual or alleged violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), or any domestic or foreign law, rule or regulation, that imposes or expands responsibilities, obligations or duties relating to compensation, retirement, benefits, deductions, withholdings, breaks or the workplace; provided, however, this exclusion shall not apply to: (a) any **Compensation Clawback Claim**; or (b) the extent that the **Claim** is: (i) for discrimination, sexual or other harassment, wrongful termination, hostile work environment or **Retaliation**; or (ii) a **Securities Claim**.

B. *Severability Of Conduct Exclusion*

In determining whether the *Conduct* exclusion applies, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured Person**. For Insuring Agreement C. *Organization Coverage*, only the **Wrongful Acts** of any chief executive officer or chief financial officer (or equivalent position) of an **Organization** shall be imputed to the **Organization**.



5. RETENTION

No Retention is applicable to the following: (1) **Non-Indemnifiable Loss**; (2) **Investigation and Response Costs**; and (3) **Crisis Loss**. Additionally, for any **Securities Claim**, no Retention is applicable to the following: (a) the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**; and (b) **Loss** incurred as **Class Certification Event Study Expenses**.

Except as provided above, for each **Claim**, the **Insurer** shall only be liable for the amount of covered **Loss** arising from such **Claim** which is in excess of any applicable Retention set forth on the Declarations or in any endorsement to this policy.

A single Retention amount shall apply to all **Loss** arising from any single **Claim**.

In the event a **Claim** triggers more than one Retention, then, as to such **Claim**, only the highest of such Retentions shall be deemed the Retention applicable to **Loss** arising from such **Claim** unless this policy expressly provides otherwise.

6. POLICY LIMITS

The **Limit of Liability** stated in the Declarations is the aggregate limit of the **Insurer's** liability for all **Crisis Loss** and **Loss** under this policy. The **Limit of Liability** and all sublimits of liability are collectively referred to in this policy as the "**Policy Limits**".

Each aggregate sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Crisis Loss** and **Loss** under this policy that is subject to that aggregate sublimit of liability. Each per **Insured Person** sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** of each **Insured Person** under this policy that is subject to that per **Insured Person** sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Limit of Liability**. Each per **Insured Person** sublimit of liability shall be part of, and not in addition to, its corresponding aggregate sublimit of liability.

The **Policy Limits** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Limits** for the **Policy Period**. Further, all **Claims** that are deemed made during the **Policy Period** or **Discovery Period** pursuant to Clause 7.B. NOTICE AND REPORTING, shall also be subject to the applicable **Policy Limits** set forth in this policy.

Defense Costs are not payable by the **Insurer** in addition to the **Policy Limits**. **Defense Costs** are part of **Loss** and as such are subject to the **Policy Limits**.

7. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

- A. *Reporting a Claim or Crisis* As a condition precedent to the obligations of the **Insurer** under this policy, an **Insured** shall notify the **Insurer** in writing of a **Claim** made against an **Insured** or a **Crisis** as soon as practicable after: (1) the **Named Entity's** risk manager or general counsel (or equivalent position) first becomes aware of the **Claim**; or (2) the **Crisis** commences. In all such events, notification must be provided no later than:
- (a) prior to the date this policy is canceled, if this policy is canceled;
 - (b) sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), if the policy is not canceled but also is not renewed with the **Insurer**; or
 - (c) one hundred and eighty (180) days after the end of the **Policy Period** or **Discovery Period** (if applicable), if this policy is renewed with the **Insurer**.



B. Reporting of Potential Claims

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** first becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances shall be deemed to have been first made at the time of the notification, provided that such subsequent **Claim** is reported to the **Insurer** in writing as soon as practicable after the **Named Entity's** risk manager or general counsel (or equivalent position) first becomes aware of such **Claim**. In order to be effective, notification of circumstances must specify the reasons for anticipating such **Claim**, and the underlying facts, circumstances, acts and omissions of such anticipated **Claim**, including full particulars as to dates, persons and entities involved. Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured** and reported by an **Insured** to the **Insurer**.

Notwithstanding the foregoing, the reporting of a **Crisis** in accordance with Clause 7.A., above, shall also be deemed an effective notice of circumstances that may give rise to a **Claim** being made against an **Insured** arising from the circumstances of such **Crisis**, unless the **Crisis** involves, in whole or part, the **Wrongful Acts, Related Wrongful Acts**, or the same or related facts, circumstances, situations, events, transactions or causes of a **Claim** first made, or deemed first made, prior to the **Policy Period**.

8. DISCOVERY

A. Bilateral Discovery Options

If the policy is canceled or is not renewed, the **Insureds** shall have the right to a **Discovery Period** of one (1) to six (6) years following the effective date of such cancellation or nonrenewal, upon payment of the respective "**Additional Premium Amount**" described below, in which to give to the **Insurer** written notice pursuant to Clause 7.A. and Clause 7.B. of the policy of: (1) **Claims** first made against an **Insured**; and (2) circumstances of which an **Organization** or an **Insured** shall become aware, in either such case, during said **Discovery Period** and solely with respect to **Wrongful Acts**, circumstances, situations, events, transactions or causes occurring or alleged to have occurred prior to the end of the **Policy Period**.

The **Additional Premium Amount** for: (a) one (1) year shall be no more than one hundred and twenty five percent (125%) of the **Full Annual Premium**; (b) two (2) to six (6) years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect immediately prior to the end of the **Policy Period**.

B. Change in Control Option

In the event of a **Change in Control**, the **Named Entity** shall have the right to request an offer from the **Insurer** of a **Discovery Period** with respect to **Wrongful Acts**, circumstances, situations, events, transactions or causes occurring or alleged to have occurred prior to the effective time of the **Change in Control**. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions, exclusions and additional premium as the **Insurer** may reasonably decide. In the event of a **Change in Control**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.



- C. *General Provisions* Other than cancellation resulting from non-payment of premium, the **Discovery Period** is not cancelable and the additional premium charged is non-refundable in whole or in part. The rights contained in this DISCOVERY Clause shall terminate unless written notice by any **Insured** of election of a **Discovery Period**, together with the additional premium due, is received by the **Insurer** no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or **Change in Control**.

9. DEFENSE AND SETTLEMENT

A. *For Claims*

- (1) *No Duty to Defend or Investigate* Each **Insured** shall defend any **Claim** made against such **Insured**. The **Insurer** does not assume any duty to defend or investigate.
- (2) *Advancement* Once the **Insurer** has received written notice of a **Claim** under this policy, it shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills detailing such **Defense Costs** and all other information reasonably requested by the **Insurer** with respect to such bills. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** is not entitled under this policy to payment of such **Loss**.
- (3) *Claims Participation and Cooperation* The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Organization** and **Insured** in the defense and prosecution of any **Claim** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.
- The rights of any **Insured Person** under this policy shall not be impaired by the failure of any other **Insured** to give the **Insurer** cooperation and information as required in the preceding paragraph.
- The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs**, without the prior written consent of the **Insurer**.
- (4) *Full Settlement Within Retention/Consent Waived* If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding such Retention, then the **Insurer's** consent shall not be required for such disposition.
- (5) *Applicability* This DEFENSE AND SETTLEMENT Clause is not applicable to **Crisis Loss**. Nevertheless, the **Insurer** does not, under this policy, assume any duty to defend.

B. *Pre-Authorized Securities Defense Attorneys*

The **Insureds** shall select a **Panel Counsel** to defend any **Securities Claim** made against such **Insureds**. The policy terms pertaining to selection of **Panel Counsel** for **Securities Claims** are set forth in the Panel Counsel Appendix to the policy.



C. *Allocation*

If both **Loss** covered under this policy and **Loss** not covered under this policy are incurred by the **Insureds**, either because a **Claim** is made against both **Insureds** and others or because a **Claim** pertains to both covered and uncovered **Wrongful Acts, Loss** or matters, such **Loss** shall be allocated between covered **Loss** and uncovered **Loss** based upon the relative legal and financial exposures of the parties to covered and uncovered **Wrongful Acts, Loss** or matters. In the event that a determination as to the amount of **Defense Costs** to be advanced under this policy cannot be agreed to, then the **Insurer** shall advance **Defense Costs** excess of any applicable Retention amount which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined in any arbitration or judicial proceeding pursuant to the provisions of this policy and applicable law.

10. CHANGES TO ORGANIZATIONS

A. *Change In Control*

In the event of a **Change in Control** during the **Policy Period**, this policy shall continue in full force and effect as to **Wrongful Acts**, circumstances, situations, events, transactions or causes occurring or alleged to have occurred prior to the effective time of the **Change in Control**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act**, circumstance, situation, event, transaction or cause occurring or alleged to have occurred after the effective time of the **Change in Control**. This policy may not be canceled after the effective time of the **Change in Control** and no portion of the premium paid for this policy shall be refundable. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in the *Change in Control Option* paragraph of Clause 8. DISCOVERY.

B. *Subsidiary Additions*

Notwithstanding the definition of **Subsidiary**, any entity with assets exceeding twenty five percent (25%) of the total consolidated assets of each and every **Organization** as reported in the **Named Entity's** most recent public filing which first becomes a **Subsidiary** during the **Policy Period** shall only be a **Subsidiary** if, prior to the earlier of (1) the date which is ninety (90) days after the date the **Named Entity** first had **Management Control** of such entity or (2) the end of the **Policy Period**, the **Named Entity** provides the **Insurer** with full particulars of the new **Subsidiary** and agrees to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any such **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

C. *Scope Of Subsidiary Coverage*

Coverage as is afforded by this policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply to **Wrongful Acts**, circumstances, situations, events, transactions or causes occurring or alleged to have occurred during the time when such **Subsidiary** is a **Subsidiary**.

11. APPLICATION AND UNDERWRITING

A. *Application And Reliance*

The **Insurer** has relied upon the statements, warranties and representations contained in the **Application**, and all such statements, warranties and representations are to be considered as incorporated into this policy.

B. *Non-Rescindable*

Under no circumstances shall the coverage provided by this policy be deemed void, whether by rescission or otherwise, once the premium has been paid.



C. Severability Of The Application

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Insured** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under the policy, then no coverage will be afforded to:

- (1) **Loss** under Insuring Agreements A. *Insured Person Coverage* and E. *Crisis Coverage* with respect to any **Insured Person** who knew, as of the inception date of the **Policy Period**, that such statements, warranties or representations were inaccurate or incomplete;
- (2) **Loss** under Insuring Agreements B. *Indemnification Of Insured Person Coverage* and E. *Crisis Coverage* with respect to any **Organization** to the extent it indemnifies any **Insured Person** referenced in (1) above; and
- (3) **Loss** under Insuring Agreements C. *Organization Coverage* and D. *Investigation and Response Costs Coverage*, and under Insuring Agreement E. *Crisis Coverage* for any **Organizational Reputation Crisis**, if any person who was the chief executive officer or chief financial officer of the **Named Entity** as of the inception date of the **Policy Period**, knew prior to or at such date that such statements, warranties or representations were inaccurate or incomplete.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been included within the **Application**.

12. GENERAL TERMS AND CONDITIONS

A. Payments And Obligations Of Organizations And Others

1. INDEMNIFICATION BY ORGANIZATIONS

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this policy any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this policy shall not impair the rights of any **Insured Person** under this policy.

2. OTHER INSURANCE AND INDEMNIFICATION

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible directors and officers or employment practices liability insurance, unless such other insurance is specifically written as excess insurance over the **Policy Limits** provided by this policy. This policy shall also only apply as excess over any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. Notwithstanding the foregoing, such insurance as is provided by this policy shall apply as primary to any personal management, professional or "umbrella excess" liability insurance purchased by or on behalf of an **Insured Person**.

In the event of a **Claim** made against an **Outside Entity Executive**, coverage as is afforded by this policy, whether under the *Insured Person Coverage* or the *Indemnification Of Insured Person Coverage*, shall only apply as excess over: (a) any indemnification provided by an **Outside Entity**; and (b) any valid and collectible insurance coverage afforded to an **Outside Entity** or its **Executives** applicable to such **Claim**. Further, in the event such other **Outside Entity** insurance is provided by the **Insurer** or any other insurance company affiliate



thereof ("**Other Policy**"), then the **Insurer's** maximum aggregate **Limit of Liability** for all **Loss** under this policy, as respects any such **Claim**, shall be reduced by the amount recoverable under such **Other Policy** for loss incurred in connection with such **Claim**.

In the event that an insurer providing coverage to which this policy is excess fails to pay **Loss** covered under this policy, the **Insurer** shall advance and indemnify such **Loss** unless and until such other insurance pays. If and to the extent the **Insurer** pays **Loss** covered by other insurance to which this policy is excess, the **Insurer** shall be subrogated to the **Insureds'** rights of recovery under such other insurance and the **Insureds** will comply with Clause 12.A.3. *SUBROGATION* to secure such rights.

3. *SUBROGATION*

To the extent of any payment under this policy, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless the *Conduct* exclusion applies with regard to such **Insured**.

4. *RECOVERY OF LIMITS*

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** will reinstate the **Policy Limits** of this policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy.

B. *Relationship Of Claims and Crises*

All **Claims** involving, in whole or part, the same **Wrongful Act, Related Wrongful Acts**, or the same or related facts, circumstances, situations, events, transactions or causes, whether involving the same or different claimants, defendants or **Insureds**, shall be deemed to be a single **Claim** first made on the earliest of the following dates, regardless of whether such date is prior to or during the **Policy Period**:

- (1) the earliest date that any such **Claim** was made or deemed to have been made;
- (2) the date any such **Claim** was deemed made pursuant to Clause 7.B.; or
- (3) the earliest date that such **Wrongful Act, Related Wrongful Acts**, fact, circumstance, situation, event, transaction or cause was reported under any other policy providing the same or similar coverage.

Any **Crisis** involving, in whole or part, the same **Wrongful Act, Related Wrongful Acts**, or the same or related facts, circumstances, situations, events, transactions or causes, of a **Claim** first made, or deemed first made, prior to such **Crisis**, shall be deemed to have occurred when such **Claim** is first made or deemed first made.

No coverage is provided by this policy for any:

- (a) **Claim** first made, or deemed first made; or
 - (b) **Crisis** which occurred, or deemed to have occurred;
- prior to the **Policy Period**.

C. *Cancellation*

The **Named Entity** may cancel this policy at any time by mailing written notice of cancellation to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent. Any such cancellation will be effective upon the later of: (a) the date the **Insurer** or its authorized agent receives such notice or surrender; or (b) the cancellation date and time specified in such notice. This policy may only be canceled by or on behalf of the **Insurer** in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by



mailing to the **Named Entity**, by registered, certified or other first class mail, at the **Named Entity Address**, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect. If the **Named Entity** shall cancel this policy, the **Insurer** shall retain the *pro rata* proportion of the premium herein.

D. Consent

Wherever in this policy or any endorsement thereto a provision requires the consent of the **Insurer** or any **Insured**, such consent shall not be unreasonably withheld.

E. Notice And Authority

The **Named Entity** shall act on behalf of its **Subsidiaries** and each and every **Insured** with respect to the giving of notice of a **Claim, Crisis** or circumstance, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, and the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a **Discovery Period**; provided, however, that the foregoing shall not limit the ability of an **Organization** or **Insured** to provide notice of a **Claim, Crisis** or circumstance in accordance with Clause 7. NOTICE AND REPORTING, or to elect discovery and pay the **Additional Premium Amount** (as defined in Clause 8. DISCOVERY).

F. Currency

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of **Loss** due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

G. Assignment

This policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

H. Disputes

1. ALTERNATIVE DISPUTE RESOLUTION

ADR Options

All disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this clause. The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

Mediation

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until sixty (60) days after the mediator has provided written notice to the parties of the mediation's termination. However, in the event that the



applicable statute of limitations shall expire during such sixty (60) day period, the **Insurer** and **Insureds** agree to toll such statute of limitations until the expiration of such sixty (60) day period.

Arbitration

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.

ADR Process

Selection of Arbitrator(s) or Mediator: The **Insurer** and the **Named Entity** shall mutually consent to: (1) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (2) in the case of mediation, a single mediator. The arbitrator, arbitration panel members, or mediator must be disinterested and have knowledge of the legal, corporate management or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

ADR Rules: At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every **Insured** under this *ALTERNATIVE DISPUTE RESOLUTION* Clause. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

2. ACTION AGAINST INSURER

Except as provided in Clause 12.H.1. *ALTERNATIVE DISPUTE RESOLUTION*, no action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, or until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against such **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**.

Any **Insured** or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or entity shall have any right under this policy to join or implead the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability.

I. Conformance To Law

In the event that there is an inconsistency between any (1) state amendatory attached to this policy, or any other wording attached to this policy to comply with applicable law and (2) any other term, condition or limitation of this policy; then, to the extent permitted by law, subject to the limitations below, the **Insurer** will resolve the inconsistency by applying the terms, conditions or limitations that are more favorable to the **Named Entity**.

Coverage under this policy shall not be provided to the extent prohibited by any law, rule or regulation, including, but not limited to, any law, rule or regulation regarding non-admitted insurance.

J. Headings

The descriptions in the headings and the Guide of this policy are solely for convenience and form no part of the terms and conditions of coverage.



13. DEFINITIONS

Terms with “**Bold**” typeface are used in this policy with the meanings and values ascribed to them below, in the Declarations, or elsewhere in this policy:

Affected Individual means any:

- (1) **Employee** of an **Organization** or **Outside Entity**;
- (2) applicant for employment with an **Organization** or **Outside Entity**;
- (3) joint employee of both (a) an **Organization** or **Outside Entity**; and (b) another entity or natural person; or
- (4) natural person claiming to be any of the foregoing.

Application means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the underwriting of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; provided that public filings by or on behalf of an **Organization** made with the SEC shall only include those as set forth in subparagraph (3) below;
- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
- (3) each and every public filing by or on behalf of an **Organization** made with the SEC, including, but not limited to, an **Organization’s** Annual Report(s), 10Ks, 10Qs, 8Ks and proxy statements, any financial information in such filings, and any certifications relating to the accuracy of the foregoing, provided that such public filing was filed during the 12 month period immediately preceding the inception of the **Policy Period**.

Asset Protection Costs means reasonable costs, charges, fees and expenses consented to by the **Insurer** incurred by an **Insured Person** to: (1) oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Insured Person**; or (2) obtain the discharge or revocation of a court order which in any way impairs the use of such personal assets or real property.

Notwithstanding the foregoing, “**Asset Protection Costs**” shall not include any costs, charges, fees or expenses in connection with any **Proscribed Clawback**.

Books and Records Demand means any written demand by or on behalf of any security holder of an **Organization** to inspect the books and records of such **Organization** pursuant to Section 220 of the Delaware General Corporation Law or any similar domestic or foreign law, rule or regulation.

Books and Records Demand Costs means reasonable costs, charges, fees and expenses consented to by the **Insurer** and incurred by the **Organization** in response to a **Books and Records Demand**.

Change in Control means:

- (1) the **Named Entity** consolidating with or merging into another entity such that the **Named Entity** is not the surviving entity, or selling all or substantially all of its assets



- to any other person or entity or group of persons or entities acting in concert;
- (2) any person or entity or group of persons or entities acting in concert acquiring **Management Control** of the **Named Entity**; or
 - (3) the appointment by any **Enforcement Body** of, or where any **Enforcement Body** assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to take control of, supervise or oversee the **Named Entity**, or to liquidate or sell all or substantially all of the assets of the **Named Entity**.

Claim

means any:

- (1) written demand (other than any matter described in (2) through (11) below) for civil monetary damages or other civil relief (including injunctive or other equitable relief), which is deemed made when an **Insured** first receives such demand;
- (2) civil proceeding (other than an investigation or any administrative or regulatory proceeding) for monetary, non-monetary or injunctive relief, including a mediation, arbitration or other alternative dispute resolution proceeding, which is deemed made when an **Insured** first receives service of a complaint, demand or similar pleading commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**;
- (3) criminal proceeding (other than an investigation or any administrative or regulatory proceeding), which is deemed made when an **Insured** is first arrested or indicted, or first served with an accusation, information, complaint, summons or similar charging document commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**;
- (4) administrative or regulatory proceeding (other than an investigation), which is deemed made when an **Insured** is first served a notice of charges, complaint or similar document, or the equivalent in a **Foreign Jurisdiction**;

any and all of the preceding, either (i) for a **Wrongful Act** of an **Insured**; or (ii) made against: (A) an **Executive** solely by reason of such **Executive's** status as an **Executive** of an **Organization**; or (B) an **Outside Entity Executive** solely by reason of such **Outside Entity Executive's** status as an **Outside Entity Executive**;

- (5) **Compensation Clawback Claim**;
- (6) **Insured Person Investigation**, which is deemed made when an **Insured Person**:
 - (i) first receives or is first served a writing or subpoena described in subparagraphs (1) or (2) of the definition of **Insured Person Investigation**; or
 - (ii) is arrested and detained or incarcerated for more than 24 hours by any law enforcement authority in such **Foreign Jurisdiction**;
- (7) official request for **Extradition** of any **Insured Person**, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of such **Extradition**, which is deemed made when an **Insured Person** first receives such request or warrant;
- (8) **Derivative Demand**, which is deemed made when an **Insured** first receives such demand; provided, however, this subparagraph only applies to coverage provided by Insuring Agreement D. *Investigation and Response Costs Coverage*;
- (9) **Books and Records Demand**, provided, however: (i) this subparagraph only applies to coverage provided by Insuring Agreement D. *Investigation and Response Costs Coverage*; and (ii) a **Books and Records Demand** will only be deemed a **Claim** if the



Insured reports such **Books and Records Demand** pursuant to Clause 7.A. of this policy, at which time such **Books and Records Demand** is deemed made;

(10) **Insured Person Inquiry**; provided, however, an **Insured Person Inquiry** will only be deemed a **Claim** if the **Insured** reports such **Insured Person Inquiry** pursuant to Clause 7.A. of this policy, at which time such **Insured Person Inquiry** is deemed made; or

(11) request to toll or waive a period or statute of limitations which is applicable to a **Claim** (as described in (1) through (10) above) that could be made for a **Wrongful Act** of an **Insured**; provided, however, a request to toll or waive a period or statute of limitations will only be deemed a **Claim** if an **Insured** reports such request pursuant to Clause 7.A. of this policy, at which time such request is deemed made.

All allegations, causes of action and **Wrongful Acts** alleged in, and all monetary or other relief sought in or information requested by, the same proceeding, investigation, inquiry or demand shall be deemed one and the same **Claim**.

Notwithstanding the foregoing, "**Claim**" shall not mean any **Proscribed Clawback**.

**Class Certification
Event Study
Expenses**

means the reasonable costs, charges, fees and expenses of an expert witness consented to by the **Insurer**, and incurred by an **Insured** to conduct an event study regarding class certification in a **Securities Claim**.

**Clawback Assistance
Costs**

means the reasonable costs, charges, fees and expenses (including the premium or origination fee for a loan or bond) incurred by an **Insured Person** solely to facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or pursuant to any similar domestic or foreign securities law, rule or regulation. "**Clawback Assistance Costs**" do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Insured Person**.

Notwithstanding the foregoing, "**Clawback Assistance Costs**" shall not include any costs, charges, fees or expenses in connection with any **Proscribed Clawback**.

Combination Event

means any acquisition, consolidation, merger or other business combination (or proposed acquisition, consolidation, merger or other business combination) involving more than fifty percent (50%) of the outstanding securities or other ownership interest of, or of all or substantially all of the assets of, any entity, including an **Organization**.

**Compensation
Clawback Claim**

means any:

(1) written demand by or on behalf of any **Organization** or **Outside Entity** for the return of any salary, wage, bonus, benefit, perquisite or other compensation, of an **Insured Person**, or any interest, fine or tax related thereto, which is deemed made when such **Insured Person** first receives such demand; or

(2) civil proceeding, including a mediation, arbitration or other alternative dispute resolution proceeding, by or on behalf of any **Organization** or **Outside Entity** for the return of any salary, wage, bonus, benefit, perquisite or other compensation, of an **Insured Person**, or any interest, fine or tax related thereto, which is deemed made when such **Insured Person** first receives service of a complaint, demand or similar pleading commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**.

Notwithstanding the foregoing, "**Compensation Clawback Claim**" shall not mean any **Proscribed Clawback**.



Controlling Person	means any natural person that actually or allegedly controls an Insured within the meaning of Section 15 of the Securities Act of 1933 (as amended), Section 20(a) of the Securities Exchange Act of 1934 (as amended), or any similar domestic or foreign law, rule or regulation.
Crisis	has the meaning as defined in the CrisisFund® Appendix attached to this policy.
Crisis Loss	has the meaning as defined in the CrisisFund® Appendix attached to this policy.
Defense Costs	<p>means reasonable costs, charges, fees and expenses consented to by the Insurer (including the cost of E-Discovery Consultant Services and premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) incurred:</p> <ol style="list-style-type: none">(1) in the investigation, adjustment, defense and/or appeal of a Claim (other than a Books and Records Demand or Derivative Demand) against an Insured; or(2) by an Insured Person lawfully: (i) opposing, challenging, resisting or defending against any request for or any effort to obtain the Extradition of that Insured Person; or (ii) appealing any order or other grant of Extradition of that Insured Person. <p>Notwithstanding the foregoing:</p> <ol style="list-style-type: none">(a) with regard to any Insured Person Inquiry, “Defense Costs” shall mean only Insured Person Inquiry Costs; and(b) “Defense Costs” shall not mean Asset Protection Costs, Class Certification Costs, Clawback Assistance Costs and Investigation and Response Costs.
Derivative Action	means any proceeding purportedly brought derivatively on behalf of an Organization by a security holder of such Organization against: (1) an Executive of an Organization ; or (2) such Organization solely in its capacity as a nominal defendant.
Derivative Demand	means any written demand by any security holder of an Organization upon the board of directors (or equivalent management body) of such Organization to commence a civil action on behalf of the Organization against any Executive of the Organization for any Wrongful Act on the part of such Executive .
Derivative Investigation	means, after receipt by any Insured of a Claim that is either a Derivative Action or a Derivative Demand , any investigation conducted by the Organization , or on behalf of the Organization by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), including, but not limited to, any special litigation committee, as to how the Organization should respond.
Derivative Investigation Costs	means reasonable costs, charges, fees and expenses consented to by the Insurer and incurred by the Organization , or on behalf of the Organization by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), including, but not limited to, any special litigation committee, in connection with a Derivative Investigation .
Directed	means solicited, initiated, directed, managed, controlled or significantly assisted. Notwithstanding the foregoing, “ Directed ” shall not mean: (1) engaging in protected “whistleblower” activity; or (2) providing information required in order to comply with a subpoena or similar legal process.
Discovery Period	means a period of extended coverage described in Clause 8. DISCOVERY.



**E-Discovery
Consultant Services**

means solely the following services performed by a vendor qualified to perform such services (“**E-Discovery Vendor**”) which is chosen by an **Insured Person** and consented to by the **Insurer**:

- (1) assisting the **Insured** with managing and minimizing the internal and external costs associated with the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information (“**E-Discovery**”);
- (2) assisting the **Insured** in developing or formulating an **E-Discovery** strategy;
- (3) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the **Insurer** in executing and monitoring the **E-Discovery** strategy; or
- (4) such other services provided by the **E-Discovery Vendor** that the **Insured**, **Insurer** and **E-Discovery Vendor** agree are reasonable and necessary given the circumstances of the **Securities Claim**.

Employee

means any past, present or future employee, other than an **Executive** of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee.

Notwithstanding the foregoing, “**Employee**” shall not include any natural person who is or claims to be a joint employee of both (1) an **Organization** or **Outside Entity** and (2) another entity or natural person.

**Employment
Practices Claim**

means any **Claim** alleging any:

- (1) **Employment Practices Violation**; or
- (2) **Third-Party EPL Violation**.

**Employment
Practices Retention**

means the Retention applicable to **Loss** arising out of an **Employment Practices Claim**.

**Employment
Practices Violation**

means any:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract or a promissory estoppel relating to the **Affected Individual’s** employment;
- (2) harassment (including workplace bullying, sexual harassment whether “quid pro quo”, hostile work environment or otherwise, including “same-sex” sexual harassment);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status or disability);
- (4) **Retaliation**;
- (5) employment-related misrepresentation(s) to an **Affected Individual**;
- (6) employment-related libel, slander, humiliation, or defamation;
- (7) malicious prosecution and false arrest or false imprisonment;
- (8) wrongful failure to employ or promote;
- (9) negligent employee evaluation, wrongful deprivation of career opportunity or wrongful demotion, including the giving of negative or defamatory statements in



connection with an employee reference;

(10) wrongful discipline;

(11) failure to grant tenure; or

(12) negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, or violation of a natural person's civil rights (including any violation of due process), if alleged in connection with any of the foregoing items (1) through (11) of this definition;

but only if the **Employment Practices Violation** relates to an **Affected Individual** in such person's capacity as an **Affected Individual**, whether such **Employment Practices Violation** is committed directly, indirectly, intentionally or unintentionally.

Enforcement Body

means: (1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general); or (2) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.

Executive

means any:

(1) past, present or future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position);

(2) past, present or future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited, to a supervisory board); or

(3) past, present or future risk manager and general counsel (or equivalent position) of the **Named Entity**.

Extradition

means any formal process by which an **Insured Person** located in any country is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, in connection with such person's insured capacities or the business of an **Organization**.

Foreign Jurisdiction

means any jurisdiction, other than the United States of America or any of its territories or possessions.

Foreign Policy

means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded by this policy. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**. "**Foreign Policy**" shall not include any partnership managerial, pension trust or professional liability coverage.

Insured

means any:

(1) **Insured Person**; or

(2) **Organization**.

Insured Person

means any:

(1) **Executive** of an **Organization**, (i) in such **Executive's** capacity as an **Executive** of an



Organization; (ii) in such **Executive's** capacity as a **Controlling Person**; (iii) in such **Executive's** capacity as an agent of a **Controlling Person**; or (iv) in any matter claimed against such **Executive** solely by reason of such **Executive's** status as an **Executive** of an **Organization**;

- (2) **Employee** of an **Organization** in such **Employee's** capacity as an **Employee** of an **Organization**, but solely in regard to any: (i) **Securities Claim**; or (ii) other **Claim** so long as such other **Claim** is also made and continuously maintained against an **Executive** of an **Organization**; or
- (3) **Outside Entity Executive** in such **Outside Entity Executive's** capacity as an **Outside Entity Executive** or in any matter claimed against such **Outside Entity Executive** solely by reason of such **Outside Entity Executive's** status as an **Outside Entity Executive**.

Insured Person Inquiry

means any:

- (1) verifiable request for an **Insured Person** of any **Organization**: (a) to appear at a meeting or interview; (b) to provide a sworn statement or testimony; or (c) to produce documents, that in each such case, concerns the business of an **Organization** or such person's insured capacities; but only if such request came from any:
 - (i) **Enforcement Body**;
 - (ii) **Organization**, or, on behalf of an **Organization**, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), including, but not limited to, any special litigation committee:
 - (A) arising out of an inquiry or investigation by an **Enforcement Body** concerning the business of an **Organization** or the person's insured capacities; or
 - (B) as part of its **Derivative Investigation**; or
 - (iii) court-appointed trustee, agent, examiner, receiver, liquidator or rehabilitator, including a trustee or agent approved under a chapter 11 plan of reorganization, of any **Organization** in any bankruptcy proceeding by or against such **Organization**; or
- (2) arrest or confinement of an **Insured Person** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in each such case, in connection with the business of an **Organization** or such person's capacity as an **Insured Person**.

"**Insured Person Inquiry**" shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Organization's** and/or an **Enforcement Body's** normal review or compliance process.

Insured Person Inquiry Costs

means:

- (1) the reasonable fees, costs and expenses consented to by the **Insurer** and incurred by or on behalf of an **Insured Person** solely in connection with the preparation for and response to an **Insured Person Inquiry** directed to such **Insured Person**, including the fees, costs and expenses incurred to attend an interview or meeting



described in subparagraph (1) of the definition of **Insured Person Inquiry** and the cost of producing documents in the **Insured Person's** possession; and

(2) **Liberty Protection Costs.**

Insured Person Investigation

means any civil, criminal, administrative or regulatory investigation of an **Insured Person** concerning such person's insured capacities or the business of an **Organization**:

- (1) once such **Insured Person** is identified in writing by an **Enforcement Body** as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding as prescribed by such **Enforcement Body's** procedures; including, but not limited to, a formal order of investigation, Wells Notice, subpoena or target letter;
- (2) in the case of an investigation by the SEC or any other domestic or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon such **Insured Person**; or
- (3) commenced by the arrest and detainment or incarceration for more than 24 hours of such **Insured Person** by any law enforcement authority in a **Foreign Jurisdiction**.

Investigation and Response Costs

means **Books and Records Demand Costs** and **Derivative Investigation Costs**.

Liberty Protection Costs

means reasonable costs, charges, fees and expenses consented to by the **Insurer** and incurred by or on behalf of an **Insured Person** in order to lawfully seek the release of such **Insured Person** from any arrest or confinement to a: (1) specified residence; or (2) secure custodial premises operated by or on behalf of any law enforcement authority; including, but not limited to, reasonable premiums (but not collateral) consented to by the **Insurer** and incurred by the **Insured Person** for a bond or other financial instrument necessary to obtain such release, if such arrest or confinement is in connection with the business of an **Organization** or such person's capacity as an **Insured Person**.

Loss

means:

- (1) damages (including punitive, exemplary and multiplied damages), settlements and judgments (including pre/post-judgment interest on a covered judgment), including damages, settlements and judgments attributable to violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended;
- (2) civil penalties assessed against any **Insured Person** pursuant to Section 78dd-2(g)(2)(B) of the Foreign Corrupt Practices Act;
- (3) **Defense Costs**;
- (4) **Investigation and Response Costs**;
- (5) **Clawback Assistance Costs**;
- (6) **Class Certification Event Study Expenses**;
- (7) **Asset Protection Costs**, subject to a \$50,000 per **Insured Person** and a \$250,000 aggregate sublimit of liability; and
- (8) plaintiffs' attorneys' fees and claimants' legal costs awarded pursuant to a covered judgment or settlement.

The insurability of penalties and punitive, exemplary and multiplied damages described in this definition shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages.



Notwithstanding the foregoing:

- (a) “**Loss**” (other than damages, settlements and judgments) shall not include the compensation of any: (i) **Insured Person**; or (ii) **Executive** or **Employee** of an **Organization** or **Outside Entity**; and
- (b) “**Loss**” (other than **Defense Costs**) shall not include:
 - (i) civil or criminal fines or penalties (other than civil penalties described in subparagraph (2) above);
 - (ii) taxes;
 - (iii) cleanup costs relating to hazardous materials, pollution or product defects that result in the release of hazardous materials or pollutants;
 - (iv) amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
 - (v) amounts that represent, or are substantially equivalent to, an increase in the consideration provided (or proposed to be provided) in any **Combination Event**; provided, however, that this subparagraph (v) shall not apply to any **Non-Indemnifiable Loss**; or
 - (vi) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed; provided, however, the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss.

Management Control

means:

- (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; the members of the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above.

Non-Indemnifiable Loss

means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **Organization**.

Organization

means:

- (1) the **Named Entity**;
- (2) each **Subsidiary**; and
- (3) in the event a bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.



Organizational Reputation Expenses	has the meaning as defined in the CrisisFund® Appendix attached to this policy.
Outside Entity	means: (1) any not-for-profit entity other than an Organization ; (2) with respect to service as a Shadow Director only, any entity chartered, incorporated and/or domiciled in the United Kingdom for which an Outside Entity Executive serves as a Shadow Director ; or (3) any other entity made an “ Outside Entity ” by an endorsement attached to this policy.
Outside Entity Executive	<p>means any: (1) Insured Person of an Organization during the time such person is or was acting at the specific request or direction of an Organization as an Executive, Shadow Director or board observer of an Outside Entity; or (2) any other person made an “Outside Entity Executive” by an endorsement attached to this policy.</p> <p>In the event of a disagreement between the Organization and a person as to whether such person was acting “at the specific request or direction of an Organization”, this policy shall abide by the determination of the Organization on this issue and such determination shall be made by written notice to the Insurer within ninety (90) days after the Claim against such person is reported to the Insurer. In the event no notice of any such determination is given to the Insurer within such period, this policy shall apply as if the Organization determined that such person was not acting at the Organization’s specific request or direction.</p>
Panel Counsel	has the meaning as defined in the Panel Counsel Appendix attached to this policy.
Personal Reputation Expenses	has the meaning as defined in the CrisisFund® Appendix attached to this policy.
Policy Period	means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in such Item 2 or the effective date of cancellation of this policy.
Proscribed Clawback	<p>means any matter moved for the return of any salary, wage, bonus, benefit, perquisite or other compensation, of an Insured Person, or any interest, fine or tax related thereto:</p> <ol style="list-style-type: none">(1) as required by Section 15 U.S.C. §78j-4 (as amended), or any rule, regulation or standard promulgated thereunder; or(2) pursuant to any other domestic or foreign law, rule or regulation that prohibits the purchase of insurance for such matters by an Organization.
Related Wrongful Acts	means any Wrongful Act arising out of a common nexus with any fact, circumstance, situation, event, transaction, cause, or series of related facts, circumstances, situations, events, transactions or causes.
Retaliation	means any retaliatory act of an Insured alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an Affected Individual to a superior or to any governmental agency of any act by an Insured which act is alleged to be a violation of any domestic or foreign law, rule or regulation; (2) the actual or attempted exercise by an Affected Individual of any right that such Affected Individual has under law, including, but not limited to, rights under worker’s compensation laws, the Employee Retirement Income Security Act of 1974 (ERISA), the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniform Services Employment and Reemployment Rights Act or any other domestic or foreign law, rule or regulation relating to employee rights; (3) any relator request or demand under the Federal False



Claims Act or any other domestic or foreign “whistle-blower” law, rule or regulation; or (4) strikes of an **Affected Individual**.

Securities Claim

means any **Claim**:

- (1) arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an **Organization** which alleges a violation of any domestic or foreign statute, rule or regulation regulating securities; “**Securities Claim**” shall include any alleged violation of common law accompanying any above described violation of statute, rule, or regulation regulating securities;
- (2) brought by a security holder of an **Organization** with respect to such security holder’s interest in securities of such **Organization** which alleges a violation of any domestic or foreign statute, rule or regulation regulating securities, or a violation of any common law; or
- (3) which is a **Derivative Action**.

Notwithstanding the foregoing, “**Securities Claim**” shall not include any:

- (a) administrative or regulatory proceeding against an **Organization**; unless such proceeding is also commenced and continuously maintained against an **Insured Person**, and only during the time when such proceeding is also commenced and continuously maintained against an **Insured Person**;
- (b) **Claim** brought by any **Executive** or **Employee** of an **Organization** alleging, arising out of, based upon or attributable to the loss of, or failure to receive or obtain, the benefit of stock, stock warrants, stock options or other securities of an **Organization**; or
- (c) investigation of an **Organization**, whether by formal order or otherwise.

Securities Retention

means the Retention applicable to **Loss** arising out of: (1) a **Securities Claim**; or (2) **Insured Person Inquiry Costs** incurred in response to: (a) an **Insured Person Inquiry** by an **Enforcement Body** charged with the regulation of securities of an **Organization**; or (b) a **Derivative Investigation**.

Shadow Director

means any natural person who is deemed a “shadow director” as defined under Section 251 of the United Kingdom’s Companies Act of 2006, as amended.

Subsidiary

means, subject to the *Subsidiary Additions* clause:

- (1) any for-profit entity (other than an entity formed as a partnership) during the time when the **Named Entity** has or had **Management Control** of such entity, either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) any not-for-profit entity during the time when an **Organization** exclusively sponsors or sponsored such entity.

Third-Party EPL Violation

means any harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of **Employment Practices Violation**, or the violation of the civil rights of a natural person relating to such harassment or discrimination, when such acts are alleged to be committed against any natural person (other than an **Affected Individual** in such person’s capacity as an **Affected Individual**), including, but not limited to, students, patients, members, customers, vendors and suppliers.

UK Corporate Manslaughter Act

means **Defense Costs** incurred by an **Insured Person** that result solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Organization** for



Defense Costs

violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar domestic or foreign law, rule or regulation.

Wrongful Act

means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act, including, but not limited to, any actual or alleged **Employment Practices Violation** or **Third-Party EPL Violation**.