

ASSET PROTECTION POLICY

General Terms and Conditions

I. TERMS AND CONDITIONS

Except for the General Terms and Conditions or unless stated to the contrary in any purchased coverage section listed in Item 5. of the Declarations, the terms and conditions of each coverage section of this Policy apply only to that section and shall not be construed to apply to any other coverage section of this Policy. In the event of any inconsistency between these General Terms and Conditions and the terms and conditions set forth in any coverage section of this Policy, the terms and conditions in such coverage section shall apply. Any defined term referenced in these General Terms and Conditions but defined in a coverage section shall, for purposes of coverage under that coverage section, have the meaning set forth in that coverage section. The General Terms and Conditions are attached to and incorporated with the purchased coverage sections listed in Item 5. of the Declarations.

II. DEFINITIONS

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

- A. "**Application**" means the signed, written application for this Policy or any coverage section of this Policy and for any policy or coverage section issued by the Insurer during the three (3) years immediately preceding this Policy of which this Policy or any coverage section of this Policy is a direct or indirect renewal or replacement, including all documents and materials attached to or submitted with or incorporated into such application(s). All such application(s), documents, materials and filings are deemed attached to and incorporated into this Coverage Section.
- B. "**Claim**" means, with respect to any **Liability Coverage Section**, those matters defined as a **Claim** in such coverage section.
- C. "**Coverage Event**" means, with respect to the Crime Protection Coverage Section, the event or loss which must occur or be sustained or discovered in order to invoke coverage under such coverage section.
- D. "**Defense Expenses**" means reasonable fees and expenses (including without limitation attorneys' fees and experts' fees) incurred in the investigation, defense or appeal of a **Claim**, or the opposition or revocation of an **Extradition** or any judicial ruling related thereto, after notice of such **Claim** is given to the Insurer pursuant to Section IV. NOTICE AND CLAIM REPORTING PROVISIONS, of these General Terms and Conditions, including 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. **Defense Expenses** shall not include the **Entity's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or **Employees**.
- E. "**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 **Entity**.
- F. "**Employee**" means the following:
 - 1. any natural persons who were, now are or shall be in the regular service of the **Entity** in the ordinary course of the **Entity's** business, regardless whether such natural person is in a supervisory, co-worker or subordinate position or otherwise, and whom the **Entity** has the right to govern and direct in the performance of such service, including any such natural persons who are leased, temporary, part-time or seasonal employees of the **Entity**;

2. any natural persons who were, now are or shall become independent contractors of the **Entity** who are treated under applicable law as employees of the **Entity**; and
3. any volunteers or interns of the **Entity**;

provided (i) any such natural person who is leased to the **Entity** or who is such an independent contractor of the **Entity** shall qualify as an **Employee** only if the **Entity** agrees to indemnify such natural person, and (ii) coverage for any such leased employees or independent contractors shall be specifically excess of any indemnification or insurance otherwise available to such leased employees or independent contractors from the applicable leasing company or any other source.

- G. "**Entity**" means, collectively, the **Parent Company** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- H. "**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.
- I. "**Executive Officer**" means with respect to any **Entity** the natural persons who were, now are or shall become such **Entity's** chief executive officer, chief financial officer or in-house general counsel or the functional equivalent of any of the foregoing positions.
- J. "**Extradition**" means any formal process by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- K. "**Financial Impairment**" means the status of the **Entity** resulting from:
1. the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Entity**, or
 2. the **Entity** becoming a debtor in possession, as defined under U.S. Bankruptcy law or equivalent foreign law.
- L. "**Foreign Jurisdiction**" means any jurisdiction, other than the United States or any of its territories or possessions.
- M. "**Foreign Policy**" means the standard insurance policy (including all mandatory endorsements, if any) approved by the Insurer for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded by a purchased coverage section under this Policy, but shall not include any commercial general liability, property or similar insurance policy.
- N. "**Insured Persons**" means with respect to each coverage section the natural persons defined as **Insured Persons** or **Insureds** in such coverage section.
- O. "**Insured Plans**" means the plans and programs defined as **Insured Plans** in the Fiduciary Liability Coverage Section, if purchased.
- P. "**Insureds**" means with respect to each coverage section the entities, plans and natural persons defined as **Insureds** in such coverage section.
- Q. "**Liability Coverage Sections**" means each of the purchased coverage sections listed in Item 5. of the Declarations, except the Crime Protection Coverage Section.
- R. "**Loss**" means with respect to any **Liability Coverage Section**, the amounts defined as **Loss** in such coverage section.

- S. **"Manager"** means any natural person who is a former, present or future manager, managing member, general partner, member of the board of managers or equivalent executive of an **Entity** that is a limited liability company or limited partnership.
- T. **"Non-Indemnifiable Loss"** means **Loss** incurred by an **Insured Person** for which the **Entity** is not permitted by common or statutory law to indemnify or is not financially able to indemnify by reason of **Financial Impairment**.
- U. **"Parent Company"** means the company named in Item 1. of the Declarations, including any such organization as a debtor in possession under the United States bankruptcy law or an equivalent status under the law of any other country.
- V. **"Policy Period"** means the period of time specified in Item 2. of the Declarations, subject to prior cancellation or termination in accordance with Section XV. CANCELLATION AND NONRENEWAL, of these General Terms and Conditions. If this period is less than or greater than one (1) year, then the **Policy Period** Limits of Liability and Sublimits of Liability specified in the Declarations shall be the Insurer's maximum liability under such coverage section for the entire period.
- W. **"Pollutants"** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** also means any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.
- X. **"Related Claims"** means all **Claims** for **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- Y. **"Subsidiary"** means:
1. any organization in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent position is owned, in any combination, by one or more **Entities**;
 2. any organization in which one or more **Entities**, in any combination, have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors or equivalent position of such organization;
 3. any organization in which exactly fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent positions is owned, in any combination, by one or more **Entities**, if one or more **Entities** solely controls the management and operation of such organization pursuant to a written contract with the owners of the remaining fifty percent (50%) of such securities or voting rights;
 4. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Entities**; and
 5. any other not-for-profit organization exclusively sponsored by one or more **Entities**;

provided that any coverage under this Policy for any **Subsidiary** and its **Insureds** shall only apply with respect to **Wrongful Acts** or **Coverage Events** occurring after the effective time such **Subsidiary** became a **Subsidiary** and prior to the effective time such **Subsidiary** ceased to be a **Subsidiary**.

- Z. **"Wrongful Acts"** means, with respect to any **Liability Coverage Section**, the acts, errors, omissions and other matters defined as **Wrongful Acts** in such coverage section.
- AA. **"Wrongful Employment Act"** means, for purposes of any **Liability Coverage Section** other than the Employment Practices and Third Party Discrimination Liability Coverage Section, any actual or alleged: (i) wrongful dismissal, discharge or termination of employment; (ii) employment related misrepresentation; (iii) violation of any law, rule, regulation or public policy concerning employment; (iv) sexual or workplace harassment of any kind; (v) employment discrimination; (vi) wrongful failure to employ or promote; (vii) wrongful discipline; (viii) wrongful deprivation of career opportunity including a wrongful failure to hire or promote; (ix) failure to grant tenure; (x) negligent employment evaluation; (xi) breach of any oral, written or implied contract or quasi- employment contract concerning employment; or (xii) any other employment-related **Wrongful Act**.

III. LIMITS OF LIABILITY, RETENTION AND SINGLE CLAIMS

A. Limits of Liability for Liability Coverage Sections

1. Combined Aggregate Limit of Liability

The amount set forth in Item 4. of the Declarations shall be the Insurer's maximum aggregate liability for all **Loss** covered under all **Liability Coverage Sections**, combined.

2. Each Liability Coverage Section Limit of Liability

The respective Limit of Liability for each **Liability Coverage Section**, as set forth in Item 5. of the Declarations, shall be the Insurer's maximum aggregate liability for all **Loss** on account of all **Claims** under such **Liability Coverage Section**. The Limit of Liability for each **Liability Coverage Section** shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 4. of the Declarations.

3. Shared Liability Coverage Section Limit of Liability

The Insurer's maximum aggregate liability for all **Loss** covered under all **Liability Coverage Sections** which share a Limit of Liability, as designated at the end of Item 5. of the Declarations, combined, shall be the largest of such shared Limits of Liability. Such shared Limit of Liability shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in Item 4. of the Declarations. This Paragraph further limits the Insurer's maximum liability under each such **Liability Coverage Section** and does not increase the respective separate Limit of Liability for each **Liability Coverage Section**.

4. Additional Defense Expenses Limit of Liability

If the Additional **Defense Expenses** Limit of Liability for the Employment Practices and Third Party Discrimination Liability Coverage Section or the Fiduciary Liability Coverage Section is purchased pursuant to Item 6. B. or 6. C. of the Declarations and if the Limit of Liability applicable to **Loss** covered under such respective coverage section is exhausted by payments by the Insurer, then the Insurer's liability for any **Defense Expenses** covered under such respective coverage section shall be subject to an additional Limit of Liability in an amount set forth in Item 6. B. or 6. C., respectively, of the Declarations. Such additional Limits of Liability shall be excess of any other valid and collectible insurance that is specifically excess of such respective coverage section and that covers such **Defense Expenses**.

5. Sublimits of Liability

The Sublimits of Liability set forth in Item 7. of the Declarations are part of and not in addition to any otherwise applicable Limit of Liability under this Policy. Except as otherwise expressly provided in this Policy, no Retention shall apply to any **Loss** which is subject to a Sublimit of Liability.

6. Defense Expenses Within Limit of Liability

Defense Expenses are part of and not in addition to the Limits of Liability applicable to the **Liability Coverage Sections**, and the payment by the Insurer of **Defense Expenses** reduces such Limits of Liability.

7. Limit of Liability Exhaustion and Payment

If with respect to any **Claim** the applicable Limit of Liability under this Policy is exhausted by payment of **Loss**, the Insurer's obligations, including without limitation any duty to defend, with respect to such **Claim** shall be completely fulfilled and extinguished. Subject to Section VI. of these General Terms and Conditions, the Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

B. Retention for Liability Coverage Sections

The Insurer's liability under the **Liability Coverage Sections** with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 5. of the Declarations. If more than one Retention applies to a single **Claim**, the largest applicable Retention shall be the maximum combined Retention for such **Claim**.

If an **Entity** refuses or fails within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** incurred by **Insured Persons** or if an **Entity** is unable to indemnify or advance covered **Loss** incurred by **Insured Persons** due to its **Financial Impairment**, the Insurer shall pay such covered **Loss** without applying the applicable Retention. If the Insurer pays under this Policy any **Loss** incurred by an **Insured Person** for which the **Entity** is legally permitted or required and is financially able to advance or indemnify, then the **Entity** shall reimburse the Insurer for such amounts up to the applicable Retention, and such amounts shall become due and payable as a direct obligation of the **Entity** to the Insurer.

C. Limits of Liability and Retentions for Crime Protection Coverage Section

The Insurer's maximum liability and the applicable Retention under the Crime Protection Coverage Section shall be the respective Limits of Liability and Retention amounts as set forth in Item 9. of the Declarations. Such Limits of Liability and Retention amounts will be applied as described in the Crime Protection Coverage Section.

D. Single Claims

All **Related Claims** under the **Liability Coverage Sections** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Related Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim** subject to more than one Retention.

IV. NOTICE AND CLAIM REPORTING PROVISIONS

A. Solely with respect to any Liability Coverage Section:

1. The **Insureds** shall give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after any **Executive Officer** or risk manager of an **Entity** first learns of such **Claim**, but in no event later than (i) sixty (60) days after expiration of the **Policy Period**, if the Discovery Period is not purchased, or (ii) expiration of the Discovery Period, if purchased. The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required by this Section IV. A. 1. shall not constitute a coverage defense with respect to such **Claim** unless the Insurer establishes it was materially prejudiced by such failure.
2. If, during the **Policy Period** or the Discovery Period (if purchased):

- a. any **Executive Officer** or risk manager of an **Entity** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**, and
- b. the **Insureds** give the Insurer written notice of such **Wrongful Act**, including a description of the **Wrongful Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Executive Officer** or risk manager first became aware of such **Wrongful Act**, and
- c. the **Insureds** request coverage under this Policy for any subsequent **Claim** arising from such **Wrongful Act**;

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the **Policy Period**.

- B. Solely with respect to the Crime Protection Coverage Section, the **Insureds** shall give to the Insurer written notice of any **Coverage Event** pursuant to the applicable notice provision in such Crime Protection Coverage Section.
- C. All notices under any coverage section of this Policy shall be in writing and given by prepaid express courier, certified mail, e-mail, or fax. Notice to any **Insureds** may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. Notice to the Insurer of any **Claim**, potential **Claim** or **Coverage Event** shall be given to the Insurer at the address set forth in Item 11. of the Declarations. All other notices to the Insurer under this Policy shall be given to the same addressee but to the attention of the Underwriting Department. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

V. DEFENSE AND SETTLEMENT; ALLOCATION OF LOSS

- A. If Duty to Defend coverage is granted pursuant to Item 5. of the Declarations with respect to a purchased **Liability Coverage Section**, the Insurer shall have the right and duty to defend any **Claim** covered under such **Liability Coverage Section**, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend shall cease upon exhaustion of the applicable Limit of Liability.
- B. If Duty to Defend coverage is not granted pursuant to Item 5. of the Declarations with respect to a purchased **Liability Coverage Section**, it shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claims** covered under such **Liability Coverage Section**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense, and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by one or more purchased **Liability Coverage Sections**.
- C. If Duty to Defend coverage is not granted pursuant to Item 5. of the Declarations, the Insurer shall, upon request, advance on a current basis covered **Defense Expenses** on behalf of the **Insureds** within sixty (60) days after the Insurer's receipt of itemized invoices for such **Defense Expenses**. The **Insureds** agree that any **Defense Expenses** advanced by the Insurer shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent it is finally determined that such **Defense Expenses** are not covered under any purchased **Liability Coverage Section**.
- D. If in any **Claim** the **Insureds** who are afforded coverage for such **Claim** incur **Loss** covered by this Policy jointly with others (including **Insureds**) who are not afforded coverage for such **Claim**, or incur an amount consisting of both **Loss** covered by this Policy and loss not covered by this Policy because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered **Loss** based upon the relative legal exposures of all parties to covered and uncovered matters, provided that if Duty to Defend coverage is granted pursuant to Item 5. of the Declarations for such **Claim**, then one hundred percent (100%) of **Defense Expenses** covered in part under this Policy shall be allocated to covered **Loss**.

- E. The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings, and agree that in the event of a **Claim** the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery; provided that the failure of any **Insured** to give the Insurer such information, assistance or cooperation shall not impair the rights of any other **Insured** under this Policy.
- F. The Insurer may make any investigation it deems necessary and may, with the written consent of the **Insureds**, make any settlement of a **Claim** it deems expedient. If the Insurer receives an offer to settle any **Claim**, it shall notify the **Insureds** in writing of said offer within ten (10) days of receiving such offer. If the Insurer accepts said offer and settles the **Claim** (with the **Insureds**' written consent), the Insurer will notify the **Insureds** in writing within thirty (30) days after the effective date of such settlement.
- G. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

VI. ORDER OF PAYMENT

- A. If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under a **Liability Coverage Section** exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss** (subject to the applicable Limit of Liability or Sublimit of Liability) in the following priority:
 - 1. First, the Insurer shall pay any such **Loss** which is **Non-Indemnifiable Loss**;
 - 2. Second, only if and to the extent the payment under subparagraph 1. above does not exhaust the applicable Limit of Liability or Sublimit of Liability, the Insurer shall pay the remaining portion of such **Loss**.
- B. Subject to the foregoing, the Insurer shall, upon receipt of a written request from the **Parent Company**, delay any payment of covered **Loss** (other than **Non-Indemnifiable Loss**) due and owing under a **Liability Coverage Section** until such time as the **Parent Company** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

VII. CHANGE OF EXPOSURES

- A. New Subsidiaries or Insured Plans

If before or during the **Policy Period** an **Entity** acquires or creates a new **Subsidiary** or a new **Insured Plan** or acquires an entity by merger or consolidation, coverage under this Policy automatically shall apply to the new **Subsidiary** or **Insured Plan** and its **Insureds**, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** (under a **Liability Coverage Section**) or a **Coverage Event** (under the Crime Protection Coverage Section) taking place after such acquisition or creation. This Paragraph does not apply to, and no coverage is afforded under, this Policy for any **Subsidiary** acquired during the **Policy Period** and its **Insureds** if such **Subsidiary** is a registered issuer of securities pursuant to the Securities Exchange Act of 1934, as amended, unless and to the extent the Insurer agrees by endorsement to this Policy to afford coverage for such **Subsidiary** and its **Insureds**.

- B. Acquisition of Parent Company

If, during the **Policy Period**:

1. the **Parent Company** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert; or
2. any person or organization or group of persons or organizations acting in concert shall acquire securities of the **Parent Company** or voting rights which results in such person, organization or group having the right to elect, appoint or designate at least fifty percent (50%) of the directors, **Managers** or equivalent executives of the **Parent Company**;

(either of the above events herein referred to as the "Transaction")

then coverage under this Policy shall continue in full force and effect until termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** (under a **Liability Coverage Section**) or a **Coverage Event** (under the Crime Protection Coverage Section) occurring prior to the effective time of the Transaction. There shall be no coverage under this Policy for any **Wrongful Act** or **Coverage Event** occurring after the effective time of the Transaction and the entire premium for this Policy shall be deemed fully earned as of such effective time. The **Parent Company** shall also then have the right to elect a Discovery Period described in Section VIII. of these General Terms and Conditions or a greater period as may be negotiated with the Insurer.

The **Parent Company** shall give the Insurer written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

C. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this Policy, provided such coverage shall apply (i) with respect to any **Liability Coverage Sections**, only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**, and (ii) with respect to the Crime Protection Coverage Section, only with respect to **Coverage Events** taking place prior to the date such organization ceased to be a **Subsidiary**.

D. Cessation of Plans

If before or during the **Policy Period** an **Insured Plan** is terminated, coverage for such **Insured Plan** and its **Insureds** under the Fiduciary Liability Coverage Section, if purchased, shall continue until termination of such coverage section with respect to **Wrongful Acts** taking place before or after such termination.

VIII. DISCOVERY PERIOD

A. If:

1. the **Parent Company** cancels any purchased coverage section listed in Item 5. of the Declarations; or
2. either the Insurer or the **Parent Company** refuses or declines to renew any purchased coverage section listed in Item 5. of the Declarations for any reason; or
3. a Transaction described in Section VII. CHANGE OF EXPOSURES, of these General Terms and Conditions occurs; and

within thirty (30) days after the end of the **Policy Period** the **Parent Company** elects to purchase the Discovery Period for all purchased **Liability Coverage Sections** and pays the additional premium set forth in Item 10. of the Declarations, then the coverage otherwise afforded by all purchased **Liability Coverage Sections** will be extended for the respective period set forth in Item 10. of the Declarations, but only for **Wrongful Acts** occurring before the end of the **Policy Period** or the date of any Transaction described in Section VII. CHANGE OF EXPOSURES, of these General Terms and Conditions, whichever is earlier. The Limit of Liability and any applicable Sublimit of Liability for the Discovery Period (if purchased) shall be part of, and not in addition to, any applicable Limit of Liability and Sublimit of Liability for the **Policy Period**.

- B. As a condition precedent to the right to exercise the Discovery Period, the total premium for the coverage section that the Discovery Period is applicable to must have been paid in full.
- C. If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.
- D. Subject to the other terms, conditions and limitations in this Section VIII., the **Parent Company** may elect to purchase the Discovery Period for some but not all purchased **Liability Coverage Sections**. The Insurer shall promptly notify the **Parent Company** of the additional premium for such Discovery Period if the **Parent Company** requests such information.

IX. REPRESENTATIONS, SEVERABILITY AND NON-RESCINDABLE COVERAGES

A. Representations

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

B. Severability

The **Application** shall be construed as a separate application for coverage by each of the **Insureds**. If with respect to any coverage section the **Application** contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under such coverage section, then the Insurer shall not be liable under such coverage section to pay any **Loss** on account of, and shall not be obligated to defend, any **Claim** based upon, arising out of or attributable to the facts that were not accurately and completely disclosed in the **Application** to the extent such **Loss** is incurred by:

1. any **Entity** as indemnification of an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; or
2. any **Entity** and its **Subsidiaries** and **Insured Plans** if an **Executive Officer** of such **Entity** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Person** for purposes of this Section IX.

C. Non-Rescindable Policy

The Insurer shall not have the right to rescind or void, in whole or in part, this Policy or any coverage section for any reason.

X. BANKRUPTCY

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

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

XI. PRIOR POLICY LIBERALIZATION

If any purchased **Liability Coverage Section** under this Policy is a direct or indirect renewal of a prior policy or coverage section purchased by the **Parent Company** from the Insurer or its affiliates and if such prior policy or coverage section was written on a standard policy form used by the Insurer prior to this Policy's policy form ("Prior Policy Form"), then to the extent **Loss** resulting from a **Claim** first made during the **Policy Period** is not covered under this Policy but would be covered if this Policy included the Prior Policy Form, then this Policy is amended to follow and be subject to the broader terms and conditions in the Prior Policy Form, provided this Section XI. shall not amend or apply to (i) any provision in this Policy addressing limits of liability, retentions or coverages specifically not purchased under this Policy, (ii) any provision in this Policy that excludes or limits coverage for specific events, litigation or matters; or (iii) the Crime Protection Coverage Section.

XII. COMPLIANCE WITH APPLICABLE TRADE AND ECONOMIC SANCTION LAWS

This Policy does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall be made only if such payment is in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

XIII. TERRITORY AND VALUATION

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

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 another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

If permitted by applicable law, when determining coverage under this Policy for **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the Insurer shall apply to such **Claim** the terms and conditions of this Policy and, to the extent more favorable to the **Insureds**, the terms and conditions of the **Foreign Policy** in such **Foreign Jurisdiction**. However, this Paragraph shall not (i) apply to any provision of any **Foreign Policy** addressing limits of liability, retentions, other insurance, nonrenewal, duty to defend, defense within or without limits, or any claims-made provisions, and (ii) amend any provision in this Policy that excludes or limits coverage for specific events, litigation or matters.

Any **Loss** incurred by an **Entity** in a **Foreign Jurisdiction** shall be deemed, at the written direction of the **Parent Company**, a **Loss** of the **Parent Company** payable to the **Parent Company** at the address shown in Item 1. of the Declarations. Any such payment by the Insurer to the **Parent Company** pursuant to this paragraph shall fully discharge the Insurer's liability under this Policy for such **Loss**. Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by an **Entity** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the Insurer.

XIV. ACTION AGAINST THE INSURER

- A. 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, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the Insurer.

- B. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of the estate of an **Insured** shall not relieve the Insurer of any of its obligations hereunder.
- C. Only if requested by the **Insureds**, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Insureds**, 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.
- D. In addition to the terms, conditions, and limitations in subparts A., B., and C., above, no action shall lie against the Insurer with respect to loss under the Crime Protection Coverage Section:
1. Until ninety (90) days after a sworn proof of loss is filed with the Insurer; and
 2. Unless such action is brought within two (2) years from the date the loss was discovered.

XV. CANCELLATION AND NONRENEWAL

- A. This Policy as a whole or any purchased coverage section listed in Item 5. of the Declarations shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Parent Company** to the Insurer, provided neither this Policy nor any purchased coverage section listed in Item 5. of the Declarations may be terminated by the **Parent Company** if the **Policy Period** is more than eighteen (18) months;
 2. ten (10) days after the receipt by the **Parent Company** of a written notice of termination from the Insurer based upon failure to pay premium due, unless such premium is received by the Insurer prior to such tenth (10th) day;
 3. at such other time as may be agreed upon by the Insurer and the **Parent Company**; or
 4. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations.
- B. The Insurer shall refund the unearned premium computed at customary pro-rata rates if this Policy is terminated by the **Parent Company**. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable. If the **Policy Period** is more than eighteen (18) months, the premium charged for this Policy shall be fully earned at inception of the **Policy Period**. The Insurer shall not be required to renew this Policy upon its expiration.
- C. If the Insurer decides not to renew this Policy, the Insurer will mail or deliver to the **Parent Company** written notice of nonrenewal at least sixty (60) days prior to the end of the **Policy Period**.

XVI. OTHER INSURANCE

If any **Loss** is insured under any other valid and collectible policy(ies), prior or current, then this Policy shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this Policy. This Policy will not be subject to the terms of any other insurance. However, this Policy shall apply on a primary basis with respect to (i) any personal umbrella or other personal liability policy which covers an **Insured Person** but not any other **Insured**, or (ii) any private equity or venture capital liability, general partner liability or other similar management or professional liability insurance policy available to an **Insured Person**.

XVII. ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS

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

XVIII. AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of the **Insureds** with respect to giving and receiving notices, paying premiums and receiving any return premiums that may become due under this Policy, and agreeing to endorsements. The **Insureds** agree that the **Parent Company** may act on their behalf with respect to such matters.

XIX. ASSIGNMENT

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

XX. TERMINATION OF PRIOR POLICIES

Any policies issued by the Insurer or its affiliates and specified in Item 12. of the Declarations shall terminate, if not already terminated, as of the inception date of this Policy.

XXI. SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, including without limitation any right of recovery from an **Entity** for **Loss** incurred by **Insured Persons** which is indemnifiable by the **Entity**. The **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insured**. In any subrogation claim against the **Entity** to enforce the **Insured Persons'** right of indemnification, the shareholder and board of director resolutions of the **Entity** shall be deemed to provide indemnification to the fullest extent permitted by law. The Insurer shall not exercise its right of subrogation against an **Insured Person** with respect to payments under any **Liability Coverage Section**.

Any such recoveries, less the cost of obtaining them, will be distributed as follows:

1. to the **Insured** and the insurer of any other policy specifically excess of this Policy, until they are reimbursed for any **Loss** that they sustain that exceeds the sum of this Policy's applicable Limit of Liability and applicable Retention, if any;
2. then to the Insurer, until the Insurer is reimbursed for the payment made under this Policy; and
3. then to the **Insureds**, until they are reimbursed for their payment of any applicable Retention.

In the event the Insurer recovers amounts it paid under this Policy, the Insurer will reinstate the applicable Limit(s) of Liability and Sublimit(s) of Liability of this Policy to the extent of such recovery, less the Insurer's costs incurred in obtaining such recovery. The Insurer assumes no duty to seek a recovery of any amounts paid under this Policy.

XXII. ALTERATION, ASSIGNMENT AND HEADINGS

By acceptance of this Policy, all **Insureds** and the Insurer agree that this Policy (including the Declarations, **Application**, all purchased coverage sections and any endorsements attached to this Policy) constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by endorsement hereto.

This Policy and any all rights hereunder are not assignable without the prior written consent of the Insurer, which consent shall be in the sole and absolute discretion of the Insurer.

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

XXIII. STATE AMENDATORY INCONSISTENCY

In consideration of the premium charged, it is hereby understood and agreed that in the event that there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, then, where permitted by law, the Insurer shall apply those terms and conditions of either the amendatory endorsement or the Policy which are more favorable to the **Insured**.