

**PRIVATE COMPANY
MANAGEMENT LIABILITY POLICY**

Crime Coverage Section



In consideration of the payment of the premium, and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS:

Coverage is provided under the following Insuring Agreements for which a **Per Occurrence Limit of Liability** is stated in ITEM 6 of the Declarations:

(A) Employee Theft Coverage:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** sustained by the **Organization** resulting directly from **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with others.

(B) Forgery or Alteration Coverage:

(1) The Underwriter will pay the **Organization** for loss sustained by the **Organization** resulting directly from **Forgery** or alteration of a **Financial Instrument** by a **Third Party**, including:

- (a) any check or draft made, drawn by, or drawn in the name of the **Organization**, or purportedly made, drawn by or drawn in the name of the **Organization**; and
- (b) any check or draft made or drawn by one purportedly acting as the agent of the **Organization**.

For the purposes of this Insuring Agreement (B), a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original check it replaced.

(2) If the **Organization** is sued for refusing to pay any **Financial Instrument** covered by this Insuring Agreement (B), on the basis that it has been forged or altered, and the **Organization** has obtained the Underwriter's prior written consent to defend against such suit, the Underwriter will reimburse the **Organization** for any reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses that the

Organization incurs in defending such suit, but the Underwriter shall have no duty to defend such suit. Defense expenses paid on behalf of the **Organization** in connection with such suit: (i) shall be in addition to, and not part of, the **Per Occurrence Limit of Liability** stated in ITEM 6(B) of the Declarations, and (ii) shall not be subject to the Deductible set forth in ITEM 6(B) of the Declarations.

(C) **Premises Coverage – Theft of Money or Securities:**

The Underwriter will pay the **Organization** for loss of **Money** or **Securities** resulting directly from **Theft** committed by a person present inside the **Premises** or **Banking Premises**, including the actual destruction or disappearance of **Money** or **Securities** within or from the **Premises** or **Banking Premises**.

Coverage under this Insuring Agreement (C) also includes:

- (1) loss constituting damage to the **Premises** or its exterior resulting directly from an actual or attempted **Theft** of **Money** or **Securities** within the **Premises**, if the **Organization** is the owner of the **Premises** or is liable for damage to the **Premises**; and
- (2) loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located within the **Premises** resulting directly from an actual or attempted **Theft** or unlawful entry into those containers.

(D) **Premises Coverage – Robbery or Safe Burglary of Other Property:**

The Underwriter will pay the **Organization** for loss of or damage to **Other Property** inside the **Premises**, resulting directly from an actual or attempted **Robbery** of a **Custodian**, or stored in a safe or vault resulting directly from an actual or attempted **Safe Burglary**.

Coverage under this Insuring Agreement (D) also includes:

- (1) loss constituting damage to the **Premises** or its exterior resulting directly from an actual or attempted **Robbery** or **Safe Burglary** of **Other Property** within the **Premises**, if the **Organization** is the owner of the **Premises** or is liable for damage to the **Premises**; and
- (2) loss of or damage to a locked safe or vault located within the **Premises** resulting directly from an actual or attempted **Robbery** or **Safe Burglary** of **Other Property**.

(E) **Outside the Premises Coverage:**

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

(F) **Computer Fraud Coverage:**

The Underwriter will pay the **Organization** for loss of or damage to **Money**, **Securities** or **Other Property** resulting directly from the use of any computer to cause a fraudulent or unlawful transfer of that property from inside the **Premises** or **Banking Premises** to a person (other than a **Messenger**) outside the **Premises**, or to a place outside the **Premises**.

(G) **Funds Transfer Fraud Coverage:**

The Underwriter will pay the **Organization** for loss of **Funds** resulting directly from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from an **Insured's Transfer Account**.

(H) **Money Orders and Counterfeit Currency Coverage:**

The Underwriter will pay the **Organization** for loss resulting directly from the **Organization** having accepted in good faith:

- (1) money orders issued by any post office, express company or bank trust that are not paid upon presentation, or
- (2) **Counterfeit Money** of any country that is acquired in the ordinary course of the **Organization's** business,

in exchange for merchandise, **Money** or services.

II. DEFINITIONS

- (A) “**Banking Premises**” means the interior portion of any building occupied by, or any depository or safe maintained and controlled by, any bank, trust company or similar financial institution.

- (B) “**Counterfeit Money**” means an imitation of **Money** that is intended to deceive and to be taken as genuine.
- (C) “**Custodian**” means the **Organization**, or any of the **Organization’s** partners or members, or any **Employee** while having custody and care of property inside the **Premises**. **Custodian** does not include any person while acting as a **Watchperson** or janitor.
- (D) “**Discover**,” “**Discovered**,” or “**Discovery**” means the time when an **Executive** first becomes aware of facts or circumstances which would cause a reasonable person to assume that a loss of a type covered by this Coverage Section has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of the loss may not be known.

“**Discover**,” “**Discovered**,” or “**Discovery**” also means the time when an **Insured** first receives notice of an actual or potential claim in which it is alleged that the **Insured** is liable to a **Third Party** under circumstances which, if true, would constitute a loss under this Coverage Section.

“**Discover**,” “**Discovered**,” or “**Discovery**” does not include knowledge acquired by an **Executive** acting alone or in collusion with an **Employee** committing a **Theft** or **Forgery**.

- (E) “**Employee**” means:
- (1) any natural person:
 - (a) while in the **Organization’s** service and for sixty (60) days after termination of service, unless such termination is due to **Theft** or any dishonest act committed by such natural person;
 - (b) who the **Organization** compensates directly by salary, wages or commissions; and
 - (c) who the **Organization** has the right to direct and control while performing services for the **Organization**;
 - (2) any natural person who is furnished temporarily to the **Organization**:
 - (a) to substitute for a permanent **Employee**, as defined in paragraph (1) above, who is on leave; or
 - (b) to meet seasonal or short-term workload conditions;
- while such natural person is subject to the **Organization’s** direction and control and is performing services for the **Organization**, excluding,

however, any such natural person while having custody and care of **Other Property** outside the **Premises**;

- (3) any natural person who is leased to the **Organization** under a written agreement between the **Organization** and a labor leasing firm, to perform duties related to the conduct of the **Organization's** business, but excluding any temporary **Employee** defined in paragraph (2) above;
- (4) any natural person who is:
 - (a) a trustee, officer, employee, administrator or manager of an **Employee Benefit Plan**, except an administrator or manager of an **Employee Benefit Plan** who is an independent contractor; and
 - (b) an **Executive** of the **Organization** while that person is handling **Money, Securities** or **Other Property** of any **Employee Benefit Plan**;
- (5) any natural person who is a former **Executive** or **Employee** retained by the **Organization** as a consultant while performing services for the **Insured**;
- (6) any natural person who is a guest student of the **Organization** or intern pursuing studies or duties with the **Organization**;
- (7) any **Employee** of an entity merged or consolidated with the **Organization** prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;
- (8) any **Executive** while performing acts with the scope of the usual duties of an **Employee**; or
- (9) any non-compensated natural person other than one who is a fund solicitor, while performing services for the **Organization** that are within the scope of the usual duties of an **Employee**.

Employee does not include any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character that is not specified in this DEFINITION (E).

- (F) “**Employee Benefit Plan**” means any welfare or pension benefit plan shown by written endorsement to this Coverage Section that the **Organization** sponsors and that is subject to the Employee Retirement Income Security Act of 1974 (“ERISA”) and any amendments thereto.
- (G) “**Executive**” means any natural person:
 - (1) duly elected or appointed director, officer, trustee, trustee emeritus, executive director, member of the Board of Managers, duly constituted committee

member, in-house general counsel or risk manager of any **Organization** chartered in the United States of America; or

- (2) holder of a position equivalent to any position described in (1) above in any **Organization** that is chartered in a **Foreign Jurisdiction**.
- (H) “**Financial Instrument**” means any check, draft, promissory note, or similar written promise, order or direction to pay a sum certain in **Money** that is made, drawn by or drawn upon the **Organization** or made or drawn by anyone acting as the **Organization’s** agent, or that is purported to have been so made or drawn.
- (I) “**Forgery**” means the signing of the name of another person or entity with intent to deceive. **Forgery** does not mean a signature which consists in whole or in part of one’s own name signed with or without authority, in any capacity, for any purpose. Facsimile, mechanical or electronic produced or reproduce signatures shall be treated the same as original signatures.
- (J) “**Fraudulent Instruction**” means:
- (1) an electronic, computer, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by the **Organization**, but which was, in fact, fraudulently transmitted by another party without the **Organization’s** knowledge or consent;
 - (2) a written instruction issued by the **Organization**, which was forged or altered by another party without the **Organization’s** knowledge or consent, or which purports to have been issued by the **Organization**, but which was, in fact, fraudulently issued without the **Organization’s** knowledge or consent; or
 - (3) an electronic, computer, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by the **Organization** which purports to have been transmitted by an **Employee**, but which was, in fact, fraudulently transmitted by another party without such **Employee’s** or the **Organization’s** knowledge or consent.
- (K) “**Funds**” means **Money** or **Securities** held in a **Transfer Account**.
- (L) “**Insured**” means the **Organization** and, solely with respect to Insuring Agreement (A), Employee Theft Coverage, of this Coverage Section, any **Employee Benefit Plan**.
- (M) “**Messenger**” means any relative of the **Organization’s** partners, members or **Employees** or any other person authorized by the **Organization** to have custody and care of the **Organization’s** property, while such person has custody and care of the **Organization’s** property outside the **Premises**.

- (N) “**Money**” means currency, coins, and bank notes in current use and having a face value, travelers checks, register checks and money orders held for sale to the public.
- (O) “**Occurrence**” means:
- (1) with respect to Insuring Agreement (A), Employee Theft Coverage, of this Coverage Section, an individual act, the combined total of all separate acts whether or not related, or a series of acts whether or not related, committed by the same **Employee**, acting alone or in collusion with others, during the **Policy Period**;
 - (2) with respect to Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section, an individual act, the combined total of all separate acts whether or not related, or a series of acts whether or not related, committed by the same person, acting alone or in collusion with others, during the **Policy Period**; and
 - (3) with respect to all other Insuring Agreements of this Coverage Section, an individual act or event, the combined total of all separate acts or events whether or not related, or a series of acts or events whether or not related, committed by the same person or entity, acting alone or in collusion with others, during the **Policy Period**.
- (P) “**Other Property**” means tangible property other than **Money** or **Securities** that has an intrinsic value. **Other Property** does not include intangible property such as computer programs, electronic data or any other property excluded from coverage under this Coverage Section.
- (Q) “**Pollutant**” means (1) 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 any state, county, municipal or local counterpart thereof, including, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos products or any noise.
- (R) “**Premises**” means the interior portion of a building occupied by the **Organization** in conducting its business.
- (S) “**Robbery**” means the unlawful taking of **Money**, **Securities** or **Other Property** from the custody and care of a person duly authorized by the **Organization** to have custody of such **Money**, **Securities** or **Other Property** by one who caused or threatened to cause that person bodily harm or committed an obviously unlawful act witnessed by that person.

- (T) “**Safe Burglary**” means the unlawful taking of property from within a locked safe or vault by forcible or violent entry, as evidenced by visible marks upon its exterior, or the unlawful taking of a safe or vault from within the **Premises**.
- (U) “**Securities**” means negotiable and non-negotiable instruments or contracts representing **Money** or **Other Property**, including chips issued by the **Organization**, tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use, and evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Organization**. **Securities** does not include **Money**.
- (V) “**Theft**” means the unlawful taking of **Money**, **Securities** or **Other Property** to the deprivation of an **Insured**.
- (W) “**Third Party**” means a natural person other than (1) an **Employee** or (2) a natural person acting in collusion with an **Employee**.
- (X) “**Transfer Account**” means an account maintained by the **Organization** at a financial institution from which the **Organization** can initiate the transfer, payment or delivery of **Funds** by means of electronic, computer, telegraphic, cable, teletype, telefacsimile or telephone instructions communicated directly through an electronic funds transfer system, or by means of written instructions establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.
- (Y) “**Watchperson**” means any person the **Organization** retains specifically to have custody and care of property inside the **Premises** and who has no other duties.

III. EXCLUSIONS

This Coverage Section does not apply to, and no coverage will be available under this Coverage Section for:

- (A) loss resulting from **Theft, Forgery** or any other dishonest act committed by the **Organization** or any partner or member of the **Organization**, whether acting alone or in collusion with others; provided, that if such loss would otherwise be covered under Insuring Agreement (A) of this Coverage Section, this EXCLUSION III(A) shall not apply to the extent coverage under this Coverage Section is in excess of the amount of such partner’s or member’s percentage ownership interest in the **Organization**, on the day immediately preceding the date of **Discovery**, multiplied by such **Organization’s** total assets as reflected in the **Organization’s** most recent audited financial statement;
- (B) loss caused by an **Employee** if the **Employee** had also committed **Theft, Forgery** or any other dishonest act prior to the effective date of this Coverage Section and the **Organization** or any **Executive** not in collusion with such **Employee** learned of such **Theft, Forgery** or dishonest act prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;

- (C) loss resulting from **Theft, Forgery** or any other dishonest act committed by any **Employee** or **Executive**:
- (1) whether acting alone or in collusion with others, or
 - (2) while performing services for the **Organization** or otherwise;
- provided, that this EXCLUSION III(C) shall not apply to the extent that such loss is covered under Insuring Agreement (A) of this Coverage Section;
- (D) loss resulting from:
- (1) the unauthorized disclosure of the **Organization's** confidential information, including, but not limited to, patents, trade secrets, processing methods or customer lists; or
 - (2) the unauthorized use or disclosure of confidential information of another person or entity which is held by the **Organization** including, but not limited to, financial information, personal information, credit card information, identification information or similar non-public information;
- (E) loss or damage resulting from any seizure or destruction of property by order of any governmental authority;
- (F) loss or damage that is an indirect or consequential result of an **Occurrence** covered by this Coverage Section, including, but not limited to, loss resulting from:
- (1) the **Organization's** inability to realize income, interest or dividends that the **Organization** would have realized had there been no loss of or damage to **Money, Securities** or **Other Property**;
 - (2) payment of damages, fines or penalties of any type for which the **Organization** may be legally liable; or
 - (3) payment of costs, fees or other expenses the **Organization** incurs in establishing either the existence of or the amount of loss under this Coverage Section;
- (G) costs, charges, fees, or expenses incurred or paid by the **Organization** in defending or prosecuting any legal proceeding or claim, except to the extent such costs, charges, fees, costs or expenses are covered under Insuring Agreement (B) of this Coverage Section;
- (H) loss or damage resulting from nuclear reaction, nuclear radiation, or radioactive contamination, or any act or condition incidental thereto;

- (I) loss or damage resulting from (1) any actual, alleged or threatened exposure to, generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any **Pollutants**; or (2) any order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**;
- (J) loss or damage resulting from:
- (1) any declared or undeclared war or civil war;
 - (2) any warlike action by a military force, including governmental or military action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents, or
 - (3) any insurrection, rebellion, revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incidental to any of the foregoing;
- (K) loss of **Money** or **Securities** in any automatic teller machine (“**ATM**”) or while being transported to or from any **ATM**, or any loss of or damage to any **ATM**; or
- (L) loss unless:
- (1) sustained by an **Insured** prior to the termination of this Coverage Section as to such **Insured**, and **Discovered** and written notice thereof is given to the Underwriter within ninety (90) days following such termination;
 - (2) sustained prior to the termination of any Insuring Agreement or any particular coverage afforded under any Insuring Agreement, and **Discovered** and written notice thereof is given to the Underwriter within ninety (90) days following such termination; or
 - (3) sustained prior to the termination of this Coverage Section in its entirety, and **Discovered** and written notice thereof is given to the Underwriter within ninety (90) days following such termination;

provided, that in no event will coverage be available under this Coverage Section for such loss if such loss is covered under any other insurance obtained by the **Insured**, whether from the Underwriter or otherwise, replacing in whole or in part the coverage afforded under this Coverage Section, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

IV. EXCLUSIONS APPLICABLE TO CERTAIN INSURING AGREEMENTS

- (A) No coverage will be available under Insuring Agreement (A), Employee Theft Coverage, of this Coverage Section for:

- (1) loss, or that part of any loss, the proof of which as to the amount or existence of such loss is dependent upon an inventory computation or a profit and loss computation; provided, that this EXCLUSION IV(A)(1) shall not apply to the extent that the **Insured** establishes wholly apart from such computations that the **Insured** has sustained a loss covered under Insuring Agreement (A) of this Coverage Section, in which event, the **Insured** may offer its inventory records and actual physical count of inventory to support the amount of loss claimed;
 - (2) loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities or Other Property**, whether in the name of an **Insured** or whether in a genuine or fictitious account; or
 - (3) loss resulting from (a) **Forgery** or alteration of a warehouse receipt or any papers connected with a warehouse receipt, or (b) issuing, canceling or failing to cancel a warehouse receipt or any papers connected with a warehouse receipt.
- (B) No coverage will be available under Insuring Agreement (C), Premises Coverage – Theft of Money or Securities, Insuring Agreement (D), Premises Coverage – Robbery or Safe Burglary of Other Property, or Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section for:
- (1) loss resulting from accounting or arithmetical errors or omissions;
 - (2) loss resulting from the giving or surrendering of **Money, Securities or Other Property** in any exchange or purchase;
 - (3) loss or damage resulting from fire; provided, that this EXCLUSION IV(B)(3) shall not apply to:
 - (a) loss or damage to **Money or Securities**; or
 - (b) damage to any safe or vault caused by fire and sustained in connection with a **Safe Burglary**;
 - (4) loss of or damage to property contained in any money operated device unless the amount of **Money** deposited in such device is recorded by a continuous recording instrument in such device;
 - (5) loss of or damage to motor vehicles, trailers or semi-trailers or any equipment or accessories attached to any of the foregoing;
 - (6) loss of or damage to **Money, Securities or Other Property**, after it has been transferred or surrendered to a person or place outside the **Premises** or outside of the **Banking Premises**:
 - (a) on the basis of a **Fraudulent Instruction**;

- (b) as a result of a threat to do bodily harm to any person;
- (c) as a result of a threat to do damage to any **Other Property**;
- (d) as a result of a threat to introduce a denial of service attack into the **Organization's** computer system;
- (e) as a result of a threat to introduce a virus or other malicious instruction into the **Organization's** computer system which is designed to damage, destroy or corrupt data or computer programs stored within the **Organization's** computer system;
- (f) as a result of a threat to contaminate, pollute or render substandard your products or goods; or
- (g) as a result of a threat to disseminate, divulge or utilize:
 - (i) the **Organization's** confidential information; or
 - (ii) any weakness in the source code within the **Organization's** computer system;

provided, that this EXCLUSION IV(B)(6) shall not apply to loss of **Money, Securities or Other Property** while outside the **Premises** in the custody and care of a **Messenger** that is otherwise covered under Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section if the **Organization**:

- (aa) had no knowledge of any threat at the time the conveyance began; or
 - (bb) had knowledge of a threat at the time the conveyance began, but the loss was not related to such threat;
- (7) loss of or damage to the **Premises** or its exterior, or to any safe, vault, cash register, cash box, cash drawer or **Other Property** resulting from vandalism or malicious mischief; or
- (8) loss resulting from the **Organization**, or anyone acting on the **Organization's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any **Other Property**.
- (C) No coverage will be available under Insuring Agreement (F), Computer Fraud Coverage, of this Coverage Section for:
- (1) loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value, or other cards or the information contained on such cards;

- (2) loss resulting from a **Fraudulent Instruction** directing a financial institution to transfer, pay or deliver **Funds** from the **Organization's Transfer Account**; or
 - (3) loss, or that part of any loss, the proof of which as to the amount or existence of such loss is dependent upon an inventory computation or a profit and loss computation.
- (D) No coverage will be available under Insuring Agreement (G), Funds Transfer Fraud Coverage, of this Coverage Section for:
- (1) loss resulting from the use of any computer to cause a fraudulent or unlawful transfer of **Money, Securities or Other Property**; or
 - (2) loss due to unintentional errors or omissions or the voluntary giving or surrendering of **Money, Securities or Other Property** in any exchange or purchase.

V. LIMITS OF LIABILITY AND DEDUCTIBLES

The applicable **Per Occurrence Limit of Liability** stated in ITEM 6 of the Declarations shall be the maximum limit of the Underwriter's liability for all loss resulting from an **Occurrence**, regardless of the number of **Insureds** sustaining such loss.

If any loss is covered under more than one Insuring Agreement of this Coverage Section, the largest applicable **Per Occurrence Limit of Liability** of any such Insuring Agreement shall be the maximum of the Underwriter's liability for such loss.

The Underwriter's liability under this Coverage Section shall apply only to that part of each loss which is in excess of the applicable Deductible stated in ITEM 6 of the Declarations. Subject to the terms, conditions and limitations of this Coverage Section, the Underwriter will then pay to the **Organization** the amount of loss in excess of the applicable Deductible, up to the applicable **Per Occurrence Limit of Liability**. If more than one Deductible applies to a single loss, then the largest applicable Deductible shall apply to such loss.

VI. EMPLOYEE BENEFIT PLANS

(A) Solely with respect to loss sustained by an **Employee Benefit Plan**:

- (1) Insuring Agreement (A), Employee Theft Coverage, of this Coverage Section is amended to read in its entirety as follows:

The Underwriter will pay the **Organization** for loss of or damage to **Money, Securities or Other Property** sustained by an **Employee**

Benefit Plan resulting directly from a fraudulent or dishonest act committed by an **Employee**, whether identified or not, acting alone or in collusion with others.

(2) The words “ninety (90) days” are deleted from EXCLUSION III(L) of this Coverage Section wherever they appear and are replaced with the words “one (1) year” in place thereof.

(B) Any payment the Underwriter makes for loss sustained by an **Employee Benefit Plan** will be made directly to the **Employee Benefit Plan** sustaining the loss. If two or more **Employee Benefit Plans** are covered under this Coverage Section, any payment the Underwriter makes for loss:

- (1) sustained by two or more **Employee Benefit Plans**, or
- (2) of **Money, Securities** or **Other Property** commingled among two or more **Employee Benefit Plans**,

resulting directly from an **Occurrence** will be made to each **Employee Benefit Plan** sustaining such loss by prorating the total applicable **Per Occurrence Limit of Liability** of all **Employee Benefit Plans** based upon the proportion that the amount of loss for each **Employee Benefit Plan** bears to the total amount of loss for all **Employee Benefit Plans** sustaining loss.

(C) No Deductible shall apply to any loss sustained by an **Employee Benefit Plan**.

VII. CONDITIONS APPLICABLE TO ALL INSURING AGREEMENTS

(A) Additional Premises or Employees:

If, while this Coverage Section is in effect, the **Organization** establishes any additional **Premises** or hires additional **Employees**, other than through an event described in Section IX(A) of the General Terms and Conditions Section, such **Premises** and **Employees** shall automatically be covered under this Coverage Section. Notice to the Underwriter of such an increase in the number of **Premises** or **Employees** is not required to be given to the Underwriter and no additional premium is required to be paid for the remainder of the **Policy Period**.

(B) Concealment, Misrepresentation or Fraud:

This Coverage Section is void in any case of fraud by any **Insured** at any time as it relates to the coverage provided by this Coverage Section. The Coverage Section is also void if the **Named Organization** or any other **Insured**, at any time, intentionally conceals or misrepresents a material fact concerning this Coverage Section, the property covered under this Coverage Section, the **Insured's** interest in the property covered under this Coverage Section, or a claim under this Coverage Section. If any **Insured** or any **Executive**, has knowledge of any information

relevant to this Coverage Section, then that knowledge will be considered knowledge possessed by every **Insured**.

(C) Duties in the Event of a Loss:

The **Organization** shall, as a condition precedent to coverage under this Coverage Section, upon **Discovery**:

- (1) give written notice to the Underwriter as soon as practicable, but in no event later than sixty (60) days after such **Discovery**. If the **Organization** has reason to believe that any loss, other than a loss described under Insuring Agreement (A), Employee Theft Coverage, or Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section, involves a violation of the law, the **Organization** must also notify local law enforcement authorities;
- (2) submit to examination under oath at the Underwriter's request;
- (3) produce for the Underwriter's examination all pertinent records concerning such loss, including, if possible, any **Financial Instrument** involved in any loss covered under Insuring Agreement (B), Forgery or Alteration Coverage, of this Coverage Section;
- (4) furnish to the Underwriter a detailed, sworn proof of loss as soon as practicable, but in no event later than one hundred twenty (120) days after **Discovery**; and
- (5) cooperate fully with the Underwriter in the investigation and settlement of any loss or claim.

(D) Legal Action Against the Underwriter:

No **Insured** may bring any legal action against the Underwriter:

- (1) unless the **Insured** has fully complied with all of the terms of this Coverage Section and this Policy;
- (2) until ninety (90) days after the date on which the **Insured** filed its proof of loss with the Underwriter in accordance with Section VII(C)(4) of this Coverage Section; and
- (3) unless such legal action is commenced within two (2) years immediately following **Discovery**.

If any limitation of time set forth in this paragraph (D) is prohibited by applicable law, such limitation shall be deemed amended so as to equal the minimum period of limitation required by applicable law.

(E) Liability for Prior Losses:

- (1) If the **Insured Discovers** loss during the **Policy Period** resulting directly from an act, event, or series of acts or events, which would have constituted an **Occurrence** had it taken place during this **Policy Period**, but which took place in whole or in part during the policy period of any prior cancelled insurance issued to the **Named Organization**, or any predecessor in interest, the Underwriter will pay for such loss, provided that:
- (a) this Coverage Section, or such additional coverage providing coverage for the loss, became effective immediately upon cancellation of the prior insurance;
 - (b) such prior insurance continued in full force without interruption from the time such prior loss was sustained until the effective date of this Coverage Section, or such additional coverage providing coverage for the loss;
 - (c) the period of time to discover loss under such prior insurance has expired; and
 - (d) the loss would have been covered under this Coverage Section had it been in effect at the time the act, event, or series of acts or events resulting in such loss took place.

The Underwriter's maximum liability for such loss shall not exceed:

- (i) if the Underwriter or an affiliate of the Underwriter issued such prior insurance, the largest **Per Occurrence Limit of Liability** applicable during the period of loss, whether such limit is written under this Coverage Section or was written under such prior insurance issued by the Underwriter or an affiliate of the Underwriter; or
- (ii) if another insurer issued such prior insurance, the lesser of the applicable **Per Occurrence Limit of Liability** stated in ITEM 6 of the Declarations or the applicable limit of liability applicable during the period of loss written under such prior insurance.

In all events, the applicable Deductible stated in ITEM 6 of the Declarations will apply to such loss.

- (2) In no event shall the **Insured** be entitled to a separate recovery of the applicable limits of any policy in force at the time any part of the loss was sustained, nor shall the **Insured** be entitled to recover the sum of the applicable limits of liabilities of such policies.

(F) Non-Accumulation of Liability

If there is more than one **Insured**, the maximum liability of the Underwriter for loss sustained by any or all **Insureds** shall not exceed the amount for which the Underwriter would be liable if all loss were sustained by any one **Insured**.

Regardless of the number of years this coverage remains in effect or the total premium amounts due or paid, whether under this Coverage Section, or under any prior bond or policy, or under any renewal or replacement of this Coverage Section, the liability of the Underwriter with respect to any loss shall not be cumulative from year to year or from policy period to policy period.

(G) Other Insurance:

This Coverage Section is specifically excess of, and will not contribute with, any other valid and collectible insurance available to any **Insured** or any other party with interest in any loss covered by this Coverage Section, unless such other insurance is written specifically in excess of any applicable **Per Occurrence Limit of Liability** provided by this Coverage Section.

(H) Ownership; Interests Covered:

The Underwriter's liability under this Coverage Section applies only to **Money, Securities or Other Property** owned or leased by the **Organization**, or for which the **Organization** is legally liable, or held by the **Organization** in any capacity whether or not the **Organization** is legally liable therefore. Notwithstanding the foregoing, the insurance provided by this Coverage Section is for the benefit of the **Insured** only and provides no rights or benefits to any other person or entity. Any claim for loss covered under this Coverage Section must be submitted by the **Organization**.

(I) Records:

The **Organization** must keep records of all property covered under this Coverage Section so that the Underwriter can verify the amount of any loss.

(J) Recoveries:

Recoveries for any loss covered under this Coverage Section, whether effected by the Underwriter or the **Insured** or whether effected before or after the Underwriter has made payment under this Coverage Section, less the costs of recovery shall be distributed as follows:

- (1) first, to an **Insured** in satisfaction of its covered loss in excess of the applicable **Per Occurrence Limit of Liability**;
- (2) second, to the Underwriter in satisfaction of the amounts paid to an **Insured** for a covered loss;

- (3) third, to an **Insured** in satisfaction of any Deductible applicable to such loss;
- (4) fourth, to an **Insured** in satisfaction of any amount of such loss not covered by this Coverage Section.

Any amounts recovered from insurance, suretyship, reinsurance, security or indemnity taken for the Underwriter's benefit shall not be deemed a recovery hereunder. Recovery of original **Securities** after duplicates of them have been issued shall not be deemed a recovery hereunder.

(K) Valuation and Settlement:

The value of any loss for purposes of coverage under this Coverage Section shall be determined as follows:

(1) Loss of **Money**:

The Underwriter will, at the **Insured's** option, pay for loss of **Money** up to and including its face value, issued by any country other than the United States of America:

- (a) at face value in currency issued by that country; or
- (b) in the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was **Discovered**.

(2) Loss of **Securities**:

The Underwriter will, at the Underwriter's option:

- (a) pay the market value of such **Securities** at the close of business on the day the loss was **Discovered**, or replace them in kind, in which event the **Insured** must assign to the Underwriter all of its rights, title and interest in and to those **Securities**, or
- (b) pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **Securities**; provided that, the Underwriter's liability will apply only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of: (i) the market value of the **Securities** at the close of business on the day the loss was **Discovered**, or (ii) the **Per Occurrence Limit of Liability** applicable to the **Securities**.

- (3) Loss of or damage to **Other Property**, including damage to the **Premises** or its exterior:

The Underwriter will pay the replacement cost of such **Other Property** without deduction for depreciation; provided, that the Underwriter's liability shall not exceed the lesser of:

- (a) the cost to replace the lost or damaged **Other Property** with property of comparable material and quality and used for the same purpose;
- (b) the amount the **Insured** actually spends that is necessary to repair or replace the lost or damaged **Other Property**; or
- (c) the **Per Occurrence Limit of Liability** applicable to such **Other Property**.

Notwithstanding anything to the contrary contained in this paragraph (K)(3), the Underwriter will not be liable to make payment on a replacement cost basis for any loss or damage to **Other Property** until the lost or damaged **Other Property** is actually repaired and replaced and unless the repairs or replacements are made as soon as reasonably possible after the loss or damage. If the lost or damaged **Other Property** is not repaired or replaced, the Underwriter will pay on an actual cash value basis.

The Underwriter will, at the **Insured's** option, settle loss or damage to **Other Property** other than **Money**:

- (i) in the currency of the country in which the loss or damage occurred; or
- (ii) in the United States of America dollar equivalent of the currency of the country in which the loss or damage occurred determined by the rate of exchange published in *The Wall Street Journal* on the date the loss was **Discovered**.

(L) Termination of Coverage as to Loss Caused by Certain Employees:

Insuring Agreement (A), Employee Theft Coverage, of this Coverage Section shall terminate as to any **Employee** and no coverage will be available for loss caused by any **Employee** which is sustained by an **Insured**:

- (1) after the **Organization** or any **Executive**, not in collusion with such **Employee**, becomes aware of any **Theft, Forgery**, or any other dishonest act committed by such **Employee**, whether such act was committed before or after such **Employee** became employed by the **Organization**; or
- (2) after the date specified in a notice mailed to the **Named Organization** by the Underwriter, which date will be at least sixty (60) days after the date of mailing. The Underwriter will mail or deliver such notice to the **Named**

Organization's address set forth in ITEM 1 of the Declarations. If notice is mailed, proof of mailing will be sufficient proof of notice.

(M) Armored Vehicle Companies:

The Underwriter's liability under Insuring Agreement (E), Outside the Premises Coverage, of this Coverage Section shall apply only to the amount of loss the **Organization** cannot recover:

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

(N) Special Limit of Insurance for Specified Property:

The Underwriter's maximum liability for all loss resulting from any **Occurrence** covered under Insuring Agreement (D), Premises Coverage – Robbery or Safe Burglary of Other Property, Insuring Agreement (E), Outside the Premises Coverage, or Insuring Agreement (F), Computer Fraud Coverage, of this Coverage Section for loss of or damage to:

- (1) precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) manuscripts, drawings or records of any kind, or the cost of reconstructing manuscripts, drawings or records or reproducing any information contained in any manuscripts, drawings or records,

shall be \$5,000, which amount shall be part of, and not in addition to, the applicable **Per Occurrence Limit of Liability** stated in ITEM 6 of the Declarations.