

## DIRECTORS & OFFICERS LIABILITY POLICY

**IMPORTANT NOTICE: THIS POLICY'S INSURING AGREEMENTS PROVIDE COVERAGE ON A CLAIMS MADE BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE TERMS OF THIS POLICY. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. DEFENSE COSTS WILL REDUCE THE AVAILABLE LIMIT OF LIABILITY AND ARE SUBJECT TO RETENTIONS.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the **Application** and any attachments thereto, and subject to all terms, conditions and limitations of this **Policy**, the **Insured** and **Insurer** agree:

### **SECTION I - INSURING AGREEMENTS**

It is understood and agreed that coverage will not be provided under any Insuring Agreement unless a Limit of Liability, Retention, and premium for such Insuring Agreement are set forth in the Declarations.

- A. **INSURED PERSONS LIABILITY INSURING AGREEMENT** - The **Insurer** will pay on behalf of the **Insured Persons**, **Loss** resulting from a **Claim** first made during the **Policy Period** or the Extended Reporting Period against the **Insured Persons** for **Wrongful Acts** for which the **Insured Persons** are legally obligated to pay, except for **Loss** the **Company** pays as indemnification.
- B. **COMPANY INDEMNIFICATION INSURING AGREEMENT** - The **Insurer** will pay on behalf of the **Company**, **Loss** resulting from a **Claim** first made during the **Policy Period** or the Extended Reporting Period against the **Insured Persons** for **Wrongful Acts** for which the **Company** has agreed to or is legally permitted or required by law to indemnify the **Insured Persons**.
- C. **SECURITIES LIABILITY INSURING AGREEMENT** - If a Limit of Liability for Securities Liability Coverage is written in Item 9 of the Declarations, the **Insurer** will pay on behalf of the **Company**, **Loss** resulting from a **Securities Claim** first made during the **Policy Period** or the Extended Reporting Period against the **Company** for which the **Company** is legally obligated to pay.
- D. **SHAREHOLDER DEMAND INVESTIGATIVE INSURING AGREEMENT** - If a Limit of Liability for Securities Liability Coverage is written in Item 9 of the Declarations, the **Insurer** will indemnify the **Company** for:
- (1) **Investigative Costs** resulting from a **Special Committee Inquiry Demand**; and
  - (2) **Books and Records Costs** resulting from a **Books and Records Request**.

This Sublimit of Liability for the Shareholder Demand Investigative Insuring Agreement shall be \$250,000. Such Sublimit shall be part of, and not in addition to, the Securities Liability Coverage Limit of Liability set forth in Item 9 of the Declarations. No Retention shall apply to the Shareholder Demand Investigative Insuring Agreement.

Coverage, subject to all other terms and conditions of the **Policy**, will be extended for Subsection (2)

above whether or not a **Wrongful Act** is alleged.

## **SECTION II - ADDITIONAL COVERAGES**

A. **ESTATES, HEIRS AND MARITAL ESTATE LIABILITY** - This **Policy** shall cover **Loss** resulting from **Claims** for **Wrongful Acts** of an **Insured Person** made against:

- (1) the estates, heirs, legal representatives or assigns of any **Insured Persons** who are deceased, incompetent, insolvent or bankrupt, provided that such **Claims** would have been covered by this **Policy** in the absence of such death, incompetency, insolvency or bankruptcy; and
- (2) the lawful spouse or **Domestic Partner** of an **Insured Person** solely by reason of such person's status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

The coverage provided by this Subsection shall not apply with respect to any loss arising from any act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

B. **NOT-FOR-PROFIT DIRECTORSHIPS** - This **Policy** shall cover **Loss** resulting from **Claims** for **Wrongful Acts** committed by **Insured Persons** while serving on the board of directors, board of trustees, or as officers of any not-for-profit entity at the direction of the **Company**; provided, however, that this coverage shall be excess over any other insurance or indemnification provided to the **Insured Persons**.

## **SECTION III - EXTENDED REPORTING PERIOD**

- A. If the **Company** or the **Insurer** cancels or non-renews this **Policy** or any Insuring Agreement, or if the **Policy** terminates subject to Section XII (C)(1), the **Insured** shall have the right to purchase an optional extended reporting period (herein called the Extended Reporting Period) for the period set forth in Item 4 of the Declarations. It is understood that if the **Insurer** cancels this **Policy** due to nonpayment of premium, the **Insured** shall not be entitled to the Extended Reporting Period.
- B. The Extended Reporting Period is not an extension of coverage, but rather an extended reporting period for **Claims** first made during the Extended Reporting Period resulting from **Wrongful Acts** that occurred prior to the effective date of cancellation, nonrenewal or termination and otherwise covered under this **Policy**. Notice of facts and circumstances that may give rise to a **Claim**, pursuant to Section X (B), must be given during the **Policy Period** and shall not be effective if given during the Extended Reporting Period.
- C. If the **Insured** elects to purchase the Extended Reporting Period, the premium will be calculated by multiplying the annual premium set forth in Item 11(a) of the Declarations by the percentage set forth in Item 4 of the Declarations. The Extended Reporting Period is non-cancellable and the entire premium shall be deemed fully earned at its commencement.
- D. The **Insureds'** right to purchase the Extended Reporting Period shall lapse unless the **Insurer** receives written notice of the **Insureds'** election and full payment of the additional premium due within sixty (60) days after the effective date of such cancellation, nonrenewal or termination.

- E. The Limit of Liability with respect to **Claims** made during the Extended Reporting Period shall be part of and not in addition to the Limit of Liability set forth in Item 9 of the Declarations, for each respective Insuring Agreement, for all **Claims** made during the immediately preceding **Policy Year**. Any **Claim** made during the Extended Reporting Period shall be deemed to be made during the **Policy Year** immediately preceding the Extended Reporting Period.
- F. The offer by the **Insurer** and acceptance by the **Insured** of continued coverage under terms, conditions, Limits of Liability, Retentions, or premiums different from those applicable to the expiring **Policy** shall not constitute a refusal to renew and shall not entitle any **Insured** to exercise the Extended Reporting Period.

## **SECTION IV - DEFINITIONS**

**Application** means:

- (1) all signed applications for the procurement of this **Policy** and any attachments or other materials submitted to the **Insurer** in support of the procurement of this **Policy**;
- (2) any publicly available information published or filed by or with a recognized source, agency or institution regarding the **Insured** in the twelve (12) months preceding the **Policy's** inception, and any amendments thereto, whether or not submitted with any signed application; and
- (3) if applicable, any representation or warranty provided to the **Insurer** within the past three (3) years in connection with any policy of which this **Policy** is a renewal or replacement.

The **Application** is deemed to be attached to and incorporated into this **Policy**, as if physically attached.

**Books and Records Costs** means any reasonable costs, charges and fees incurred by the **Company** in response to a **Books and Records Request**, such fees, costs and charges not to include regular or overtime wages, salaries or fees of **Insured Persons**.

**Books and Records Request** means any written demand first made upon the Board of Directors of the **Company** during the **Policy Period** or Extended Reporting Period (if applicable) by or on behalf of a shareholder of the **Company** to inspect the books and records of such **Company** pursuant to Section 220 of the Delaware General Corporation Law or other similar statute.

**Brokerage/Advisory Services** means the purchase or sale of mutual funds, annuities, variable annuities, or life, accident or health insurance or securities as defined in Section 202(18) of the Investment Advisers Act of 1940, as amended, transacted through an **Employee**, or a third-party service provider pursuant to a contract between the **Company** and the service provider. In connection with the foregoing activities, Brokerage/Advisory Services also includes the provision of:

- (1) economic advice, financial advice, or investment advisory services; or
- (2) financial planning advice including, without limitation, any of the following activities in conjunction therewith: the preparation of financial plans or personal financial statements, or the giving of advice with regard to insurance, savings, investments, retirement planning, or taxes.

**Brokerage/Advisory Services** shall not include rendering advice with regard to the FDIC-insured component of any deposit account or the sale of credit life or disability insurance incidental to the issuance of a loan.

**Claim**, either in singular or plural, means any of the following instituted against an **Insured Person** or against the **Company**, but only to the extent coverage is granted to the **Company**:

- (1) a written demand, other than a **Special Committee Inquiry Demand** or a **Books and Records Request**, for monetary damages or non-monetary relief that is received during the **Policy Period** or, if applicable, Extended Reporting Period, by an **Insured Person** or the **Company** (but only to the extent coverage is granted to the **Company**);
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by a return of an indictment;
- (4) an arbitration or mediation proceeding in which monetary damages are sought;
- (5) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, a formal investigative order, or similar document;
- (6) with respect to Insuring Agreement D only, a **Special Committee Inquiry Demand** or a **Books and Records Request**, that is received during the **Policy Period** or, if applicable, Extended Reporting Period; or
- (7) a written request to toll or waive a statute of limitations, relating to a potential **Claim** described in Subsections (1) through (6) above, that is received and reported during the **Policy Period** or, if applicable, Extended Reporting Period, by an **Insured Person** or the **Company** (but only to the extent coverage is granted to the **Company**)

for a **Wrongful Act**, including any appeals from such proceedings.

**Cloud** means a remote server that is hosted on the Internet and that:

- (1) is used for storage or computer processing by the **Company**;
- (2) the **Company** directly pays for; and
- (3) is owned by a company with which the **Company** has entered into a direct service-level agreement.

**Company** means the entity or entities set forth in Item 1 of the Declarations, any **Subsidiary** created or acquired as of the inception date set forth in Item 2 of the Declarations, and, subject to Section XI (B), any bank **Subsidiary** created or acquired during the **Policy Period**.

**Computer Programs** mean a set of related electronic instructions that direct the operations and functions of a computer or devices connected to it and that enable the computer or devices to receive, process, store, or send **Electronic Data**.

**Computer System** means:

- (1) any computer with related peripheral components;
- (2) any electronic processing, storage or communication device;
- (3) any network or operating system; and
- (4) any tablet or smart phone

by which **Electronic Data** is electronically collected, transmitted, processed, stored, and retrieved. **Computer System** includes transmissions of the **Company's Electronic Data** to and from a **Cloud**.

**Confidential Information** means:

- (1) any nonpublic personal information that allows an individual to be distinctively identified, including a social security number, driver's license, or state identification number;
- (2) a **Customer's** credit or debit card numbers, PINs, passwords or other account numbers; and
- (3) any financial or commercial information that is subject to the terms of a confidentiality agreement agreed to by the **Insured**.

**Customer** means any natural person or entity that receives professional services directly from the **Company**.

**Cyber Banking Services** means any service rendered by the **Insured** through the transmission of **Electronic Data** to or from the **Insured's** secured and authenticated **Secured Portal**.

**Cyber Publishing and Social Networking Activities** means the electronic display or electronic dissemination of information through the **Company's** website or **Social Networking** account.

**Defense Costs** means reasonable and necessary fees, costs, charges, expenses, including attorneys' fees, experts' fees, mediators' fees, arbitrators' fees, e-discovery consultants' fees, e-discovery costs, and premiums for an appeal bond or similar bond, incurred by or on behalf of an **Insured** with the **Insurer's** prior written consent in investigating or defending any covered **Claim**. **Defense Costs** shall not include salaries, wages, overtime, overhead, or benefit expenses incurred by the **Insured**.

**Director or Officer** means any natural person who is a past, present or future director, management committee member, audit committee member, supervisory board member, management board member, or trustee of the **Company** or an officer of the **Company** elected or appointed by the **Company's** board of directors at a duly held board meeting.

**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**.

**Electronic Data** means facts or information converted to a form usable in a **Computer System** by **Computer Programs** and stored on magnetic tapes or disks, optical storage disks, or other bulk media.

**Electronic Funds Transfer Act** means the transfer of funds from a **Customer's** account through a **Computer System** operated by the **Company**.

**Employee**, either in singular or plural, means any natural person whose labor or service is or was engaged and directed by the **Company** including any: 1) past, present, future, part-time, seasonal or temporary employees; and 2) volunteers and interns acting in the capacity of an **Employee**. **Employee** also includes **Leased Employees** but does not include **Independent Contractors**.

**ERISA** means the Employment Retirement Income Security Act of 1974, as amended.

**Executive Officer** means the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Director, In-house Counsel, Controller, Internal Auditor, Risk Manager, Senior Loan Officer or President, of the **Company** or any person holding any equivalent position within the **Company**.

**Financial Impairment** means the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company** or any **Subsidiary**.

**Independent Contractor** means any natural person who is not an **Employee** or a **Leased Employee** but performs labor or service for the **Company** pursuant to a written contract or agreement.

**Insurance Services** means any of the following services performed by an **Insured** as insurance agent, insurance broker, insurance consultant or insurance managing general agent:

- (1) sale and placement of insurance;
- (2) identification, analysis and evaluation of a client's insurance needs, including work performed for prospective clients;
- (3) appraisal of property and inspections for insurance purposes;
- (4) adjustment of claims on behalf of insurance companies, including loss payments; or
- (5) arrangement of premium financing for clients.

**Insured**, either in singular or plural, means the **Insured Persons** or the **Company**, if coverage for the **Company** is set forth by Insuring Agreement made part of this **Policy**.

**Insured Person**, either in singular or plural, means any natural person who was, now is or shall become an **Employee**, director, officer, member of the board of trustees, governor, advisory or honorary director, or advisory or honorary member of the board of trustees of the **Company** while acting in his or her capacity as such.

**Interrelated Wrongful Acts** means any **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

**Investigative Costs** means reasonable and necessary fees (including attorney's fees and expert's fees) and expenses (other than wages, salaries, fees or benefits of the directors, officers or employees of the **Company**) incurred by the **Company** (including its Board of Directors or any committee of its Board of Directors) in investigating or evaluating on behalf of the **Company** whether it is in the best interest of the **Company** to prosecute the claims alleged in a **Special Committee Inquiry Demand**.

**Leased Employee** means any natural person who is leased to the **Company** by a labor leasing firm under an agreement between the **Company** and the labor leasing firm to perform work for the **Company** and for whom the **Company** controls the means and manner of the work performed. But any coverage afforded under this **Policy** to a **Leased Employee** applies only to the extent that the **Company** indemnifies such **Leased Employee**, and any such coverage will be specifically excess of any other indemnity and insurance otherwise available to such **Leased Employee**.

**Loan Servicing** means the servicing of any loan, lease or extension of credit (not including financing for investment banking or leveraged or management buy-outs). **Loan Servicing** includes the following servicing

activities: record keeping, billing and disbursements of principal and interest, receipt or payment of insurance premiums and taxes, credit reporting or statements of a customer's credit worthiness, or the determination of the depreciation amount of property (but not projections of or an appraisal for residual or future value of property).

**Loan Servicing** does not include the purchase, acquisition or sale of any loan, lease or extension of credit, any act of restructure, termination, transfer, or repossession or foreclosure of any loan, lease or extension of credit.

**Loss** means **Investigative Costs, Books and Records Costs, Defense Costs**, and any amounts which the **Insured** is legally obligated to pay resulting from a **Claim**, including damages, judgments, settlements, and pre- and post-judgment interest. **Loss** shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has an adequate relationship to the relevant **Insured**. **Loss** shall not include:

- (1) taxes, or any amount that the **Company** is obligated to pay to any taxing authority;
- (2) criminal or civil fines or penalties imposed by law;
- (3) any unpaid, unrecoverable or outstanding amounts resulting from a loan, lease or extension of credit to any customer or any forgiveness of debt, including any unpaid, unrecoverable or outstanding amounts resulting from a loan, lease or extension of credit that has been sold;
- (4) costs to comply with any non-monetary or injunctive relief of any kind or any agreement to provide such relief, including but not limited to any damages, costs or expenses incurred in making an accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local laws, rules or similar legal authority, or in complying with any other federal, state or local laws, rules or similar legal authority;
- (5) any amounts incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of hazardous materials;
- (6) any amounts the **Company** is obligated to pay or has paid pursuant to any written or oral contract or agreement.
- (7) arising out of or in any way involving the depreciation (or failure to appreciate) in value of any investment product, including but not limited to securities, commodities, currencies, options or futures, but only to the extent that such investment product's depreciation (or failure to appreciate) is due to market fluctuation;
- (8) any restitution or disgorgement, or the payment of **Loss** (other than **Defense Costs**) which is attributable to restitution or disgorgement, or similar payments arising out of, or relating to, restitution or disgorgement, including but not limited to the return of fees, commissions or charges for the **Company's** services; or
- (9) any matters which are uninsurable under the law pursuant to which this **Policy** shall be construed.

**Loss Information** means information on open, closed and potential **Claims, Special Committee Inquiry Demands or Books and Records Requests**, including date, description, and payment amounts, if any.

**Named Insured** means the first named entity set forth in Item 1 of the Declarations.

**Policy** means collectively, the Declarations, the **Application**, this policy form and any Endorsements attached hereto.

**Policy Period** means the period from 12:01 A.M on the inception date set forth in Item 2 of the Declarations to 12:01 AM on the expiration date set forth in Item 2 of the Declarations or any earlier termination date. In no event will the **Policy Period** continue past the effective date of cancellation or termination of this **Policy**.

**Policy Year** means the period of one year following the effective date and hour of this **Policy** or any anniversary thereof, or if the time between the effective date and termination of the **Policy Period** is less than one year, such lesser period. Any extension of the **Policy Period** shall not result in an increase or reinstatement of the Limit of Liability. If the **Policy Period** is extended beyond its original expiration date, the period of the extension shall be a part of the **Policy Year**, which would have ended on the original expiration date.

**Pollutants** include, but are not limited to, any solid, liquid, gaseous or thermal organism, irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, hazardous substances, nuclear materials, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Privacy and Security Act** means the management, oversight, or preservation of **Confidential Information** or the security of the **Company's Computer System**.

**Secured Portal** means the **Company's**:

- (1) website;
- (2) internet or mobile banking applications; or
- (3) private, internal network.

A **Secured Portal** does not include any emails, email systems, telefacsimile devices, or any voice or voice-recording system.

**Securities Claim** means a **Claim**, other than a **Special Committee Inquiry Demand** or a **Books and Records Request**:

- (1) against an **Insured** for a violation of any securities law, but solely in connection with the securities of the **Company**;
- (2) against an **Insured** for a common law cause of action, pled in tandem with, or in lieu of, any securities law violation described in Subsection (1) above and brought by:
  - a. a security holder of the **Company** with respect to his interest in the securities of the **Company**, brought directly or derivatively; or
  - b. any person or entity in connection with the purchase, sale or offer to purchase to sell securities of the **Company**; or
- (3) brought by or on behalf of the **Company** seeking a motion to dismiss a derivative action.

**Social Networking** means the **Company's** official profile or any account on an internet-based venue owned by a third-party entity that allows its users to disseminate information electronically to other venue participants, and facilitates and encourages comments and dialogue.



**Special Committee Inquiry Demand** means a written demand first made upon the Board of Directors or Board of Trustees of the **Company** during the **Policy Period** or Extended Reporting Period (if applicable), by one or more security holders of the **Company**, without the solicitation, assistance or active participation of any **Insured Person**, to bring a civil proceeding in a court of law on behalf of the **Company** against any **Insured Person** for a **Wrongful Act**.

**Subsidiary** means:

- (1) any entity in which the **Company** owns more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors;
- (2) any limited liability company in which the **Company** has the right to appoint or designate fifty percent (50%) or more of such limited liability company's managers; or
- (3) any joint venture in which the **Company** has the right to elect, appoint or designate more than fifty percent (50%) of such entity's directors, trustees or other equivalent executives.

**Trust Services** means any of the following services performed by the **Insured**:

- (1) executor, administrator or personal representative of estates, administrator of guardianships, trustee under personal or corporate trust agreements, or conservator of any person;
- (2) administrator, custodian, or trustee under any individual retirement account (IRA), H.R. 10 Plan (Keogh Plan), 401k, pension, profit sharing, health and welfare or any other employee benefit plan or trust, other than an employee benefit plan or trust sponsored or established by the **Company** for its own **Employees**;
- (3) custodian, depository or managing agent for securities or real property, manager of any personal property owned by others, attorney-in-fact, interest or dividend disbursing agent, transfer or paying agent, redemption or subscriptions agent, fiscal agent, tax withholding agent, registrar of securities, agent for voting securities, sinking fund agent, escrow agent or trustee under a corporate, municipal or local taxing district bond indenture; or
- (4) trustee exercising any other trust or fiduciary powers permitted by law.

**Wrongful Act**, either in singular or plural, means any actual or alleged error, omission, misstatement, misleading statement, neglect or breach of duty by:

- (1) any **Insured Person** in the discharge of their duties while acting solely in the capacity as such;
- (2) any **Insured Person** while acting solely in the capacity as director, officer, or member of the board of trustees of a not-for-profit entity pursuant to Section II (B); or
- (3) the **Company**, but only to the extent that coverage is granted to the **Company** by an Insuring Agreement made a part of this **Policy**.

## **SECTION V - EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS**

The following Exclusions are applicable to all **Insureds** under all Insuring Agreements made a part of this **Policy**.

**Bodily/Personal Injury and Property Damage Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** for actual or alleged bodily injury, sickness, disease, or death of any person, damage to or destruction of any tangible or intangible property including loss of use and diminution thereof, wrongful entry, slander of title, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, mental anguish, emotional distress, harassment, loss of consortium, invasion of privacy, defamation, false light, libel, or slander.

**Brokerage/Advisory Services Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Brokerage/Advisory Services**. However, this Exclusion shall not apply:

- (1) if this **Policy** includes the Broad Form Company Liability Endorsement;
- (2) if this **Policy** includes the Bankers Professional Liability Endorsement or the Broad Form Bankers Professional Liability Endorsement;
- (3) to **Securities Claims**.

**Contract Exclusion** - The **Insurer** shall not be liable to make any payment for:

- (1) **Loss** in connection with any **Claim** arising out of or in any way involving the assumption of any liability to defend, indemnify, or hold harmless any person or entity, other than an **Insured Person**, under any written contract or agreement, unless such liability would be imposed regardless of the existence of such contract or agreement; or
- (2) **Loss**, other than **Defense Costs**, for the intentional breach, in fact, of any written or oral contract or contractual duty, or amounts the **Company** is obligated to pay pursuant to any written or oral contract.

**Cyber Cover Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving:

- (1) **Cyber Banking Services**;
- (2) **Electronic Funds Transfer Acts**;
- (3) **Privacy and Security Acts**;
- (4) **Cyber Publishing and Social Networking Activities**; or
- (5) an **Insured's** development of websites or software, an **Insured's** provision of hosting or network security services, or an **Insured** acting as an internet service provider, internet access provider, application service provider, or provider of like services to third parties.

However, this Exclusion shall not apply to **Securities Claims**.

**Employment Practices Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving actual or alleged:

- (1) wrongful termination, employment-related discrimination or employment-related harassment;

- (2) employment-related misrepresentation or employment-related retaliation, humiliation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion, negligent evaluation, negligent hiring, negligent retention, wrongful discipline; or
- (3) any other violation of any statutory or common law relating to employment.

**ERISA Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any pension, profit sharing or employee benefit program established in whole or in part for the benefit of **Employees** of the **Company**, including without limitation, any violation of **ERISA** or similar provisions of any federal, state or local statutory law, common law or rule or any administrative rule or law. However, this Exclusion shall not apply to **Securities Claims**.

**Fee Dispute Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving disputes over fees, commissions, or charges for the **Company's** services.

**Foreclosed Property Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the ownership, sale, operation, management or control of any entity or property acquired by the **Company** as security or collateral for any loan, lease or extension of credit.

The Foreclosed Property Exclusion shall not apply to **Claims** in connection with the ownership, sale, operation, management or control of any one to four family residential property.

**Fraud/Violation of Law Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** arising out of or in any way involving any fraudulent, dishonest or criminal act or any willful violation of any civil or criminal statute, regulation or law by the **Insured**, provided a final non-appealable adjudication establishes such fraudulent, dishonest, or criminal act or such willful violation of statute, regulation or law.

**Illegal Profit/Payment Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss**, other than **Defense Costs**, in connection with any **Claim** arising out of or in any way involving:

- (1) conflicts of interest, engaging in self-dealing, or acting in bad faith; or
- (2) payment by the **Company** of inadequate or excessive consideration in connection with its purchase of **Company** securities; or
- (3) any **Insured** gaining any profit, remuneration, or financial advantage to which the **Insured** was not legally entitled, provided a final, non-appealable adjudication establishes the **Insured** gained profit, remuneration or financial advantage to which the **Insured** was not legally entitled.

**Insolvency Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the insolvency, conservatorship, receivership, liquidation of, bankruptcy of or suspension of payment by any person or entity; provided, however, this Exclusion shall not apply to:

- (1) **Financial Impairment**;
- (2) the **Insured's** investment on behalf of a customer in the stock of any such entity or entities;
- (3) the **Insured's** extension of credit, an agreement or refusal to extend credit, the servicing of any loan, lease or extension of credit (not including financing for investment banking, or leveraged or management buy-outs), or the collection or restructuring of any extension of credit;

- (4) the Employment Practices Liability Insuring Agreement, if so attached to this **Policy**; and
- (5) the Fiduciary Liability Insuring Agreement, if so attached to this **Policy**.

**Insurance Services Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Insurance Services** (other than **Insurance Services** relating to credit life or disability insurance incidental to the issuance of a loan). However, this Exclusion shall not apply:

- (1) if this **Policy** includes the Broad Form Company Liability Endorsement;
- (2) if this **Policy** includes the Bankers Professional Liability Endorsement or the Broad Form Bankers Professional Liability Endorsement; or
- (3) to **Securities Claims**.

**Insured vs. Insured Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** by, on behalf of, or at the behest of the **Company**, any affiliate of the **Company** or any **Insured Person** in any capacity except where such **Claim** is brought and maintained:

- (1) in the form of a cross-claim or third-party claim for contribution or indemnity that is part of and results directly from a **Claim** that is not otherwise excluded by the terms of the **Policy**;
- (2) by an **Insured Person** solely as a customer of the **Company**; provided such **Claim** is brought independently of, and totally without the direct or indirect solicitation, assistance, participation, or intervention of any other **Insured**; or
- (3) by a security holder of the **Company** as a derivative action on behalf of the **Company** or such affiliate; provided such **Claim** is brought independently of, and totally without the direct or indirect solicitation, assistance, participation, or intervention of any **Insured** or any affiliate of the **Company** unless such participation arises solely out of the activities for which Section 806 of the Sarbanes-Oxley Act of 2002, or similar "whistle blower" protection provision of an applicable federal, state, or local securities law affords protection to such **Insured**;
- (4) by an **Insured Person** who has not been an **Employee**, director, officer, member of the board of trustees, honorary or advisory director or advisory member of the board of trustees of the **Company** for four (4) years prior to the inception date of the **Policy**; or
- (5) by the FDIC or other governmental authority regulating the **Company** or any other party acting as receiver, conservator, liquidator, rehabilitator, or trustee of the **Company** or acting in a similar capacity.

**Investment Banking/Securities Underwriting Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any actual or alleged:

- (1) underwriting, syndicating or promoting any security (except loan syndications or equity or debt securities issued by the **Company**);
- (2) rendering of advice or recommendations regarding any actual or attempted or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction, bankruptcy, reorganization, restructuring, recapitalization, spin-off, offering of securities, dissolution or sale of all or substantially all of the assets or stock of an entity;
- (3) rendering of any fairness opinion;
- (4) proprietary trading;
- (5) any acquisition or sale of securities of the **Company** for its own account; or
- (6) any other investment banking activity,

including any disclosure requirements in connection with any of the foregoing activities.

**IRA/Keogh Exclusion** – The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the **Company** while acting solely in the capacity as administrator, custodian, or trustee under any individual retirement account (IRA) or H.R. 10 Plan (Keogh Plan) outside of the scope of any Trust Department or Trust **Subsidiary** of the **Company**. If this **Policy** includes the Broad Form Company Liability Endorsement, the Bankers Professional Liability Endorsement or the Broad Form Bankers Professional Liability Endorsement, this Exclusion shall not apply.

**Non-Subsidiary Wrongful Acts Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** against any **Subsidiary**, or any **Employee, Director or Officer, or Executive Officer** of such **Subsidiary**, for any **Wrongful Act** or **Interrelated Wrongful Acts** actually or allegedly committed in whole or in part during any time when the entity was not a **Subsidiary**.

**Pollution Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving:

- (1) the actual, alleged or threatened discharge, disposal, migration, dispersal, release or escape of **Pollutants**; or
- (2) any direction, order or request to test for, monitor, remediate, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or to pay for or contribute to the costs of undertaking such actions.

This Exclusion shall not apply to **Claims** covered under Insuring Agreement A.

**Prior and Pending Proceeding Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any demand, claim, suit, or other proceeding against any **Insured** initiated prior to the date set forth in Item 13 of the Declarations, or arising out of or in any way involving the same or substantially the same fact, circumstance or situation underlying or alleged in such prior demand, claim, suit or other proceeding.

**Prior Notice Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any **Wrongful Act** or any **Wrongful Act** which is part of any **Interrelated Wrongful Acts**, or any fact, circumstance or situation, which has been the subject of any notice or attempted notice given to any carrier other than the **Insurer** under any similar insurance policy providing protection for any **Insured**.

**Receivership Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the **Company's** function or activity as receiver, trustee in bankruptcy, or assignee for the benefit of creditors.

**Short-Swing Profit Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving an accounting of profits made from the purchase or sale of **Company** securities by the **Insured Persons** within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any state statutory law or common law.

**Trust Services Exclusion** - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the rendering or failing to render **Trust Services**. However, this Exclusion shall not apply to **Securities Claims**.

## **SECTION VI - LIMIT OF LIABILITY, RETENTION AND INDEMNIFICATION**

### **A. LIMITS OF LIABILITY**

- (1) The **Insurer's** maximum Limit of Liability under this **Policy** for all Insuring Agreements combined shall not exceed the Total Policy Aggregate Limit set forth in Item 3a. of the Declarations regardless of whether such Insuring Agreement is provided as a sublimit or a separate limit. Amounts incurred as **Defense Costs** will reduce and shall be part of and not in addition to the Total Policy Aggregate Limit.
- (2) If a Separate Limit of Liability is not specified in Item 8 of the Declarations for an individual Insuring Agreement, the **Insurer's** maximum Limit of Liability for each Insuring Agreement for all **Loss** resulting from all **Claims** first made for each **Policy Year** during the **Policy Period** shall be the amount set forth in Item 9 of the Declarations for such Insuring Agreement, and this amount shall be a part of and not in addition to the D&O Policy Limit set forth in Item 3b. of the Declarations.
- (3) If a Separate Limit of Liability is specified in Item 8 of the Declarations for any Insuring Agreement, the **Insurer's** maximum Limit of Liability for each Insuring Agreement for all **Loss** resulting from all **Claims** first made for each **Policy Year** during the **Policy Period** shall be the amount set forth in Item 9 of the Declarations for such Insuring Agreement. However, payment of such **Loss** will not erode the Limit of Liability set forth in Item 9 of the Declarations for any other Insuring Agreement.

### **B. RETENTION AND INDEMNIFICATION**

- (1) **Defense Costs** will be applied against the Retention. The **Insurer** shall only pay for covered **Loss**, including covered **Defense Costs**, in excess of the applicable Retention for each **Claim** as set forth in Item 10 of the Declarations. No Retention shall apply to **Loss** incurred by the **Insured Persons** for which the **Company** is:
  - (a) neither permitted nor required by law to advance **Defense Costs** or indemnify the **Insured Persons**; or
  - (b) permitted or required to advance **Defense Costs** or indemnify the **Insured Persons** but does not do so by reason of **Financial Impairment**.
- (2) If the **Company** is legally permitted or required to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**, regardless of whether actual indemnification or advancement is granted, the Retention applicable to Insuring Agreement B (Company Indemnification Coverage) shall apply to such **Loss**, unless the **Company**, solely by reason of its **Financial Impairment**, does not make indemnification or advancement.
- (3) One Retention shall apply to covered **Loss** resulting from each **Claim**. If **Loss** from a **Claim** is covered under more than one Insuring Agreement, the **Claim** shall be subject to the highest applicable Retention.

(4) Except for the payment of **Defense Costs**, the **Insurer** shall pay or reimburse one hundred percent (100%) of covered **Loss**, in excess of the applicable Retention, upon final disposition of the **Claim**.

C. **SINGLE CLAIM** - **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** committed by one or more **Insureds** shall be considered a single **Claim**, and only one Retention and Limit of Liability shall apply to such single **Claim**. Each such single **Claim** shall be deemed to be first made on the date the earliest of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**.

## **SECTION VII - NON-EROSION OF INSURING AGREEMENT A AND ORDER OF PAYMENTS**

### A. **NON-EROSION OF INSURING AGREEMENT A**

- (1) If the Limit of Liability for any Insuring Agreement extending coverage to the **Company** is a sublimit of the D&O Policy Limit, the Limit of Liability applicable to Insuring Agreement A (Insured Persons Liability Coverage) shall not be reduced by the payment of **Loss** resulting from **Claims** covered by such Insuring Agreement. If a separate Limit of Liability is set forth in Item 8 of the Declarations this provision shall not apply.
- (2) If the **Company** is legally permitted or required to advance **Defense Costs** or indemnify **Insured Persons** for **Loss**, such **Loss** shall be deemed to occur under Insuring Agreement B (Company Indemnification Coverage) regardless of whether actual indemnification is granted.

B. **ORDER OF PAYMENTS** - In the event one or more **Claims** result in a potential or actual **Loss** which, in aggregate, in the **Insurer's** judgment could reasonably exceed the D&O Policy Limit set forth in Item 3b. of the Declarations, then:

- (1) the **Insurer** shall pay first for such **Loss** for which coverage is provided under Insuring Agreement A (Insured Persons Liability Coverage); then
- (2) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss**, the **Insurer** shall pay such **Loss** for which coverage is provided under Insuring Agreement B (Company Indemnification Coverage); then
- (3) pay such **Loss** for which coverage is provided to the **Company** under any Insuring Agreement extending coverage to the **Company**.

The **Financial Impairment** of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Policy** pursuant to this Subsection.

## **SECTION VIII - DEFENSE AND SETTLEMENT**

### **A. NO DUTY TO DEFEND**

- (1) Amounts incurred as covered **Defense Costs** will reduce and shall be part of, and not in addition to, the applicable Limit of Liability. It shall be the duty of the **Insured** and not the duty of the **Insurer** to defend **Claims**. The **Insured** shall only retain counsel approved in writing by the **Insurer**, whose consent for which shall not be unreasonably withheld.
- (2) The **Insured** shall not incur **Defense Costs**, admit liability for, settle, or offer to settle any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision as to such consent. The **Insurer** shall not be liable for any **Loss**, including **Defense Costs**, for any settlement, admission, voluntary payment, assumed obligation, or confessed or agreed damages or judgment to which it has not consented in writing.
- (3) The **Insurer** shall have the right but not the duty to associate with the **Insured** in the settlement and defense of any **Claim** that appears reasonably likely to involve the **Insurer**. Such association shall include, but not be limited to, participation in the formation of litigation strategy, review of pleadings and other pertinent papers prior to filing, and participation in the settlement negotiations.

### **B. ADVANCEMENT OF DEFENSE COSTS**

- (1) Subject to Section IX, the **Insurer**, if requested by the **Insured**, shall advance covered **Defense Costs** on a current basis, except when advancement of **Defense Costs** is prohibited by law or regulation.
- (2) Prior to advancing or indemnifying **Defense Costs**, the **Insurer** shall be entitled to sufficient information and documentation as to the amount and purpose of any **Defense Costs** to enable it to evaluate the reasonableness and necessity of such **Defense Costs** and to verify that such **Defense Costs** were actually incurred.

- C. **DUTY TO COOPERATE** - The **Insured** shall promptly furnish the **Insurer** with all information reasonably requested by the **Insurer** including, but not limited to, copies of reports, investigations, pleadings and other papers. As a condition precedent to coverage under this **Policy**, the **Insured** shall provide the **Insurer** with such information, assistance and cooperation as the **Insurer** may reasonably request. The **Insured** shall take such steps as are necessary to fulfill its obligations to cooperate, including but not limited to ensuring that the **Insurer** is included as appropriate in any order or agreement that might otherwise limit access to information **Insurer** reasonably requires.

## **SECTION IX - ALLOCATION AND ARBITRATION**

### **A. ALLOCATION**

- (1) If in any **Claim** the **Insureds** are jointly and severally liable with others (including the **Company** even if no coverage is extended for such **Claim** against the **Company**) for **Loss**, then:



- (a) 100% of all **Defense Costs**, incurred jointly by the **Insured Persons** and the **Company**, shall be treated as **Loss** incurred solely by the **Insured Persons**; and
  - (b) all other **Loss** shall be allocated between the **Insured Persons** and others based on the relative legal and financial exposures of the parties to such **Claims** and in the event of a settlement, based upon the relative benefits to the parties from settlement.
- (2) If in any **Claim** the **Insureds** incur an amount consisting of both covered and uncovered **Loss** because the **Claim** includes both covered and uncovered matters, then the amount shall be allocated between covered **Loss** and uncovered loss based on the relative legal and financial exposures of the **Insureds** to the covered and uncovered matters and, in the event of a settlement, based upon the relative benefits to the parties from settlement of the covered and uncovered matters.
- (3) If a **Claim** against an **Insured** is subject to more than one Insuring Agreement and if the Limit of Liability of one of the applicable Insuring Agreements has been reduced or exhausted by a previous **Claim** or **Claims**, then the **Insurer** shall pay for any **Loss** as a result of that **Claim** under all applicable Insuring Agreements with a remaining Limit of Liability based on the relative legal and financial exposures of the **Insureds** to the remaining Limits of Liability of all applicable Insuring Agreements providing coverage to such **Claim**.

B. **ARBITRATION** - The **Insurer** and the **Insured** agree to use their best efforts to reach a proper allocation of **Defense Costs**. If the **Insured** and the **Insurer** cannot agree on an allocation:

- (1) no presumption as to allocation shall exist in any mediation, arbitration, suit or other proceeding;
- (2) the **Insurer** shall advance on a current basis **Defense Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined; and
- (3) the **Insurer**, if requested by the **Insured**, shall submit the allocation dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** will be applied retroactively to all **Defense Costs**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss** arising from such **Claim** or any other **Claim**.

## **SECTION X - NOTICE OF CLAIMS AND POTENTIAL CLAIMS**

A. The **Insured**, as a condition precedent to any rights under this **Policy**, shall give the **Insurer** written notice, as soon as practicable, of any **Claim** first made and brought to the attention of an **Executive Officer** during the **Policy Period** or the Extended Reporting Period, but in no event later than ninety (90) days after the **Claim** is made.

- B. If during the **Policy Period**, an **Insured** first becomes aware of circumstances which may give rise to a **Claim**, and gives written notice to the **Insurer** of the circumstances and reasons for anticipating a **Claim**, then any **Claim** subsequently arising from such circumstances shall be deemed to have been first made during the **Policy Year** in which such notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Claims**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Claim**, as well as the identity of the potential plaintiffs and the causes of action to be asserted.
- C. The **Insured**, as a condition precedent to any rights under this **Policy**, shall also give the **Insurer** written notice, as soon as practicable, of any **Special Committee Inquiry Demand** or **Books and Records Request** first made during the **Policy Period** as soon as practicable after it occurs, but in no event later than ninety (90) days after an Executive Officer first becomes aware of such **Special Committee Inquiry Demand** or **Books and Records Request**.
- D. All notices required to be given to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5 of the Declarations. Any notice shall be deemed to have been given only when such notice is received by the **Insurer**.

## **SECTION XI - MERGERS, ACQUISITIONS AND CHANGES IN BUSINESS ACTIVITIES**

- A. If during the **Policy Period**, the **Company**:
- (1) acquires, merges with or creates any non-bank entity;
  - (2) acquires or merges with another entity or creates or acquires a **Subsidiary**, whose assets equal or exceed twenty-five percent (25%) of the **Company's** total assets at the time of the transaction;
  - (3) acquires assets which equal or exceed twenty-five percent (25%) of the **Company's** total assets at the time of the transaction;
  - (4) creates or acquires a financial services holding company or converts from a bank holding company to a financial services holding company;
  - (5) converts from a mutual company to a stock company; or
  - (6) changes or converts its corporate structure from a C-corporation to an S-corporation;
- then no coverage shall be afforded under this **Policy** for any **Loss** incurred by the **Company**, such entity, **Subsidiary**, or its **Insured Persons** resulting from any **Claim** arising out of or in any way involving such transaction, entity, **Subsidiary**, or event, prior to:
- (a) the **Company** providing written notice and any requested information regarding the transaction to the **Insurer** as soon as practicable;
  - (b) the **Insurer**, at its sole discretion, agreeing in writing to provide such coverage; and
  - (c) the **Company** accepting any special terms, conditions and/or Exclusions and paying any additional premium required by the **Insurer**.

However, with respect to (A)(2) above, this provision shall not apply until ninety (90) days after the merger, acquisition or creation.

- B. If during the **Policy Period**, the **Company** creates or acquires a bank or bank **Subsidiary**, whose assets are less than twenty-five percent (25%) of the **Company's** total assets at the time of the transaction, the **Insurer** agrees to provide automatic coverage for such bank, bank **Subsidiary** and its **Insured Persons** for the remainder of the **Policy Period**.
- C. Any coverage otherwise afforded under this **Policy** for a **Loss** in any way involving the **Company**, any **Subsidiary**, or any acquired, merged or created entity or its **Insured Persons** shall not apply to any **Claim** arising out of or directly or indirectly resulting from:
- (1) any **Wrongful Act** or any fact, circumstance or situation committed or allegedly committed prior to the effective date of such acquisition, merger or creation; or
  - (2) any other **Wrongful Act**, which, together with a **Wrongful Act** committed or allegedly committed prior to effective date of such acquisition, merger or creation constitute **Interrelated Wrongful Acts**.

## **SECTION XII - CANCELLATION / NONRENEWAL / TERMINATION**

- A. **NAMED INSURED CANCELLATION** - The **Named Insured** may cancel this **Policy** or any Insuring Agreement by providing written notice to the **Insurer**. If the **Named Insured** cancels this **Policy**, the **Insurer** shall only return ninety percent (90%) of the unearned premium. For multi-year **Policies**, the **Insurer** shall only return ninety percent (90%) of the unearned premium if the cancellation occurs before the first anniversary. If the cancellation occurs after the first anniversary, unearned premium will be returned on a pro-rata basis as soon as practicable.
- B. **INSURER CANCELLATION OR NONRENEWAL**
- (1) **NONRENEWAL** - The **Insurer** shall not be required to renew this **Policy** or any Insuring Agreement upon expiration of the **Policy Period**. This **Policy** or any Insuring Agreement may be non-renewed by the **Insurer** by giving to the **Named Insured** written notice stating when, not less than sixty (60) days thereafter, such action shall become effective and the reason(s) therefore.
  - (2) **CANCELLATION**
    - (a) This **Policy** or any Insuring Agreement may be cancelled by the **Insurer** by giving to the **Named Insured** written notice stating when such action shall become effective and the reason(s) therefore.
    - (b) The **Insurer** shall provide not less than twenty (20) days' notice of its intent to cancel for nonpayment of premium or sixty (60) days' notice of its intent to cancel for any other reason.
    - (c) If the **Insurer** cancels this **Policy** or any Insuring Agreement, the **Insurer** shall return one hundred percent (100%) of the unearned premium. The return of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
  - (3) **NOTICE** - All notices pursuant to Section XII (B) will be mailed to the **Named Insured** by certified mail at the address set forth in Item 1 of the Declarations. The mailing of such notice as aforesaid shall be sufficient proof of notice, and this **Policy** shall terminate at the date and hour specified in such notice.

C. **TERMINATION**

- (1) Upon the occurrence of any of the following events, this **Policy** shall be deemed terminated:
  - (a) **Financial Impairment** of the **Company** or any **Subsidiary** comprising more than fifty percent (50%) of the **Company's** total assets;
  - (b) acquisition of the **Company** by another entity or the merger or consolidation of the **Company** into another entity such that the **Company** is not the surviving entity or acquisition of substantially all of the assets of the **Company** by another entity; or
  - (c) the **Company** ceasing to engage actively in its primary business.
- (2) Pursuant to Subsection (C)(1) above, the **Insurer** shall refund the unearned premium, calculated on a pro-rata basis. The return of any unearned premium shall not be a condition precedent to the effectiveness of the termination but such payment shall be returned as soon as practicable. The occurrence of any of the foregoing events shall not affect the **Insured's** right to purchase the Extended Reporting Period pursuant to Section III.
- (3) In the event of **Financial Impairment** or sale of a **Subsidiary** comprising less than fifty percent (50%) of the **Company's** total assets, this termination provision shall apply only to the **Subsidiary** and its **Insured Persons** and the **Policy** shall continue in full force with respect to all other **Insureds**.

**SECTION XIII - REPRESENTATIONS AND SEVERABILITY**

- A. **REPRESENTATIONS** - It is agreed and represented that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. By acceptance of this **Policy**, the **Insured** agrees that:
- (1) such **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**;
  - (2) this **Policy** shall not be deemed to be a series of individual insurance contracts with the **Company** and each of the **Insured Persons**; and
  - (3) the statements in the **Application** are their representations, that they are material to the acceptance of the risk or hazard assumed by the **Insurer** under this **Policy**, and that this **Policy** is issued in reliance upon the truth of such representations. As such, if there are misrepresentations in the application that are material to a **Claim** an **Insured** submits under this **Policy**, the **Insurer** may avail itself to remedies available under law, including denial, partial denial, or, rescission.
- B. **SEVERABILITY** - With respect to any statements, representations, and information contained in the **Application**, no knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**. In the event that any statements, representations or information is not truthfully disclosed in the **Application**, and there is a **Claim** made based upon, arising from or in consequence of such untruthful or inaccurate statements, representations or information, no coverage shall be afforded under this **Policy**, for any such **Claim** as to:
- (1) any **Insured Person** who knew of such untruthful or inaccurate statements, representations or

- information;
- (2) the **Company**, to the extent of its indemnification obligation to any **Insured Person** in Item (1) above; and
  - (3) the **Company**, to the extent coverage is granted to the **Company**, or if any past, present, or future chief financial officer, in-house general counsel, chief executive officer, President or Chairman of the Board knew of such untruthful or inaccurate statements, representations, or information (whether or not such individual knew of such untruthful or inaccurate statements, representation or information in the **Application**).

The **Insurer** shall not be entitled under any circumstances to rescind Insuring Agreement A.

- C. **SEVERABILITY OF EXCLUSIONS** - With respect to the Exclusions herein, to determine if coverage is available:
- (1) no **Wrongful Act**, fact pertaining to, or knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
  - (2) all facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), shall be imputed to the **Company** with respect to the Fraud/Violation of Law and Illegal Profit/Payment Exclusions.

#### **SECTION XIV - GENERAL TERMS AND CONDITIONS**

- A. **SUBROGATION** - In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured Persons'** and the **Company's** rights to recovery therefor, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure the **Insurer's** rights, including the execution of such documents as may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Persons** or the **Company**. Recovery of any **Loss** paid under the **Policy**, regardless of whether effected by the **Insurer** or **Insureds**, less the cost of making such recovery, shall be distributed first to the **Insureds** for any amounts which are in excess of the limits of liability of this **Policy** and would have been covered by this **Policy** otherwise, next to the **Insurer** for the amount of such **Loss** paid hereunder, next to the **Insureds** for any retention, and lastly to the **Insureds** for the amount of **Loss** excluded, or otherwise not covered, under this **Policy**. Recovery by the **Insurer** from reinsurance or indemnity shall not be a recovery hereunder.
- B. **ASSIGNMENT AND ACCEPTANCE** - By acceptance of this **Policy**, the **Insured** and the **Insurer** agree that this **Policy**, the **Application**, and any written Endorsements attached thereto constitute the entire agreement between the parties. Assignment of interest under this **Policy** shall not bind the **Insurer** until its consent is endorsed hereon.
- C. **CONFORMITY TO STATUTE** - Any terms of this **Policy** which are in conflict with the terms of any applicable laws governing this **Policy** are amended to conform to such laws.

- D. **AUTHORIZATION** - By acceptance of this **Policy**, the **Insureds** agree that the **Named Insured** will act on behalf of all **Insureds** for all purposes under this **Policy** including, but not limited to, giving and receiving of all notices and correspondence, cancellation, nonrenewal or termination of this **Policy**, payment of premiums, the negotiation and acceptance of Endorsements, and receipt of any return premiums that may be due under this **Policy**.
- E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not affect a waiver or a change in any part of this **Policy** or stop the **Insurer** from asserting any right under the terms of this **Policy**, nor shall the terms, conditions and limitations of this **Policy** be waived or changed, except by written Endorsement issued to form a part of this **Policy**.
- F. **ACTION AGAINST THE INSURER** - No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Policy**, and until the **Insured's** obligation to pay is finally determined, either by adjudication or by written agreement of the **Insured(s)**, the claimant, and the **Insurer**.
- No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured(s)**, nor shall the **Insurer** be impleaded by any **Insured(s)** and/or the **Company** or their legal representative.
- G. **OTHER INSURANCE OR INDEMNIFICATION** - This **Policy** shall not be subject to the terms of any other insurance. All **Loss**, including **Defense Costs**, payable under this **Policy** shall be excess to:
- (1) any other existing insurance regardless of whether collectable, including but not limited to, any insurance under which there is a duty to defend, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**; and
  - (2) indemnification to which an **Insured** is entitled from any entity other than the **Company**.
- H. **LOSS INFORMATION** - The **Insurer** will provide **Loss Information** to the **Company** within ten (10) days of the **Company's** request or, if required by statute, at the same time as any notice of cancellation or nonrenewal of this **Policy**. However, **Loss Information** shall not include information on any reserve.
- I. **INSOLVENCY/BANKRUPTCY** - The insolvency or bankruptcy of the **Insured** or of the estate of such **Insured** shall not release the **Insurer** from its obligations nor deprive the **Insurer** of its rights under this **Policy**.
- J. **HEADINGS AND SUB-HEADINGS** - The descriptions in the headings and sub-headings of this **Policy** are solely for convenience and form no part of the terms and conditions of coverage. Please note that terms in boldface type shall have the meaning set forth in Section IV. of the Definitions.
- K. **WORLDWIDE TERRITORY** - This **Policy** applies to **Wrongful Acts** occurring and **Claims** made anywhere in the world where permitted by law.
- L. **MOST FAVORABLE TERMS** - In the event that there is an inconsistency between the State Amendatory Endorsement and any provision modifying the "Insurer Cancellation or Nonrenewal" or "Extended Reporting Period" sections of this **Policy**, then it is understood and agreed that in such situation, the **Insurer** shall apply the terms and conditions more favorable to the **Insured**, where permitted by law.