

**SECTION 4: CRIME**  
(TO BE COMPLETED ONLY IF APPLICANT SEEKS CRIME COVERAGE)

**1. ORGANIZATION**

- a. Description of Options: \_\_\_\_\_
- b. Employee Count: \_\_\_\_\_
- c. Domestic: \_\_\_\_\_
- d. Foreign: \_\_\_\_\_
- e. Total: \_\_\_\_\_

**2. AUDIT PROCEDURE**

- a. Is there an audit by an independent CPA? \_\_\_\_\_  
If "yes", how often? \_\_\_\_\_  
If "no", please explain: \_\_\_\_\_
- b. Have the inventory audits of the last 3 years revealed any major shortages? \_\_\_\_\_  
If "yes", please explain: \_\_\_\_\_

**3. INTERNAL CONTROLS**

- a. Are bank accounts reconciled by someone not authorized to deposit or withdraw funds? \_\_\_\_\_  
If "no", please explain: \_\_\_\_\_
- b. Is countersignature of checks required? \_\_\_\_\_  
If "no", please explain: \_\_\_\_\_

**4. EXPERIENCE**

- a. Has any insurance been declined or canceled during the past 3 years? \_\_\_\_\_  
If "yes", please explain: \_\_\_\_\_
- b. List all losses sustained during the past 3 years whether reimbursed or not? \_\_\_\_\_  
If no losses, state "none": \_\_\_\_\_

**SECTION 5: KIDNAP AND RANSOM**  
(TO BE COMPLETED ONLY IF APPLICANT SEEKS KIDNAP AND RANSOM COVERAGE)

**OPERATIONS**

**a. Number of Employees**

Elected Officers: \_\_\_\_\_ Directors: \_\_\_\_\_ All Other Employees: \_\_\_\_\_

**b. List overseas travel by domestic (U. S.) employees by specific country and typical duration (Attach additional sheet if necessary):**

<u>COUNTRY</u>	<u>DURATION OF STAY</u>	<u>COUNTRY</u>	<u>DURATION OF STAY</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**c. List of overseas operations?**

<u>COUNTRY</u>	<u>NUMBER OF EMPLOYEES</u>	<u>COUNTRY</u>	<u>NUMBER OF EMPLOYEES</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- d. Does the Applicant currently have in place any special security or risk management procedures for overseas travel? ☐ Yes ☐ No (if "yes", attach details)
- e. Has there ever been an actual, attempted or threatened kidnapping, extortion or detention against the Applicant or any person(s) to be covered under the policy? ☐ Yes ☐ No (if "yes", attach details)

**SECTION 6: WARRANTY AND SIGNATURE**  
(TO BE COMPLETED BY ALL APPLICANTS)

**1. PRIOR KNOWLEDGE**

Please complete the following paragraph:

No person or entity proposed for coverage is aware of any fact or circumstance or any actual or alleged act, error or omission which he or she has reason to believe might give rise to a future claim that would fall within the scope of the proposed coverage(s), except (if no exceptions, please state) no exceptions

It is agreed that if such fact or circumstance or actual or alleged act, error or omission exists, whether or not disclosed, any claim arising therefrom is excluded from the proposed coverage(s).

**2. FALSE INFORMATION**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance, or statement of claim containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime in certain jurisdictions.

**3. DECLARATION**

The undersigned declares that to the best of his or her knowledge and belief that statements set forth herein are true. The signing of this Application does not bind the Insurer or the proposed Insureds to effect insurance. The undersigned agrees that this Application and its attachments shall be the basis of the contract should a policy be issued and shall be deemed attached to and shall form part of the policy. The Insurer is hereby authorized to make any investigation and inquiry in connection with this Application that it deems necessary.

The undersigned, on behalf of all proposed Insureds, agrees that if the information in the declarations and representations contained in the Application and its attachments, materially changes between the date of the Application and the inception of the proposed coverage, the undersigned will immediately report in writing to the Insurer such change, and the Insurer may withdraw or modify any outstanding quotations or agreements to bind coverage. The undersigned acknowledges and agrees that the Insurer's receipt of such written report, prior to inception of the proposed coverage, is a condition precedent to coverage.

**MUST BE SIGNED BY CHAIRMAN OF THE BOARD OR PRESIDENT OF THE PARENT COMPANY ON BEHALF OF ALL INSUREDS.**

SIGNATURE



TITLE Chairman and CEO

DATE

12/8/09

## FRAUD WARNINGS

- AR Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in any application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
- CO It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the insurance company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.
- DC *It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fine. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant*
- FL Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
- KY ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.
- LA *Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.*
- ME *It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the insurance company. Penalties may include imprisonment, fines or a denial of insurance benefits.*
- NJ Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
- NM ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES.
- NY ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.
- OH An person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
- OK WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
- PA Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such persons to criminal and civil penalties.
- TN It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purposes of defrauding the company. Penalties include imprisonment, fines and denial of coverage.
- VA *It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the insurance company. Penalties include imprisonment, fines and denial of insurance benefits.*

Zurich American Insurance Company ("Insurer")  
Declarations



Policy Number: DOC 9140750 01

Renewal of Number: DOC 9140750 00

Item 1. Named Insured and Address: **SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

Item 2. Coverage Sections:

Section 1. Directors & Officers Liability	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Company Liability Coverage	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Section 2. Employment Practices Liability	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Section 3. Fiduciary Liability	Included <input checked="" type="checkbox"/>	Not Included <input type="checkbox"/>
Section 4. Crime	Included <input type="checkbox"/>	Not Included <input checked="" type="checkbox"/>
Section 5. Kidnap and Ransom	Included <input type="checkbox"/>	Not Included <input checked="" type="checkbox"/>

*Note: If neither "included" nor "Not Included" is designated for any Coverage Section, such Coverage Section is not included*

Item 3. Limit of Liability:

(A) Aggregate each **Policy Period** for all Coverage Sections combined: \$ 10,000,000

Note: For Coverage Sections 1, 2, 3 and 5 (if included), the Limit of Liability  
and the Self Insured Retention are reduced or exhausted by **Defense Costs**.

(B) Additional Aggregate each **Policy Period** for excess **Defense Costs** under Coverage Section 2: \$N/A

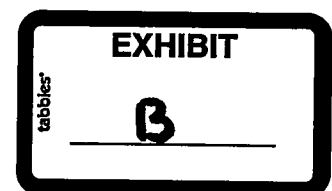
(C) Coverage Section 4 Sublimits of Liability

Insuring Agreement I.A.	\$
Insuring Agreement I.B.	\$
Insuring Agreement I.C.	\$
Insuring Agreement I.D.	\$
Insuring Agreement I.E.	\$
Insuring Agreement I.F.	\$
Insuring Agreement I.G.	\$

(D) Coverage Section 5 Sublimits of Liability

1. Aggregate Sublimit of Liability:	\$
2. Each <b>Single Loss</b> under all Insuring Agreements, combined:	\$
3. Each <b>Single Loss</b> under Insuring Agreement A (Ransom/Extortion):	\$
4. Each <b>Single Loss</b> under Insuring Agreement B (In Transit/Delivery):	\$
5. Each <b>Single Loss</b> under Insuring Agreement C (Expenses):	\$
6. Each <b>Single Loss</b> under Insuring Agreement D (Defense):	\$

Item 4. **Policy Period:** From 12:01 A.M. on 12/13/2007  
To 12:01 A.M. on 12/13/2008  
Local time at the address shown in Item 1.



Item 5. Self Insured Retention:

Section 1.	Directors & Officers Liability		
	Insuring Agreement A	\$0	
	Insuring Agreement B	\$75,000	each Claim
	Insuring Agreement C (if included)	\$75,000	each Claim
Section 2.	Employment Practices Liability	\$100,000	each Claim
Section 3.	Fiduciary Liability	\$0	each Claim
Section 4.	Crime	\$	each Occurrence
Section 5.	Kidnap and Ransom	\$	each Single Loss

Item 6. Extended Reporting Period (applicable to Coverage Sections 1, 2, and 3 only):

(A) Additional Premium: 125% (B) Additional Period: 1 Year

Item 7. Continuity Date:

Section 1.	Directors & Officers Liability	12/13/2006
Section 2.	Employment Practices Liability	12/13/2006
Section 3.	Fiduciary Liability	12/13/2007

Item 8. Prior or Pending Date:

Section 1.	Directors & Officers Liability	12/13/2006
Section 2.	Employment Practices Liability	12/13/2006
Section 3.	Fiduciary Liability	12/13/2007

Item 9. Employee Benefit Plan(s) covered under Coverage Section 4:

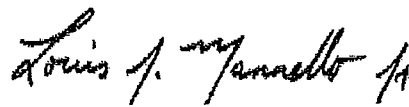
Item 10. Endorsements Effective at Inception: Numbers 1- 20 as attached.

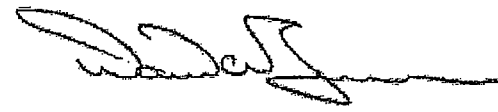
SECTIONS 1, 2, AND 3 OF THIS POLICY ARE CLAIMS MADE COVERAGES. EXCEPT TO SUCH EXTENT AS MAY BE PROVIDED HEREIN, COVERAGE PROVIDED BY THESE COVERAGE SECTIONS (IF INCLUDED) IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ CAREFULLY.

  
Authorized Representative

7/11/08  
Date

  
President

  
Corporate Secretary

# Zurich Private Solutions - Enhanced



Refer to Section III. of the COMMON POLICY TERMS, and the DEFINITIONS appearing in each Coverage Section attached for the special meaning of words and phrases that appear in bold.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine the Company's rights and duties and what is and is not covered.

Except for these COMMON POLICY TERMS or unless stated to the contrary in any Coverage Section, the terms and conditions of each Coverage Section apply only to that Coverage Section and shall not apply to any other Coverage Section. If any provision in the COMMON POLICY TERMS is inconsistent or in conflict with the terms and conditions of any Coverage Section, the terms and conditions of such Coverage Section shall control for purposes of that Coverage Section.

In consideration of the payment of the premium, the undertaking of the **Insureds** to pay the Self Insured Retention, if any, and in reliance upon the statements in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the applicable Limit of Liability and the Exclusions, Conditions and other terms of this policy (including COMMON POLICY TERMS, all applicable Coverage Sections included and any endorsements attached thereto), the Zurich American Insurance Company (herein called the Insurer) and the **Insureds** agree as follows:

## COMMON POLICY TERMS

### I. LIMIT OF LIABILITY AND SELF INSURED RETENTION

- A. Except as otherwise provided in Subsection I.B. below, the maximum aggregate liability under this policy for all **Loss**, whether covered under one or more Coverage Sections, shall be the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations. **Defense Costs** are part of and not in addition to any applicable Limit of Liability. Subject to the Aggregate Limit of Liability set forth in Item 3.(A), the Sublimits of Liability set forth in Item 3.(C) and 3.(D) of the Declarations are the Insurer's maximum liability under this policy for **Loss** subject to such Sublimits. Such Sublimits shall be part of and not in addition to the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations.
- B. Notwithstanding Subsection I.A. above, if the Aggregate Limit of Liability set forth in Item 3.(A) of the Declarations is exhausted by the Insurer's payment of **Loss** under this policy, the Insurer's maximum liability under Coverage Section 2, if included, for any **Defense Costs** which are otherwise covered under Coverage Section 2 and which are incurred after such Aggregate Limit of Liability is exhausted, shall be the Additional Aggregate Limit of Liability set forth in Item 3.(B) of the Declarations.
- C. Except as otherwise provided in any Coverage Section, the Insurer's liability with respect to **Loss** arising from each **Claim** covered under Coverage Sections 1, 2 or 3, each **Occurrence** covered under Coverage Section 4, and each **Single Loss** covered under Coverage Section 5, shall apply only to that part of **Loss** which is excess of the applicable Self Insured Retention set forth in Item 5. of the Declarations. If different portions of a single **Claim**, **Occurrence** or **Single Loss** are subject to different Self Insured Retentions, the applicable Self Insured Retention will be applied separately to each portion of such **Claim**, **Occurrence** or **Single Loss**, but the sum of such Self Insured Retentions shall not exceed the largest applicable Self Insured Retention.
- D. For the purposes of Coverage Sections 1, 2, and 3, if included, all **Claims** arising out of the same **Wrongful Act**, **Wrongful Employment Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed one **Loss** on account of one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against the **Insureds**, regardless of whether such date is before or during the **Policy Period**.
- E. **Defense Costs** shall be part of and not in addition to the applicable Limit of Liability set forth in Item 3. of the Declarations, and **Defense Costs** shall reduce such Limit of Liability. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

### II. EXTENDED REPORTING PERIOD

- A. If the Insurer or the **Named Insured** fails or refuses to renew this policy, or if the **Named Insured** cancels this policy, then the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 6.(A) of the Declarations,



to an Extended Reporting Period afforded under Coverage Sections 1, 2 and 3, if included, for the period set forth in Item 6.(B) of the Declarations following the effective date of such nonrenewal or cancellation, but only with respect to covered **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) taking place prior to the effective date of such nonrenewal or cancellation. This right of extension shall lapse unless written notice of an election to purchase this Extended Reporting Period, together with payment of the additional premium due, is given by the **Named Insured** to the Insurer within thirty (30) days following the effective date of nonrenewal or cancellation of the policy. If such written notice is not mailed to the Insurer within thirty (30) days or the premium is not paid when due, then the **Named Insured** shall not at a later date be entitled to purchase an Extended Reporting Period.

- B. The entire additional premium for the Extended Reporting Period shall be deemed fully earned and non-refundable as of the effective date of the Extended Reporting Period.
- C. The election of the Extended Reporting Period shall not in any way reinstate or increase the Limit of Liability in Item 3. of the Declarations. The Limit of Liability applicable to the Extended Reporting Period shall be the Limit of Liability remaining under this policy for the **Policy Period**.

### III. DEFINITIONS

- A. **Application** means (1) all signed applications, including attachments and materials submitted therewith, for this policy and for any policy issued by the Insurer of which this policy is a direct or indirect renewal or replacement, and (2) any public documents filed by the **Company** with any federal, state, local or foreign regulatory or administrative authority.
- B. **Company**, either in the singular or plural, means the **Named Insured** and all **Subsidiaries**.
- C. **Continuity Date** means the date(s) indicated in Item 7. of the Declarations, upon which the first policy for the coverages specified in Item 7. of the Declarations was issued by any insurer to the **Named Insured** provided such coverage was continuously renewed and maintained in effect up to the inception date of this policy.
- D. **Executive Officers**, either in the singular or plural, means the chairperson, president, chief executive officer, chief financial officer, general partner, **Manager**, in-house general counsel, or equivalent executive, and with respect to Coverage Section 2, if included, the director of human resources or equivalent position.
- E. **Insured(s)** means, with respect to any Coverage Section included, only those organizations, plans and natural persons covered under such Coverage Section.
- F. **Interrelated Wrongful Acts** means all **Wrongful Acts**, as defined in Coverage Sections 1, and 3, or **Wrongful Employment Acts**, as defined in Coverage Section 2, that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes. All **Wrongful Acts** or **Wrongful Employment Acts** that are alleged in the same **Claim** shall be considered **Interrelated Wrongful Acts**.
- G. **Loss** means, with respect to any Coverage Section, any damages, settlements, judgments, costs, expenses or other loss covered under such Coverage Section.
- H. **Manager**, either in the singular or plural, means any natural person who is legally responsible in whole or in part for the supervision and/or management of any **Company** that is a limited liability company, including without limitation, managers, managing members, directors, officers, or any natural person serving in an equivalent position with the **Company**.
- I. **Named Insured** means the organization designated in Item 1. of the Declarations.
- J. **Policy Period** means the period of time specified in Item 4. of the Declarations, subject to prior termination in accordance with Subsection IV.F. of the COMMON POLICY TERMS. If this period is less than or greater than one (1) year, then the respective aggregate Limit of Liability specified in Item 3. of the Declarations shall be the Insurer's maximum liability under this policy for the entire period with respect to **Loss** otherwise subject to such aggregate Limit of Liability.
- K. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- L. **Subsidiary**, either in the singular or plural, means any corporation in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by the **Named Insured** or by one or more **Companies**.



#### IV. CONDITIONS

It shall be a condition precedent to the Insurer's obligations under this policy that the Insured comply with all of the terms and conditions set forth in this policy.

##### A. INSURED'S DUTIES IN THE EVENT OF A CLAIM OR LOSS

###### 1. Applicable To Coverage Sections 1,2, and 3:

- a. The Insured shall give written notice to the Insurer of any Claim otherwise covered under this policy as soon as practicable but in no event later than sixty (60) days after the end of the Policy Period, if applicable, or within the Extended Reporting Period, if exercised.
- b. The Insureds shall cooperate with the Insurer, including providing all information requested by the Insurer regarding any Claim and cooperating fully with the Insurer in the defense, investigation and settlement of any Claim. Upon the Insurer's request, the Insureds shall submit to examination by a representative of the Insurer, under oath if required. In addition, upon the Insurer's request, the Insureds shall attend hearings, depositions, trials, mediations and arbitrations and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits and trials, all without charge to the Insurer.
- c. The Insureds shall follow the Insurer's direction regarding whether to accept or reject a demand for arbitration of any Claim, and shall not voluntarily agree to arbitrate a Claim without the Insurer's written consent.
- d. The Insureds agree that in the event of a Claim the Insureds will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.
- e. The Insureds agree not to settle or offer to settle any Claim, incur any Defense Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Insurer's prior written consent. The Insurer shall not be liable for any settlement, Defense Costs, assumed obligation or admission to which it has not consented. Except for Coverage Section 1, if the Insureds refuse to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendations, then subject to the applicable Limit of Liability, the Insurer's liability under Coverage Section 2 and 3 with respect to such Claim shall not exceed the amount for which such Claim could have been settled by the Insurer plus Defense Costs up to the date the Insureds refused to settle such Claim. The Insurer and the Insureds shall not unreasonably withhold any consent referenced in this paragraph.

###### 2. Applicable To Coverage Sections 4 and 5:

In the event of a Loss otherwise covered under Coverage Section 4 or 5, if included, the Insured shall give notice to the Insurer and shall provide such additional information and comply with such other conditions as set forth in such respective Coverage Section.

##### B. NOTICE OF POTENTIAL CLAIM (Coverage Section 1, 2 and 3 only)

If during the Policy Period an Insured becomes aware of and gives written notice to the Insurer of a Wrongful Act or a Wrongful Employment Act that occurred during the Policy Period and that could give rise to a Claim against the Insured under Coverage Section 1, 2 or 3, then any Claim subsequently arising out of such Wrongful Act or Wrongful Employment Act shall be deemed for purposes of this policy to have been made during the Policy Period in which the written notice was submitted to the Insurer, provided such written notice to the Insurer includes all of the following:

1. the names of all potential claimants;
2. the identity of each Insured who committed the Wrongful Act or Wrongful Employment Act;
3. a detailed description of the Wrongful Act or Wrongful Employment Act;
4. the damage which has or may result from the Wrongful Act or Wrongful Employment Act; and
5. the circumstances by which the Insured first became aware of such Wrongful Act or Wrongful Employment Act.

C. NOTICE

All notices under any provision of this policy shall be in writing and properly addressed as follows:

1. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in Item 1. of the Declarations.
2. Notice to the Insurer of any **Claim**, potential **Claim**, or **Loss** shall be given to the Insurer at the following address:  
Management Solutions Group  
Attn: Claim Director  
Zurich North America – Specialties  
P.O. Box 307010  
Jamaica, New York 11430-7010
3. All other notices to the Insurer under this policy shall be given to the following address:  
Management Solutions Group  
One Liberty Plaza  
New York, New York 10006
4. Any notice to the Insurer of any **Claim**, potential **Claim**, or **Loss** shall designate the Coverage Section(s) under which the notice is being given and shall be treated as notice under only the Coverage Section(s) so designated.
5. 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.

D. REPRESENTATIONS AND SEVERABILITY

In granting coverage to the **Insureds** under any Coverage Section, the Insurer has relied upon the declarations and statements in the **Application** and upon any declarations and statements in the original written application submitted by the **Insureds** to another insurer with respect to the similar coverage incepting as of the respective **Continuity Date** set forth in Item 7. of the Declarations. All such declarations and statements are the basis of this policy and shall be considered as incorporated in and constituting part of this policy.

The **Insureds** represent that all such declarations and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this policy. The **Insureds** agree that in the event that any such declarations and representations are untrue, this policy shall be void *ab initio* and shall not afford any coverage with respect to any of the following **Insureds**:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. the **Company**, to the extent it indemnifies any **Insured Person** referenced in 1. above;
3. the **Company** and any **Benefit Program** if any **Executive Officer** of such **Company** or **Benefit Program** knew the facts that were not truthfully disclosed in the **Application**; and
4. all **Insureds** if the person signing the **Application** knew the facts that were not truthfully disclosed in the **Application**;

whether or not the **Insured Person** or **Executive Officer** described in 1., 2., or 3. above knew that the **Application** contained such untruthful disclosure.

E. OTHER INSURANCE

If any **Loss** under this policy is insured under any other valid and collectible insurance 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 the Limit of Liability in this policy.

F. POLICY TERMINATION

This policy and any included Coverage Section shall terminate at the earliest of the following times:

1. upon expiration of the **Policy Period** as set forth in Item 4. of the Declarations;

2. the effective date of termination specified in written prior notice by the Named Insured to the Insurer;
3. ten (10) days after receipt by the Named Insured of a written notice of termination from the Insurer for failure to pay a premium when due; or
4. at such other time as may be agreed upon by the Named Insured and the Insurer.

The Insurer shall refund the unearned premium computed at customary short rates if this policy is terminated by the Named Insured. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of termination.

**G. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery. The Insureds shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the Insureds. The Insureds shall do nothing to prejudice such rights.

**H. ACTION AGAINST THE INSURER**

No action shall lie against the Insurer unless there has been full compliance with all the terms and conditions of this policy, and both the Insured's liability and the amount of Insured's obligations to pay have been finally determined either by judgment against the Insured after an actual trial, or by agreement of the Insured, the claimant and Insurer, in writing.

No person or organization shall have any right under this policy to join the Insurer as a party to any action against the Insured to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or any legal representatives thereof.

**I. POLICY TERRITORY**

Coverage under this policy shall extend anywhere in the world.

**J. AUTHORIZATION**

The Named Insured shall act on behalf of all Insureds with respect to the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, giving and receiving any notice, and the exercise of the rights provided in Section II. of the COMMON POLICY TERMS.

**K. ASSIGNMENT**

The contractual rights of the Insured under this policy shall not be assignable to any other person or entity.

**L. BANKRUPTCY OR INSOLVENCY**

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

If a liquidation or reorganization proceeding is commenced by any Company (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "Bankruptcy Law") then, in regard to a covered Claim under this policy, the Insureds hereby:

1. waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this policy under such Bankruptcy Law; and
2. agree not to oppose or object to any efforts by the Insurer or any Insured to obtain relief from any stay or injunction applicable to the proceeds of this policy as a result of the commencement of such liquidation or reorganization proceeding.

**M. CHANGES**

Notice to any agent or representative, or knowledge possessed by any agent, representative or any other person shall not effect a waiver or a change in any part of this policy, or prevent the Insurer from asserting any rights under the terms of this policy; nor shall the terms of this policy be waived or materially changed, except by endorsements issued to form a part of this policy.

N. SPOUSES, ESTATES AND LEGAL REPRESENTATIVES (Coverage Section 1, 2, and 3 only)

1. If a **Claim** against a natural person **Insured** includes a claim against the **Insured's** lawful spouse solely by reason of (a) such spouse's legal status as a spouse of the **Insured**, or (b) such spouse's ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) of the **Insured**, all loss which such spouse becomes legally obligated to pay by reason of such **Claim** shall be treated for purposes of this policy as **Loss** which the **Insured** becomes legally obligated to pay on account of the **Claim** made against the **Insured**. All terms and conditions of this policy, including without limitation the Self Insured Retention, applicable to **Loss** incurred by such **Insured** in the **Claim** shall also apply to such spousal loss. This coverage extension does not apply to the extent the **Claim** alleges any wrongful act or omission by the **Insured's** spouse.
2. This policy shall afford coverage for **Claims** for the **Wrongful Acts** (under Coverage Sections 1 and 3, if included) or **Wrongful Employment Acts** (under Coverage Section 2, if included) of any **Insured** that are made against the estates, heirs, legal representatives or assigns of any **Insured** who is deceased, incompetent, insolvent or bankrupt to the extent that, in the absence of such death, incompetence, insolvency or bankruptcy, such **Claim** would have been covered by this policy.

O. VALUATION AND TERRITORY

The Limit of Liability, Self Insured Retention, **Loss**, premium 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 The United States of America 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, except as otherwise provided in Coverage Section 4 or 5, if included.

# COVERAGE SECTION 1.

## DIRECTORS & OFFICERS LIABILITY AND COMPANY REIMBURSEMENT



### I. INSURING AGREEMENTS

#### A. Directors and Officers Liability Coverage

The Insurer shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period**.

#### B. COMPANY Reimbursement Coverage

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period**.

#### C. COMPANY LIABILITY COVERAGE

If Company Liability Coverage is included pursuant to Item 2. of the Declarations, the Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay on account of any **Claim** first made against the **Company** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period**.

#### D. OUTSIDE POSITION COVERAGE

Coverage under this Coverage Section for an **Insured Person** in an **Outside Position**:

1. shall be specifically excess of any indemnity payment by, or any valid and collectible insurance maintained by, the **Outside Entity** or any other organization (other than the **Company**);
2. solely with respect to an **Insured Person** in an **Outside Position** with an **Outside Entity** described in Subsection III.G.2 of this Coverage Section, shall not apply (a) to Insuring Agreement B, or (b) to any **Loss** under Insuring Agreement A for which the **Company** is permitted or required by common or statutory law, but fails or refuses other than for reason of **Financial Impairment**, to indemnify the **Insured Person**; and
3. shall not extend to the **Outside Entity** or to any director, officer, trustee, governor, manager, or other equivalent executive or employee of the **Outside Entity** other than the **Insured Person** serving in the **Outside Position**.

If the Insurer or any affiliate of the Insurer makes payment under another policy on account of any **Claim** also covered under this Coverage Section by reason of coverage for an **Insured Person** in an **Outside Position**, the Insurer's applicable Limit of Liability under this policy with respect to such **Claim** shall be reduced by the amount of such payment.

### II. DEFENSE AND SETTLEMENT

Subject to this Section II., it shall be the duty of the **Insureds** and not the duty of the Insurer to defend **Claims** against the **Insureds**. 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 but not limited to the negotiation of a settlement, of any **Claim** that appears reasonably likely to be covered in whole or in part by this Coverage Section.

### III. DEFINITIONS

For purposes of this Coverage Section:

#### A. **Claim** means:

1. a written demand for monetary damages or other relief;
2. a civil proceeding commenced by the service of a complaint or similar pleading;
3. a criminal proceeding commenced by a return of an indictment; or
4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

against any **Insured Person** or, with respect to Insuring Agreement C., against the **Company** for a **Wrongful Act**, including any appeal therefrom.



- B. **Defense Costs** means that part of **Loss** consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds; provided, however, the Insurer has no obligation to apply for or to furnish any such bond.
- C. **Financial Impairment** means the status of the **Company** resulting from:
1. the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**;
  2. the **Company** becoming a debtor in possession; or
  3. the **Company's** financial inability to pay its debts in the ordinary course of business as they become due.
- D. **Insured**, either in the singular or plural, means one or more of the following:
1. the **Company** if **Company Liability Coverage** is included pursuant to Item 2., of the Declarations; or
  2. the **Insured Persons**.
- E. **Insured Capacity** means the position or capacity described in the definition of **Insured Persons**.
- F. **Insured Persons**, in the singular or plural, means:
1. any person who was, is, or shall be a duly elected director or a duly appointed or elected officer, **Manager** or trustee of the **Company**, or with respect to a **Subsidiary** chartered outside the United States, their functional equivalent; and
  2. any duly elected or appointed officer or **Manager** of the **Company** while serving in an **Outside Position**.
- G. **Loss** means the amount which the **Insured Persons** or, with respect to Insuring Agreement C., the **Company** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements and **Defense Costs**. **Loss** does not include (1) any amount not indemnified by the **Company** for which the **Insured Persons** are absolved from payment by reason of any covenant, agreement or court order, (2) any amount incurred by the **Company** (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any actual or potential **Claim** by or on behalf of the **Company**, (3) any amount incurred in the prosecution of an affirmative claim, counterclaim or cross claim, (4) any amount allocated pursuant to Subsection V.B. of this Coverage Section to uncovered loss, (5) fines or penalties imposed by law, punitive or exemplary damages, or the multiple portion of any multiplied damage award, (6) taxes, (7) the cost to comply with any injunctive or other monetary relief or any agreement to provide such relief, or (8) matters uninsurable under the law pursuant to which this policy is construed.
- However, this definition does not exclude from coverage punitive or exemplary damages or the multiple portion of a multiplied damage award to the extent such damages or damage award: (1) is insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this policy or the **Wrongful Act**; and (2) is less than \$100,000, such amount to be part of and not in addition to, the applicable Limit of Liability set forth in Item 3. of the Declarations.
- H. **Outside Entity** means:
1. any non-profit corporation, organization, foundation or eleemosynary institution exempt from federal income tax as an organization described in Section 501(c)(3), Internal Revenue Code of 1986, as amended; and
  2. any other corporation or organization while such corporation or organization (a) has no outstanding securities that have been offered, sold or distributed to the public, and (b) has less than \$50 million of total consolidated assets as reflected in the corporation's or organization's audited consolidated financial statements.
- I. **Outside Position** means the position of director, officer, manager, trustee, governor or equivalent executive position with any **Outside Entity**, provided that service in such position was at the specific request of the **Company** or was part of the duties regularly assigned by the **Company**.
- J. **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted (1) by any of the **Insured Persons**, individually or otherwise, in his or her **Insured Capacity**, or any matter claimed against the **Insured Persons** solely by reason of their serving in such **Insured Capacity**, or (2) solely with respect to Insuring Agreement C., if included, by the **Company**.

**V. EXCLUSIONS**

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of any **Claim** made against any **Insured**:



1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a direct or indirect renewal or replacement;
2. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against the **Company** or any **Insured Person** on or prior to the respective Prior or Pending Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. brought or maintained by or on behalf of the **Company** or any **Insured Person** in any capacity except:
  - a. a **Claim** that is a derivative action brought or maintained on behalf of the **Company** by one or more persons who are not **Insured Persons** and who bring and maintain the **Claim** without the solicitation, assistance or active participation of the **Company** or any **Insured Person**; or
  - b. **Defense Costs** incurred by an **Insured Person** in an employment related **Claim** against such **Insured Person** in his or her capacity as an officer of the **Company**; or
  - c. a **Claim** brought or maintained by any **Insured Person** for contribution or indemnity, if the **Claim** directly results from another **Claim** covered under this Coverage Section;
4. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of federal, state or local law, but only with respect to any plan sponsored by the **Company** for the benefit of its own employees;
5. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
6. for service by the **Insured Person** in any position or capacity in any organization other than the **Company** even if the **Company** directed or requested the **Insured Person** to serve in such other position or capacity, except to the extent such coverage is otherwise provided by this Coverage Section or by written endorsement to this Coverage Section for **Outside Positions**;
7. which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, or which is otherwise based upon, arising out of or attributable to (a) any request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**, or any voluntary decision to do so; or (b) any demand, suit or proceeding by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**;  
 including but not limited to any **Claim** for financial loss to any **Company**, its security holders or its creditors based upon, arising out of, or attributable to the matters otherwise described in this exclusion;
8. for libel, slander, false arrest, detention or imprisonment, malicious prosecution, violation of any right of privacy, wrongful entry or eviction or other invasion of any right of private occupancy;
9. based upon, arising out of, or attributable to any **Wrongful Act** occurring prior to the **Continuity Date**, if on such date any **Insured** knew or reasonably could have foreseen that such **Wrongful Act** could lead to a **Claim**;
10. based upon, arising out of, or attributable to any actual or attempted offering, solicitation, sale, distribution, or issuance of securities to the public, whether or not a prospectus has been issued; provided, however, if at least thirty (30) days prior to such event, the Insurer is given written notice of such event by the **Named Insured** together with any information requested by the Insurer, the Insurer shall offer a proposal to provide coverage for such event, subject to such terms, conditions and additional premium as the Insurer shall determine at its sole discretion;
11. for **Wrongful Acts** taking place on or after the date any securities of the **Company** first become listed on any national exchange or the Nasdaq National Market or the Nasdaq SmallCap Market, if such **Claim** is based upon, arises out of or is attributable to any actual or attempted purchase, sale, distribution, or issuance of, or offer to purchase or sell, securities issued by the **Company**, whether such purchase, sale, distribution, issuance or offer involves a transaction with the **Company** or occurs in the open market, including but not limited to any such **Claim** alleging violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Racketeer Influenced and Corrupt Organizations Act, any applicable state "blue-sky" law, any other federal, state, local or provincial common or statutory law relating to securities, or any rules or regulations promulgated under any of the foregoing, all as amended;

12. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation;
13. based upon, arising out of, or attributable to such **Insured** gaining in fact any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled;
14. brought or maintained by or on behalf of a past, present or prospective employee of the **Company** in his or her capacity as such, including without limitation any **Claim** for **Wrongful Acts** based upon, arising out of, or attributable to the **Company's** actual or prospective employment of such person, the termination of such employment, or any discriminatory or tortious conduct against such person in his or her capacity as such, provided that this Exclusion shall not apply to **Defense Costs** incurred by an **Insured Person** in any such **Claim** against the **Insured Person** in his or her capacity as an officer of the **Company**.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying Exclusions 12. and 13. above. Only facts pertaining to and knowledge possessed by the Chairperson, President, Chief Executive Officer, Chief Financial Officer or in-house General Counsel of the **Company** shall be imputed to the **Company** for purposes of applying Exclusions 12. and 13. above.

- B. The Insurer shall not be liable under Insuring Agreement C., if included, of this Coverage Section for **Loss** on account of any **Claim**:
  1. based upon, arising out of, or attributable to the actual or proposed payment by the **Company** of allegedly inadequate consideration in connection with the **Company's** purchase of securities issued by any **Company**; provided that this Exclusion shall not apply to **Defense Costs**;
  2. based upon, arising out of, or attributable to any actual or alleged liability of the **Company** under any written or oral contract or agreement, provided that this Exclusion shall not apply to the extent that the **Company** would have been liable in the absence of the contract or agreement;
  3. based upon, arising out of, or attributable to the rendering or failure to render any service to a customer or client of the **Company**;
  4. based upon, arising out of, or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets; or
  5. based upon, arising out of, or attributable to libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium.
- C. The Insurer shall not be liable for **Loss** on account of any **Claim** made against an **Insured Person** while serving in an **Outside Position**:
  1. based upon, arising out of, or attributable to any **Wrongful Acts** taking place in whole or in part before the date such **Insured Person** began to serve in the **Outside Position** or after the date such **Insured Person** ceases to serve in the **Outside Position**; or
  2. brought or maintained (a) by the **Outside Entity**, or (b) on behalf of the **Outside Entity** if any director, officer, manager, trustee, governor or equivalent executive of the **Outside Entity** instigates, assists or participates in the prosecution of such **Claim**, or (c) by any director, officer, manager, trustee, governor or equivalent executive of the **Outside Entity**.

#### V. CONDITIONS

##### A. PRESUMPTIVE INDEMNIFICATION

If the **Company** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to indemnify the **Insured Persons** for **Loss**, then, notwithstanding any other conditions, provisions or terms of this policy to the contrary, any payment by the Insurer of such **Loss** shall be subject to the Insuring Agreement B. Self Insured Retention set forth in Item 5. of the Declarations and all exclusions set forth in Section IV.

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

##### B. ALLOCATION

If both Loss covered by this Coverage Section and loss not covered by this Coverage Section are incurred either because a **Claim** against **Insureds** includes both covered and uncovered matters or because a **Claim** is made against both **Insureds** and others, including the **Company** if Insuring Agreement C. is not included, then the **Insured Persons**, the **Company** and the Insurer shall allocate such amount between covered Loss and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters and the relative benefits of the parties arising from the defense or settlement of such **Claim**.

If the Insurer, the **Insured Persons** and the **Company** agree on an allocation of **Defense Costs**, the Insurer shall advance on a current basis **Defense Costs** allocated to covered Loss. If the Insurer, the **Insured Persons** and the **Company** cannot agree on an allocation, the Insurer shall advance on a current basis the **Defense Costs** which the Insurer believes to be covered under this Coverage Section until a different allocation is negotiated, arbitrated, or judicially determined. Any such negotiated, arbitrated, or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured by this Coverage Section.

Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to the allocation of other Loss on account of such **Claim**. In any arbitration, suit or other proceeding among the Insurer, the **Insured Persons** or the **Company**, no presumption shall exist concerning what is a fair and proper allocation between covered Loss and uncovered loss.

#### C. CHANGES IN EXPOSURE

##### 1. Acquisition or Creation of Another Organization

If before or during the **Policy Period** a **Company**:

- a. acquires securities or voting rights in another organization or creates another organization which, as a result of such acquisition or creation, becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this policy, such organization and its **Insureds** automatically shall be covered under this Coverage Section, but only with respect to **Wrongful Acts** taking place after such acquisition or creation, unless the Insurer agrees, after presentation by the **Named Insured** of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Acts** taking place before such acquisition or creation.

However, if the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Company** for any such acquisition during the **Policy Period** exceeds twenty-five percent (25%) of the total consolidated assets of the **Named Insured** as reflected in the **Named Insured's** then most recent audited consolidated financial statements, no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer as soon as practicable together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer.

Any coverage afforded by this Subsection C.1. shall be specifically excess of the amount of any other insurance available to such **Insureds**.

##### 2. Acquisition of the **Named Insured**

If during the **Policy Period**:

- a. the **Named Insured** merges into or consolidates with another organization and such other organization is the surviving entity; or
- b. another organization or person or group of organizations or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors of the **Named Insured**;

then coverage under this Coverage Section shall continue until the later of:

- (i) the termination of the **Policy Period**; or
- (ii) any other subsequent date to which the Insurer may agree by endorsement;

but only with respect to **Claims for Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) above shall be conditioned upon payment during the **Policy Period** by the **Named Insured** of any additional premium and shall be subject to any additional terms and conditions required by the Insurer. Any **Claim** made during such coverage extension, if granted, shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred. The **Insureds** shall not be entitled to purchase the Extended Reporting Period if a coverage extension pursuant to (ii) above is purchased.

The **Named Insured** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may require.

3. **Cessation of Subsidiaries**

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

D. **COORDINATION OF COVERAGE**

Any **Loss** covered under both this Coverage Section and the Employment Practices Liability Coverage Section, if included, shall be first covered under the Employment Practices Liability Coverage Section, subject to the terms, conditions and limitations therein. Any remaining portion of **Loss** otherwise covered under this Coverage Section which is not paid under the Employment Practices Liability Coverage Section shall be covered under this Coverage Section, subject to its terms, conditions and limitations.

## COVERAGE SECTION 2.

### EMPLOYMENT PRACTICES LIABILITY



#### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the Insureds all Loss for which the Insureds become legally obligated to pay on account of any Claim by or on behalf of a past, present or prospective Employee of the Company for a Wrongful Employment Act taking place before or during the Policy Period if such Claim is first made against the Insureds, individually or otherwise, during the Policy Period or, if purchased, the Extended Reporting Period.

#### II. DEFENSE AND SETTLEMENT

- A. It shall be the right and duty of the Insurer, and not the Insureds, to defend Claims against the Insureds, even if the allegations in the Claim are groundless, false or fraudulent. The Insurer's right and duty to defend includes, without limitation, the right and duty to select defense counsel. The Insurer's duty to defend any Claim or to pay Loss for such Claim ends when the Limit of Liability applicable to such Claim or to the Policy Period in which such Claim is first made or is deemed to be first made has been exhausted.
- B. In the event the Insurer does not assume the defense of any Claim, the Insurer shall advance on a current basis the Defense Costs which the Insurer believes to be covered under this Coverage Section. Any advancement of Defense Costs shall be repaid to the Insurer by the Insureds, severally according to their respective interests, if and to the extent it is determined that such Defense Costs are not insured by this Coverage Section.

#### III. DEFINITIONS

For purpose of this Coverage Section:

##### A. Claim means:

- 1. a written demand for monetary damages;
- 2. a civil proceeding commenced by the service of a complaint or similar pleading;
- 3. a criminal proceeding commenced by the return of an indictment;
- 4. a formal administrative or regulatory proceeding (including without limitation an EEOC Proceeding) commenced by receipt of a notice of charges, formal investigative order or similar document; or
- 5. an arbitration or alternative dispute resolution proceeding;

against any Insured for a Wrongful Employment Act, including any appeal therefrom. However, Claim does not include any labor or grievance proceeding pursuant to a collective bargaining agreement.

- B. Defense Costs means that part of Loss consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of directors, officers or Employees of the Company) incurred in defending or investigating Claims and the premium for attachment or similar bonds, provided, however, the Insurer has no obligation to apply for or furnish any such bond.
- C. EEOC Proceeding means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address Wrongful Employment Acts.
- D. Employee means one or more persons while in the services of the Company and whom the Company compensates (if at all) by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including without limitation volunteers and past, present, prospective, part-time, temporary, seasonal, contract and leased employees otherwise described within this definition. Employee also means any natural person independent contractor who is treated under applicable law as an employee of the Company.



- E. **Insured Persons** either in the singular or plural, means any person who has been, now is or shall become:
1. a duly elected director or a duly elected or appointed officer, **Manager** or trustee of the **Company**, or with respect to a **Subsidiary** chartered outside the United States, their functional equivalent; and
  2. an **Employee** of the **Company** if such person is considered an employee of the **Company** under the law applicable to the **Claim**.
- F. **Insureds**, either in the singular or the plural, means the **Company** and the **Insured Persons**.
- G. **Loss** means the total amount which the **Insureds** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Employment Acts** for which coverage applies, including but not limited to damages (including front pay and back pay), judgments, pre-judgment and post-judgment interest, settlements and **Defense Costs**.
- Loss** shall not include:
1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
  2. fines or penalties imposed by law or **Punitive Damages**;
  3. taxes; or
  4. matters uninsurable under the law to which this policy is construed.
- However, this definition does not exclude from coverage **Punitive Damages** to the extent such damages or damage award: (1) is insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this policy or the **Wrongful Employment Act**; and (2) is less than \$100,000, such amount to be part of and not in addition to, the applicable Limit of Liability set forth in Item 3. of the Declarations of this policy.
- H. **Punitive Damages** means punitive or exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, as amended.
- I. **Wrongful Employment Act** means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by the **Company** or by one or more **Insured Persons** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual, alleged or constructive wrongful dismissal, discharge or termination of employment; breach of any oral, written or implied employment contract or quasi-employment contract; employment-related misrepresentation; violation of any federal, state or local statute, regulation, ordinance, common law or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; wrongful demotion or adverse change in the terms, conditions or status of employment; failure to grant tenure; failure to adopt adequate workplace or employment policies and procedures; illegal retaliatory treatment of employees; negligent hiring; negligent evaluation of employees; wrongful reference; employment-related invasion of privacy; employment-related defamation; employment-related wrongful infliction of emotional distress; or other employment-related torts.

#### IV. EXCLUSIONS

- A. The Insurer shall not be liable under this Coverage Section for **Loss** on account of any **Claim**:
1. based upon, arising out of or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Coverage Section is a direct or indirect renewal or replacement;
  2. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Prior or Pending Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;



3. which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, or which is otherwise based upon, arising out of or attributable to (a) any request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**, or any voluntary decision to do so; or (b) any demand, suit or proceeding by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**;

including but not limited to any **Claim** for financial loss to any **Company** or benefit program or their security holders, participants, beneficiaries or creditors based upon, arising out of, or attributable to the matters otherwise described in this exclusion; however, this exclusion does not apply to any employment related **Claim** for retaliation in connection with an **Insured Person's** actual or threatened disclosure of the matters described in this exclusion.

4. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (b) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), (c) the Fair Labor Standards Act (except the Equal Pay Act), (d) the National Labor Relations Act, (e) the Worker Adjustment and Retraining Notification Act, (f) the Consolidated Omnibus Budget Reconciliation Act of 1985, (g) the Occupational Safety and Health Act, (h) any other federal, state, or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or (i) rules or regulations promulgated under any of such statutes or laws; provided this exclusion shall not apply to any **Claim** for retaliation in connection with the claimant's actual, attempted or threatened exercise of rights pursuant to any such statute, law, rule or regulation;
  5. based upon, arising out of, or attributable to any strike, lock-out, picket or other similar actions in connection with labor disputes or labor negotiations; or
  6. for bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof.
- B. The Insurer shall not be liable under this Coverage Section for that part of Loss, other than **Defense Costs**, which constitutes:
1. amounts owing under or assumed by the **Insured** pursuant to any express written contract or agreement with the **Insured**; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such Loss in the absence of such contract or agreement;
  2. costs to comply with any injunctive or non-monetary relief or with any agreement to provide such relief, including without limitation costs associated with providing reasonable accommodation required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act, as amended, or any similar federal, state or local statute, regulation, or common law;
  3. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, however, this exclusion shall not apply to any back pay or front pay;
  4. medical or insurance benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance;
  5. based upon, arising out of, or attributable to such **Insured Person** gaining in fact any personal profit, remuneration or financial advantage to which such **Insured Person** was not legally entitled; or
  6. the following employee benefits or forms of employee compensation due or to become due or the equivalent value thereof:
    - (i) any stock, stock options, stock warrants, performance stock shares, restricted stock or other compensation or incentive granted to an employee in the form of securities of the **Company**, or
    - (ii) any payment or instrument the amount or value of which is derived from the value of securities of the **Company**, including but not limited to stock appreciation rights or phantom stock plans or arrangements;provided this exclusion shall not apply to employee stock ownership plans or employee stock purchase plans.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in this Subsection IV. A. and B. above. Only facts pertaining to or knowledge possessed by an **Executive Officer** of a **Company** shall be imputed to the **Company** for purposes of applying the exclusions set forth in this Subsection IV. A. and B. above.

## V. ARBITRATION

The Insurer and the **Insureds** shall submit any dispute or controversy arising out of or relating to this Coverage Section 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 American Arbitration Association (AAA) shall administer the arbitration in accordance with its then prevailing commercial arbitration rules. The AAA 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 such arbitration, each party will bear its own legal fees and expenses.

## VI. CHANGES IN EXPOSURE

### A. Acquisition or Creation of Another Organization

If before or during the **Policy Period** a **Company**:

1. acquires securities or voting rights in another organization or creates another organization which, as a result of such acquisition or creation, becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this policy, such organization and its **Insureds** automatically shall be covered under this Coverage Section, but only with respect to **Wrongful Employment Acts** taking place after such acquisition or creation, unless the Insurer agrees, after presentation by the **Named Insured** of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Employment Acts** taking place before such acquisition or creation.

However, if, as a direct and immediate result of such acquisition, the total number of **Employees** of all **Companies** combined increases by more than twenty-five percent (25%), then no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer as soon as practicable together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer.

Any coverage afforded by this subsection shall be specifically excess of the amount of any other insurance available to such **Insureds**.

### B. Acquisition of the **Named Insured**

If during the **Policy Period**:

1. the **Named Insured** merges into or consolidates with another organization and such other organization is the surviving entity; or
2. another organization or person or group of organizations or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors of the **Named Insured**;

then coverage under this Coverage Section shall continue until the later of:

- (i) the termination of the **Policy Period**; or
- (ii) any other subsequent date to which the Insurer may agree by endorsement;

but only with respect to **Claims** for **Wrongful Employment Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) above shall be conditioned upon payment during the **Policy Period** by the **Named Insured** of any additional premium and shall be subject to any additional terms and conditions required by the Insurer. Any **Claim** made during such coverage extension, if granted, shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred. The **Insureds** shall not be entitled to purchase the Extended Reporting Period if a coverage extension pursuant to (ii) above is purchased.

The Named Insured shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may require.

C. Cessation of **Subsidiaries**

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

VII. COORDINATION OF COVERAGE

Any **Loss** covered under this Coverage Section and either the **Directors & Officers Liability Coverage Section** or the **Fiduciary Liability Coverage Section**, if included, shall be first covered under this Coverage Section, subject to its terms, conditions and limitations.

## COVERAGE SECTION 3.

### FIDUCIARY LIABILITY COVERAGE



#### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds** all Loss for which the **Insureds** become legally obligated to pay on account of any **Claim** first made against the **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** taking place before or during the **Policy Period** by an **Insured** or by any person for whose **Wrongful Acts** the **Insured** is legally responsible.

#### II. Defense and Settlement

- A. It shall be the right and duty of the Insurer, and not the **Insureds**, to defend **Claims** against the **Insureds**, even if the allegations in the **Claim** are groundless, false or fraudulent. The Insurer's right and duty to defend includes, without limitation, the right and duty to select defense counsel. The Insurer's duty to defend any **Claim** or to pay Loss for such **Claim** ends when the Limit of Liability applicable to such **Claim** or to the **Policy Period** in which such **Claim** is first made or is deemed to be first made has been exhausted.
- B. In the event the Insurer does not assume the defense of any **Claim**, the Insurer shall advance on a current basis the **Defense Costs** which the Insurer believes to be covered under this Coverage Section. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defense Costs** are not insured by this Coverage Section.

#### III. DEFINITIONS

For purposes of this Coverage Section:

##### A. Administration means:

1. interpreting or giving advice or notice to employees or participants with respect to a **Benefit Program**;
2. effecting enrollment, termination or cancellation of employees or participants under a **Benefit Program**; or
3. the handling of records in connection with a **Benefit Program**.

##### B. Benefit Program means:

1. any **Pension Benefit Plan** specifically listed as an insured **Benefit Program** in an endorsement to this Coverage Section;
2. any past or present **Employee Welfare Benefit Plan** sponsored by the **Company** which existed at the inception date of this policy or of any policy of which this Coverage Section is a direct or indirect renewal;
3. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**, including programs governed by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; or
4. any other employee benefit plan or program not subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, sponsored solely by the **Company** for the benefit of the employees of the **Company**;

provided, however, **Benefit Program** shall not include any multi-employer plan, as defined in the Employee Retirement Income Security Act of 1974, as amended.

##### C. Claim means:

1. a written demand for monetary damages or other relief;
2. a civil proceeding commenced by the service of a complaint or similar pleading;
3. a criminal proceeding commenced by a return of an indictment; or
4. a formal administrative or regulatory proceeding, including a fact finding investigation by the Department of Labor, the Pension Benefits Guaranty Corporation or a similar government agency located anywhere in the world, commenced by the filing of a notice of charges, formal investigative order, or similar document;

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

- D. **Defense Costs** means that part of **Loss** consisting of reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds, provided, however, the Insurer has no obligation to apply for or to furnish such bond.
- E. **Employee Welfare Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
- F. **Insured**, either in the singular or plural, means any one or more of the following:
  - 1. the **Company**;
  - 2. the **Benefit Programs**; or
  - 3. the **Insured Persons**.
- G. **Insured Persons**, either in the singular or plural, means any natural persons serving as a past, present or future trustee, director, officer or **Manager** of the **Company** or any **Benefit Program**.
- H. **Loss** means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against him or her for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, **Defense Costs**, civil penalties of five percent (5%) or less imposed upon an **Insured** as a fiduciary under Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended, and civil penalties of twenty percent (20%) or less imposed upon an **Insured** as a fiduciary under Section 502(l) of the Employee Retirement Income Security Act of 1974, as amended.

**Loss** shall not include:

- 1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- 2. taxes;
- 3. fines or penalties imposed by law, other than the civil penalties described above;
- 4. the cost to comply with any injunctive or non-monetary relief, or with any agreement to provide any such relief; or
- 5. matters uninsurable under the law to which this policy is construed.

However, this definition does not exclude from coverage punitive or exemplary damages or the multiple portion of a multiplied damage award to the extent such damages or damage award: (1) is insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Insureds**, the Insurer, this policy or the **Wrongful Act**; and (2) is less than \$100,000, such amount to be part of and not in addition to, the applicable Limit of Liability set forth in Item 3. of the Declarations.

- I. **Pension Benefit Plan** means any plan so defined in the Employee Retirement Income Security Act of 1974, as amended.
- J. **Wrongful Act** means:
  - 1. any breach by an **Insured** of the responsibilities, obligations or duties imposed upon a fiduciary of a **Benefit Program** by the Employee Retirement Income Security Act of 1974, as amended, or by any similar common or statutory law of the United States or other jurisdiction anywhere in the world;
  - 2. any other matter claimed against an **Insured** solely because of such **Insured's** service as a fiduciary of any **Benefit Program**; or
  - 3. any negligent act, error or omission by an **Insured** in the **Administration** of any **Benefit Program**.

#### IV. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
  - 1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Coverage Section is a direct or indirect renewal or replacement;

2. for any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation;
3. for libel or slander;
4. for bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof;
5. based upon, arising out of, or attributable to liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Benefit Program** was established;
6. based upon, arising out of, or attributable to the failure of the **Insured** to comply with any law governing workers' compensation, unemployment, social security or disability benefits or any similar law;
7. which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, or which is otherwise based upon, arising out of or attributable to (a) any request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**, or any voluntary decision to do so; or (b) any demand, suit or proceeding by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**;  
including but not limited to any **Claim** for financial loss to any **Company** or **Benefit Program** or their security holders, participants, beneficiaries or creditors based upon, arising out of, or attributable to the matters otherwise described in this exclusion;
8. based upon, arising out of, or attributable to any demand, suit or proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Pending or Prior Date set forth in Item 8. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein; or
9. based upon, arising out of, or attributable to such **Insured** having gained in fact any personal profit, remuneration or advantage to which such **Insured** was not legally entitled.

B. The Insurer shall not be liable for that part of Loss, other than **Defense Costs**:

1. which is based upon, arising out of, or attributable to the failure to collect from employers contributions owed to a **Benefit Program**, unless the failure is because of the negligence of an **Insured**; or
2. which constitutes benefits under or relating to a **Benefit Program** unless, and to the extent that, (a) the **Insured** is a natural person and the benefits are payable by such **Insured** as a personal obligation, and (b) recovery for the benefits is based upon a covered **Wrongful Act**.

No fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in Subsection IV.A. and B. above. Only facts pertaining to or knowledge possessed by an **Executive Officer** of a **Company** or **Benefit Program** shall be imputed to such **Company** or **Benefit Program** for purposes of applying the exclusions set forth in this Subsection IV.A. and B. above.

V. **CONDITIONS**

A. **CHANGE IN EXPOSURE**

1. **Acquisition or Creation of Another Organization or Benefit Program**

If before or during the **Policy Period** a **Company**:

- a. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**;
- b. acquires any organization by merger into or consolidation with the **Company**; or
- c. creates or acquires a **Benefit Program** or otherwise becomes a fiduciary of or responsible for the **Administration** of any **Benefit Program**;



then, subject to all terms and conditions of this policy, such organization, **Benefit Program** and its **Insureds** automatically shall be covered under this Coverage Section, but only with respect to **Wrongful Acts** taking place after such acquisition or creation, unless the Insurer agrees, after presentation by the **Named Insured** of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

However, if such created or acquired **Benefit Program** is a **Pension Benefit Plan** created or acquired during the **Policy Period** and if the fair value of the total assets of the created or acquired **Pension Benefit Plan** exceed twenty-five percent (25%) of the total assets of all **Pension Benefit Plans** of the **Company** covered under this Coverage Section, then no coverage shall be afforded under this Coverage Section to such created or acquired **Pension Benefit Plan** and its **Insureds** unless (i) the **Named Insured** gives written notice of such creation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require, (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer, and (iii) the Insurer names the **Pension Benefit Plan** as an **Insured** in an endorsement to this Coverage Section.

Notwithstanding the foregoing, no coverage shall be afforded pursuant to this Subsection V.A.1. to any employee stock ownership plan or its **Insureds** in their capacity as such, or for **Wrongful Acts** by any **Insured** with respect to any such plan, unless and until the Insurer names such plan as an **Insured** in an endorsement to this Coverage Section.

Any coverage afforded by this Subsection V.A.1. shall be specifically excess of the amount of any other insurance available to such **Insureds**.

## 2. Acquisition of the **Named Insured**

If during the **Policy Period**:

- a. the **Named Insured** merges into or consolidates with another organization and such other organization is the surviving entity; or
- b. another organization or person or group of organizations or persons acting in concert acquires securities or voting rights that results in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors of the **Named Insured**;

then coverage under this Coverage Section shall continue until the later of:

- (i) the termination of the **Policy Period**; or
- (ii) any other subsequent date to which the Insurer may agree by endorsement;

but only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (ii) above shall be conditioned upon payment during the **Policy Period** by the **Named Insured** of any additional premium and shall be subject to any additional terms and conditions required by the Insurer. Any **Claim** made during such coverage extension, if granted, shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred. The **Insureds** shall not be entitled to purchase the Extended Reporting Period if a coverage extension pursuant to (ii) above is purchased.

The **Named Insured** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may require.

## 3. Cessation of **Subsidiaries**

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

4. Termination Of Any Benefit Program

If during the **Policy Period** any **Benefit Program** is terminated, coverage with respect to such terminated **Benefit Program** and its **Insureds** in their capacity as such shall continue until termination of this policy for those who were **Insureds** at the time of such **Benefit Program** termination, or who would have been **Insureds** at the time of such termination had this Coverage Section been in effect, with respect to **Wrongful Acts** by such **Insureds** taking place prior to or after the effective date of such **Benefit Program** termination.

B. COORDINATION OF COVERAGE

Any **Loss** covered under this Coverage Section and the Employment Practices Liability Coverage Section, if included, shall be first covered under the Employment Practices Liability Coverage Section, subject to the terms, conditions and limitations therein. Any remaining portion of such **Loss** otherwise covered under this Coverage Section which is not paid under the Employment Practices Liability Coverage Section shall be covered under this Coverage Section, subject to its terms, conditions and limitations.

Insured Name: SMALL SMILES HOLDING COMPANY,  
LLC  
Reference Number: DOC 9140750 01  
Effective Date: 12/13/2007



**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY.  
THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS  
AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

## **DISCLOSURE OF PREMIUM (RELATING TO DISPOSITION OF TRIA)**

### **SCHEDULE\***

(1) Premium attributable to risk of loss from certified acts of terrorism through the end of the policy period based on the extension of the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Extension Act of 2005, ("TRIA") for lines subject to TRIA:

Premium Waived. This amount is reflected in the total premium for this policy.

If TRIA terminates, the portion of this premium attributable to the remaining part of the policy period, as modified by any change shown in (2) of this Schedule, applies to the risk of loss from terrorism after the termination of TRIA.

(2) Premium change upon termination of TRIA or upon applicability of a Conditional Endorsement:

No change unless one of the following is completed -

Return Premium: N/A

Additional Premium: N/A

If we notify you of an additional premium charge, the additional premium will be due as specified in such notice.

\*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

#### **A. Disclosure of Premium**

In accordance with the TRIA, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the risk of loss from terrorist acts certified under that Act for lines subject to TRIA. That portion of your premium attributable is shown in the Schedule of this endorsement or in the Declarations.

#### **B. Disclosure of Federal Participation in Payment of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 90% (85% for 2007) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The Act currently provides for no insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year. The federal program established by the

Act is scheduled to terminate at the end of December 31, 2007 unless extended by the federal government.

#### **C. Possibility of Additional or Return Premium**

The premium attributable to the risk of loss from certified acts of terrorism coverage is calculated based on the coverage (if any) in effect at the beginning of your policy for certified acts of terrorism. If your policy contains a Conditional Endorsement, the termination of TRIA or extension of the federal program with certain modifications (as explained in that endorsement) may modify the extent of coverage (if any) your policy provides for terrorism. If TRIA terminates or the Conditional Endorsement becomes applicable to your policy, the return premium (if any) or additional premium (if any) shown in (2) of the Schedule will apply. If the level or terms of federal participation change, the premium shown in (1) of the Schedule attributable to that part of the policy period extending beyond such a change may not be appropriate and we will notify you of any changes in your premium.

**Tennessee Amendatory Endorsement**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 San Felipe St Ste 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Zurich Private Solutions – Enhanced**

- I. It is agreed that Subsection IV.F., of the COMMON POLICY TERMS is deleted in its entirety and is replaced with the following:
- CANCELLATIONS**
1. This policy may be canceled by the **Named Insured** by surrender of the policy to the Insurer or by mailing written notice to the Insurer stating when such cancellation shall take effect. If canceled by the **Named Insured**, the Insurer shall refund the unearned premium computed at customary short rates. In no event may the requested date of cancellation be greater than ten (10) days prior to the date the request is received by the Insurer.
  2. If this policy has been in effect less than sixty (60) days and is not a renewal, this policy may be canceled by the Insurer for any reason by written notice mailed or delivered to the **Named Insured**, and mailed to the agent, if any, at the address shown in the Declarations. Such cancellation shall be effective not less than ten (10) days after the date the notice is mailed.
  3. If this policy is in effect for sixty (60) days or more or if this policy is a renewal, the Insurer may cancel for the following reasons:
    - a. nonpayment of premium, including nonpayment of any additional premiums, calculated in accordance with the current rating manual of the Insurer;
    - b. conviction of an **Insured** of a crime having as one of its necessary elements an act increasing any hazard insured against;
    - c. discovery of fraud or material misrepresentation on the part of either of the following:
      - (i) an **Insured** or an **Insured's** representative in obtaining the insurance; or
      - (ii) the **Named Insured** in pursuing a **Claim** under the policy.
    - d. failure to comply with written loss control recommendations;
    - e. material change in the risk which increases the risk of loss after insurance coverage has been issued or renewed;
    - f. determination by the Commissioner that the continuation of the policy would jeopardize a company's solvency or would place the Insurer in violation of the insurance laws of Tennessee or any other state;
    - g. violation or breach by an **Insured** of any policy terms or conditions; or
    - h. such other reasons that are approved by the Commissioner.

If the Insurer cancels subject to 3.a. through 3.h. above, the Insurer will mail or deliver to the **Named Insured**, and mail to the agent, if any, written notice of cancellation. Such cancellation shall be effective not less than ten (10) days after the date the notice is mailed. Notice will be mailed or delivered to the **Named Insured**, and mailed to the agent, if any, at the address shown in the Declarations.

4. The mailing of such notice as aforesaid shall be sufficient proof of notice. This policy shall terminate and the Policy Period shall end at the date and hour specified in such notice.
5. If the policy is canceled by the Insurer, the earned premium shall be computed pro-rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. Failure to pay any premium adjustment at, on, or around the time of the effective date of cancellation shall not alter the effectiveness of cancellation.

#### NONRENEWAL

1. If the Insurer elects not to renew this policy, the Insurer will mail or deliver to the **Named Insured**, and mail to the agent, if any, written notice of nonrenewal. The Insurer will mail or deliver this notice to the address shown in the Declarations at least sixty (60) days prior to the expiration of this policy. If the notice is mailed or delivered less than sixty (60) days before expiration, the Insurer shall extend the existing policy for sixty (60) days from the date such notice is provided. The premium for the extension provided in such circumstances shall be no more than a pro rata basis of the existing policy.
2. If the Insurer provides the notice as required and thereafter agrees to provide a ninety (90) day or less extension, an additional notice of nonrenewal is not required with respect to such extension. Earned premium for any period of coverage that extends beyond the policy expiration date shall be computed pro rata based on the expiring premium.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. If either one of the following occurs, the Insurer is not required to provide written notice of nonrenewal:
  - a. the Insurer or an Insurer within the same insurance group has offered to issue a renewal policy; or
  - b. an **Insured** has obtained replacement coverage or agreed in writing to do so.

#### CONDITIONAL RENEWAL

1. If the Insurer elects to renew this policy and the renewal is subject to any of the following:
  - a. increase of premium rates and/or factors by more than twenty-five (25%) percent;
  - b. reduction in Limit of Liability; or
  - c. elimination of coverages;the Insurer will mail or deliver written notice of the change(s) or amount of the increase to the **Named Insured**, and mail to the agent, if any, at the address shown in the Declaration, at least sixty (60) days before the expiration date of the policy.
2. If renewal is subject to any condition described in 1.a. through 1.c. above, and the Insurer fails to provide notice sixty (60) days before the expiration date of this policy, the following procedures apply:
  - a. The existing policy will remain in effect until the earlier of the following:
    - (i) sixty (60) days after the date of mailing or delivery of the notice; or
    - (ii) the effective date of replacement coverage obtained by the **Named Insured**.
  - b. If the **Named Insured** elects not to renew, any earned premium for the period of extension of the expiring policy will be calculated pro rata at the rates applicable to the expiring policy.
  - c. If the **Named Insured** accepts the renewal, the premium increase, if any, and other changes are effective the day following the policy's expiration date.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.

II. It is agreed that Section V., ARBITRATION, of Coverage Section 2 is deleted in its entirety and replaced with the following:

#### V. ARBITRATION

The Insurer and the **Insured** may submit any dispute or controversy arising out of or relating to this policy or the breach, termination or invalidity thereof to arbitration pursuant to such rules and procedures as the parties may agree. If the Insurer and the **Insured** cannot so agree, the arbitration shall be administered by the American Arbitration Association (AAA) in accordance with its then prevailing commercial arbitration rules. The AAA arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. Any decision by the arbitrators must be agreed to by both parties, resulting in non-binding resolution and may be appealed to a court of competent jurisdiction. In any such arbitration, each party will bear its own legal fees and expenses.

All other provisions of this policy remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/1/08

## Prior Acts Exclusion



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

It is agreed that:

The Underwriter shall not be liable for Loss on account of any Claim made against any Insured based upon, arising out of or attributable to Wrongful Acts, including Interrelated Wrongful Acts, committed, attempted or allegedly committed or attempted in whole or in part prior to September 26, 2006.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/11/08



## Bodily Injury / Property Damage Exclusion (Absolute)



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

It is agreed that:

1. Coverage Section 1, Paragraph 5 of Section IV.A., Exclusions, is deleted in its entirety and is replaced with the following:  
based upon, arising out of or attributable to bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or destruction of any tangible property including loss of use thereof;
2. Coverage Section 2, Paragraph 6 of Section IV.A., Exclusions, is deleted in its entirety and is replaced with the following:  
based upon, arising out of or attributable to bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or destruction of any tangible property including loss of use thereof;

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/1/08

# Private Plus Enhancement Endorsement



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Common Policy Terms**
**Directors and Officers Liability Coverage Section 1**
**Employment Practices Liability Coverage Section 2**

It is agreed:

## **1. Additional \$500,000 Defense Cost Limit for Directors and Officers Liability Claims**

Notwithstanding anything in this policy to the contrary, if the applicable Limit of Liability set forth in Item 3 of the Declarations for Coverage Section 1 is exhausted by the payment of Loss under this policy, the Insurer's maximum additional aggregate liability under Insuring Agreements A and B of Coverage Section 1 for all **Defense Costs** which are otherwise covered under such Insuring Agreements and which are incurred after such Limit of Liability is exhausted, shall be \$500,000.

## **2. Additional \$1,000,000 Defense Cost Limit for Employment Practices Claims**

Notwithstanding anything in this policy to the contrary, if the applicable Limit of Liability set forth in Item 3 of the Declarations for Coverage Section 2 is exhausted by the payment of Loss under this policy, the Insurer's maximum aggregate additional liability under Coverage Section 2 for all **Defense Costs** which are otherwise covered under Coverage Section 2 and which are incurred after such Limit of Liability is exhausted, shall be \$1,000,000.

## **3. Outside Position Coverage for any Non-Profit Outside Entities**

The definition of "Outside Entity" in Subsection III.H is amended to also include any non-profit organization.

## **4. Coverage Sections 1 and 2 Non Rescindable**

Solely with respect to Coverage Sections 1 and 2, the second paragraph of Subsection IV.D of the Common Policy Terms is deleted in its entirety and replaced by the following:

Coverage under Coverage Sections 1 and/or 2 shall not be rescinded in whole or in part for any reason. However, in the event that the **Application** contains a material misstatement, misrepresentation or omission of any information required to be disclosed therein, the Insurer shall not be liable for Loss on account of any **Claim** based upon, arising out of or attributable to any such information as provided below:

- (a) The Insurer shall not be liable under Coverage Sections 1 or 2 for **Loss** on account of such **Claim** which is incurred by an **Insured Person** who knew of such information as of the date of the **Application** (whether or not such individual knew of such misstatement, misrepresentation or omission in the **Application**); and
- (b) The Insurer shall not be liable under Coverage Sections 1 or 2 for **Loss** on account of such **Claim** which is incurred by the **Company** or for which the **Company** grants indemnification if any past or present chair, chief executive officer, president, chief operating officer, chief financial officer or in-house general counsel of the **Named Insured** knew of such information as of the date of the **Application** (whether or not such person knew of such misstatement, misrepresentation or omission in the **Application**).

## **5. Domestic Partner Coverage**

Section IV.N of the Common Policy Terms, is amended to also include the following:

For purposes of this Subsection IV.N, spouse shall mean (i) any lawful spouse whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world, and (ii) any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.

## **6. Enhanced Company Definition- Bankruptcy**

The definition of **Company** in Subsection III.B of the Common Policy Terms is deleted in its entirety and replaced by the following:

**B. Company**, either in the singular or plural means, collectively:

- 1. the **Named Insureds**;
- 2. all **Subsidiaries**; and
- 3. any organization described in 1 or 2 above as a debtor in possession under United States bankruptcy law or equivalent status under the law of any other country.

**Exclusion IV. A. 3** of Coverage Section 1, is amended to include the following additional exception:

- d. a **Claim** brought by or on behalf of a bankruptcy or insolvency trustee, examiner or receiver for the **Company** or any assignee of such trustee, examiner or receiver;

## **7. Order of Payments Provision**

The following Order of Payments provisions are added to Coverage Section 1:

If the amount of covered **Loss** which is otherwise due and owing by the Insurer under Coverage Section 1 exceeds the then-remaining applicable **Limit of Liability** for Coverage Section 1, the Insurer shall:

- i. first pay such **Loss** for which coverage is provided under Insuring Agreement A of Coverage Section 1, then
- ii. with respect to whatever remaining amount of the **Limit of Liability** is available after payment under(i.) above, pay such **Loss** for which coverage is provided under any other Insuring Agreement of Coverage Section 1.

Subject to the immediately preceding paragraph, the Insurer shall at the written request of the **Named Insured** delay payment of **Loss** for which coverage is provided under any Insuring Agreement of Coverage Section 1 other than Insuring Agreement A until such time as the **Named Insured** designates, provided the Insurer's liability with respect to such delayed payment shall not be increased, and shall not include any interest, as a result of such delay.

## **8. Punitive and Multiple Damages Coverage**

The last paragraph of the definition of Loss in Subsection III.G of Coverage Section 1, Subsection III.G of Coverage Section 2, and Subsection III.G of Coverage Section 3 is deleted in its entirety and replaced by the following:

However, this definition does not exclude from coverage punitive or exemplary damages or the multiple portion of a multiplied damage award to the extent such damages or damage award is insurable under the internal laws of any jurisdiction which has a substantial relationship to the Insureds, the Insurer, this policy or the Wrongful Act.

#### **9. Modified Settlement Clause**

Solely with respect to coverage under Coverage Section 2, Subsection IV.A(1)(e) of the Common Policy Terms is deleted in its entirety and replaced with the following:

- (e) The Insureds agree not to settle or offer to settle any Claim, incur any Defense Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Insurer's prior written consent. The Insurer shall not be liable for any settlement, Defense Costs, assumed obligation or admission to which it has not consented. If the Insureds refuse to consent to a settlement acceptable to the claimant in accordance with the Insurer's recommendations, then subject to the applicable Limit of Liability, the Insurer's liability under Coverage Section 2 with respect to such Claim shall not exceed (i) the amount for which such Claim could have been settled by the Insurer plus Defense Costs up to the date the Insureds refused to settle such Claim, and (ii) 80% of all covered Loss resulting from such Claim which is in excess of the amount described in (i) above. The remaining 20% of such excess Loss shall be uninsured under Coverage Section 2.

All other terms and conditions remain unchanged.

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60709/36431

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/1/08

**Final Adjudication**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

**Directors & Officers Liability and Company Reimbursement: Coverage Section 1**

**Employment Practices Liability: Coverage Section 2**

**Fiduciary Liability Coverage: Coverage Section 3**

It is agreed that

1. Coverage Section 1, Section IV (Exclusions), Item 13 is deleted in its entirety and replaced with the following:
  13. Based upon, arising out of, or attributable to such **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a gaining of personal profit, remuneration or financial advantage.
2. Coverage Section 2, Section IV (Exclusions), Item B. 5. is deleted in its entirety and replaced with the following:
  5. Based upon, arising out of, or attributable to such **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a gaining of personal profit, remuneration or financial advantage.
3. Coverage Section 3, Section IV (Exclusions), Item A.9. is deleted in its entirety and replaced with the following:
  9. Based upon, arising out of, or attributable to such **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a gaining of personal profit, remuneration or financial advantage.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/1/08

**Amend Severability**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced: Common Policy Terms**

It is agreed that Section IV.D. of the Common Policy terms is deleted in its entirety and replaced with the following:

**D. REPRESENTATIONS AND SEVERABILITY**

In granting coverage to the **Insureds** under any Coverage Section, the Insurer has relied upon the declarations and statements in the **Application** and upon any declarations and statements in the original written application submitted by the **Insureds** to another insurer with respect to the similar coverage incepting as of the respective **Continuity Date** set forth in Item 7. of the Declarations. All such declarations and statements are the basis of this policy and shall be considered as incorporated in and constituting part of this policy.

The **Insureds** represent that all such declarations and representations are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this policy. The **Insureds** agree that in the event that any such declarations and representations are untrue, this policy shall be void *ab initio* and shall not afford any coverage with respect to any of the following **Insureds**:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. the **Company**, to the extent it indemnifies any **Insured Person** referenced in 1. above;
3. the **Company** and any **Benefit Program** if any **Executive Officer** of such **Company** or **Benefit Program** knew the facts that were not truthfully disclosed in the **Application**; and

whether or not the **Insured Person** or **Executive Officer** described in 1., 2., or 3. above knew that the **Application** contained such untruthful disclosure.

All other terms and conditions remain unchanged.

Signed by:

  
 Authorized Representative

Date

2/11/08



## Amend Subsidiary Asset Threshold



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

## Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC  
 618 CHURCH STREET, SUITE 520  
 NASHVILLE, TN 37219  
 USA

## Producer:

LOCKTON COMPANIES LLC  
 5847 SAN FELIPE ST., STE. 320  
 HOUSTON, TX 77057-3000  
 USA

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under:

## Zurich Private Solutions – Enhanced

It is agreed that:

1. Coverage Section 1, Director and Officers Liability, Paragraph 2 of Section V.C. is deleted in its entirety and replaced with the following:

However, if the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Company** for any such acquisition during the **Policy Period** exceeds twenty-five percent (25%) of the total consolidated assets of the **Named Insured** as reflected in the **Named Insured's** then most recent audited consolidated financial statements, no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer within ninety (90) days together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer.

2. Coverage Section 2, Employment Practices Liability, Paragraph 2 of Section VI.A. is deleted in its entirety and replaced with the following:

However, if, as a direct and immediate result of such acquisition, the total number of **Employees** of all **Companies** combined increases by more than twenty-five percent (25%), then no coverage shall be afforded under this Coverage Section to such organization and its **Insureds** unless (i) the **Named Insured** gives written notice of such acquisition to the Insurer within ninety (90) days together with such information as the Insurer may require, and (ii) the **Named Insured** agrees to any amendment of this policy and pays any additional premium required by the Insurer.

All other terms and conditions remain unchanged.

Signed by:   
 Authorized Representative

2/11/08  
 Date

**Professional Liability Exclusion: Medical**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Private Company Management Liability Policy: Coverage Section 1 (Directors & Officers Liability Including Company Reimbursement)**

It is agreed that the Insurer shall not be liable under Coverage Section 1 for Loss on account of any Claim made against any Insured based upon, arising out of or attributable to:

1. the rendering of, or actual or alleged failure to render, professional services in connection with the Company's business as a provider of medical services, including but not limited to:
  - a. providing medical, surgical, dental, psychiatric or nursing treatment, care, diagnosis or services, including the furnishing of food or beverages in connection therewith,
  - b. providing routine and/or esoteric testing services used in the diagnosis, monitoring and/or treatment of any disease or other medical condition,
  - c. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances,
  - d. handling or conducting post mortem examinations,
  - e. providing veterinary services, or
  - f. providing services as a member of, or participating in, a formal medical peer review committee, board or similar medical peer group of the Company or any hospital or professional society; or
2. any advice actually or allegedly proffered by any Insured in connection with the above.

Provided, however, this exclusion does not apply to any Loss on account of any Claim that is a derivative action on behalf of the Company or shareholder class action against any Insured Person alleging a failure to supervise the rendering of professional services as stated above.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/1/08

**Additional Named Insured**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

**Employment Practices Liability Coverage Section 2**


It is agreed that:

1. Item 1 of the Declarations is amended by adding the following:

Small Smiles of Akron, LLC – Kenneth E. Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dentistry of Albany, LLC  
 Small Smiles Dentistry for Children, Albuquerque, P.C.  
 Small Smiles of East Albuquerque, P.C.  
 Small Smiles of Atlanta, P.C.  
 Small Smiles of Augusta, P.C.  
 6<sup>th</sup> Street of Denver Dental Clinic, P.C.  
 Small Smiles of Austin, PLLC  
 Small Smiles of Baltimore, P.C.  
 Small Smiles of Beaumont, PLLC  
 Small Smiles Dental Clinic of Boise, PLLC  
 Small Smiles Dental Center of Brockton, LLC  
 Children's Dental Clinic of Charleston, LLC  
 Small Smiles of Cincinnati LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dentistry for Children, P.C.  
 Children's Medicaid Dental of Columbia, LLC  
 Small Smiles of Columbus, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles of Dayton, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Smile High Dentistry for Children, P.C.  
 Children's Dental Clinic of Florence, LLC  
 Small Smiles of Dothan, P.C.  
 Small Smiles Dental Center of East Liberty, LLC  
 Children's Dental Clinic of Florence, LLC  
 Small Smiles of Fort Wayne, LLC  
 Children's Dental Clinic of Gary, LLC  
 Small Smiles of Greeley, P.C.  
 Children's Medicaid Dental of Greenville, LLC  
 Small Smiles Dental Center of Harrisburg, LLC  
 Small Smiles Dental Center of Hartford, PC  
 Small Smiles Dental Center of Holyoke, LLC  
 The Indian Springs Dental Clinic, LLC  
 The Children's Dental Clinic of Indianapolis, LLC  
 Dental Clinic of Indianapolis at Eagledale Plaza, LLC

Small Smiles of Langley Park, P.C.  
 Small Smiles of Lawrence, LLC  
 Small Smiles of Dental Center of Lexington, P.S.C.  
 Small Smiles of Louisville, P.S.C.  
 Small Smiles Dental Center of Lubbock, PLLC  
 Small Smiles of Lynn, LLC  
 Small Smiles of Macon, P.C.  
 Small Smiles of Manassas, LLC  
 Small Smiles Dental Center of Manchester, PLLC  
 Small Smiles of Mattapan, LLC  
 Robert F. Andrus, D.D.S., P.C.  
 Small Smiles of Myrtle Beach, LLC  
 Small Smiles Dentistry of Newburgh, LLC  
 Small Smiles Dental Center of New Haven, PC  
 Small Smiles Dental Center of North Austin, PLLC  
 Small Smiles of North Baltimore, PC  
 Small Smiles Dental Center of Northwest Baltimore, PC  
 Small Smiles Dental Center of Odessa, PLLC  
 Children's Dental Clinic of Oklahoma City, PLLC  
 Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC  
 Small Smiles of Omaha, P.C.  
 Small Smiles of Oxon Hill, PC  
 Children's Medicaid Dental Clinic, P.C.  
 DeRose Children's Dental Clinic, P.C.  
 Small Smiles of Reno, LLC  
 Small Smiles of Richmond, LLC  
 Small Smiles of Roanoke, LLC  
 Small Smiles Dentistry of Rochester, LLC  
 Small Smiles of Roselawn, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dental Center of San Antonio, PLLC  
 Small Smiles Dentistry for Children, Santa Fe, P.C.  
 Small Smiles of Savannah, P.C.  
 Small Smiles of South Bend, LLC  
 Small Smiles Dental Center of South Houston, PLLC  
 Small Smiles of Spartanburg, LLC  
 Small Smiles of Springfield, LLC  
 Small Smiles Dentistry of Syracuse, LLC  
 Children's Dental Clinic of Thornton, P.C.  
 Small Smiles of Toledo, LLC -Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Topeka Dental Clinic, LLC  
 Small Smiles of Toledo, LLC  
 Children's Dental Clinic of Tucson, L.L.C.  
 Children's Dental Clinic of Tulsa, PLLC  
 Small Smiles Dental Center of Waco, PLLC  
 Small Smiles of Washington D.C., PC  
 Small Smiles Dental Center of West Columbus, LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles of Wichita, LLC  
 Small Smiles of Worcester, LLC  
 Small Smiles of Youngstown, LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 FORBA Holdings, LLC Pueblo Office  
 FORBA Holdings, LLC Nashville Office

All other terms and conditions remain unchanged.

Signed by:  Date 2/1/08  
 Authorized Representative

## Third Party Coverage



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced: Coverage Section 2**

It is agreed that:

1. Subsection I. is amended by adding the following additional Insuring Clause:

The Underwriter shall pay on behalf of the **Insureds** all loss for which the **Insureds** become legally obligated to pay on account of any **Claim** by or on behalf of any natural person (other than a past, present or prospective **Employee** or shareholder of the **Company** in their capacity as such) for a **Wrongful Discrimination Act** taking place before or during the **Policy Period** if such **Claim** is first made against the **Insureds**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period.

2. Solely with respect to coverage afforded by reason of this endorsement:

a. Item 3(A) of the Declarations Page: (A) Each Claim \$1,000,000  
 (B) Each Policy Period \$1,000,000

The Limits of Liability and any Deductible are reduced or exhausted by Defense Costs and are a part of, not in addition to, the Limit of Liability as set forth on the Declarations Page.

- b. Item 5. Self-Insured Retention, Section 2, of the Declarations is amended to read as follows:

Deductible Amount : \$100,000

- c. Item 8. Pending or Prior Date, Section 2, of the Declarations is amended to read as follows:

Pending or Prior Date: 12/13/2006

- d. The term “**Wrongful Employment Act**” wherever used in this policy shall mean **Wrongful Discrimination Act**.

3. Section III, Definitions, is amended by adding the following:

**Wrongful Discrimination Act** means any act, error, omission, neglect, or breach of duty actually or alleged committed or attempted by the **Company** or by one or more **Insured Persons** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual or alleged violation of any federal, state, or local statute, regulation, ordinance, common law or public policy concerning discrimination or sexual harassment.

4. Solely with respect to coverage afforded by reason of this endorsement, the Underwriter shall not be liable for a **Wrongful Discrimination Act Claim** for that part of **Loss**, other than **Defense Costs**, on account of any **Claim** made against the **Insureds**,
- a. which is attributable to any non-monetary relief; or
  - b. which is attributable to modifying any building or property in order to make said building or property more accessible or accommodating to any person with a disability, or to making any other accommodations for any person with a disability.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/11/08



## Amend Duties in Event of Claim



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	Not Applicable	Not Applicable

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES, LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced**

**Common Policy Terms**

It is agreed that section IV.A.1.a. is deleted and replaced with the following:

- a. The **Insured** shall give written notice to the Insurer of any **Claim** otherwise covered under this policy as soon as practicable after the CEO, CFO, Risk Management Department or HR Department becomes aware of such **Claim** but in no event later than sixty (60) days after the end of the **Policy Period**, if applicable, or within the Extended Reporting Period, if exercised.

Signed by:   
Authorized Representative

2/11/08  
Date

**Investigative Costs Coverage**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Private Solutions – Enhanced Policy**

**Common Policy Terms**

**Directors and Officers Liability Coverage Section 1**

It is agreed that:

**1. COMMON POLICY TERMS**

1. **LIMIT OF LIABILITY AND SELF INSURED RETENTION** is amended by the addition of the following:

The Underwriter's maximum liability for each Loss covered under the Investigation Costs Coverage Insuring Clause shall be \$100,000. The Underwriter's maximum liability for all Loss on account of all Claims covered under the Investigation Costs Coverage Insuring Clause shall be \$100,000. Provided however, such sublimit of liability as provided above is inclusive of, and not in addition to, the Limit of Liability as otherwise set forth in Item 3 of the Declarations, and the payment by the Underwriter of Investigation Costs reduces such Limit of Liability.

2. No Deductible Amount shall apply to Loss covered under the Investigation Costs Coverage Insuring Clause.

**2. COVERAGE SECTION 1**

1. The following additional Insuring Clause is added to this policy:

The Underwriter shall pay on behalf of the Company all Investigations Costs which the Company becomes legally obligated to pay on account of any Shareholder Derivative Demand first made against the Company during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act taking place before or during the Policy Period.

2. Section III.G(2) is deleted in its entirety.
3. Section III, Definitions, is amended as follows:

- (a) The following definitions are added:

**Investigation Costs** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts fees) and expenses (other than regular or overtime wages, salaries or fees of the Insured Persons or Employees of the Company) incurred by the Company (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any Shareholder Derivative Demand.

**Shareholder Derivative Demand** means any written demand, by one or more shareholders of the Company, upon the board of directors of the Company, to bring a civil proceeding in a court of law against any Insured Person for a **Wrongful Act** taking place before or during the **Policy Period**.

**Employee or Employees** means, respectively, one or more persons in the regular service of the Company in the ordinary course of the Company's business and whom the Company compensates by salary, wages and/or commissions and has the right to govern and direct in the performance of such service.

- (b) For purposes of coverage under the Investigation Costs Covering Insuring clause, the definitions of the following terms, wherever used in this policy, are amended as follows:

**Claim** means a **Shareholder Derivative Demand**.

**Loss** means **Investigation Costs**.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/11/08

## Pollution Exclusion - Non-Indemnifiable Exception



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

**Directors and Officers Liability Coverage Section 1**

**Employment Practices Liability Coverage Section 2**

It is agreed that:

Paragraph 7 of Section IV.A. of Coverage Section 1 and Paragraph 3 of Section IV, A. of Coverage Section 2, are amended by the addition of the following:

provided, however, this exclusion does not apply to any Loss for which the Company (i) is neither permitted nor required by common or statutory law to indemnify the Insured Person, or (ii) fails or refuses for reason of Financial Impairment to indemnify the Insured Person.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/11/08

## CAP Penalties and HIPAA Extension



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

## Named Insured and Mailing Address:

SMALL SMILES HOLDING COMPANY, LLC  
 618 CHURCH STREET, SUITE 520  
 NASHVILLE, TN 37219  
 USA

## Producer:

LOCKTON COMPANIES LLC  
 5847 SAN FELIPE ST., STE. 320  
 HOUSTON, TX 77057-3000  
 USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced: Coverage Section 3**

It is agreed that:

- Section III. Definition H. is amended to include the following:

Subject to all other terms and conditions of this policy, Loss shall include penalties, subject to the Limit of Liability as set forth below, assessed against the **Insureds** by the Internal Revenue Service pursuant to a voluntary resolution entered into by the **Insureds** pursuant to the Closing Agreement Program ("CAP"), the Voluntary Compliance Resolution Program ("VCR") or the Tax Sheltered Annuity Voluntary Correction Program ("TVC") but only if (1) the **Insureds** first approached the Internal Revenue Service regarding the violations forming the basis for such CAP, VCR or TVC penalties during the **Policy Period** and the **Insureds** reported such violations to the Underwriter as soon as practicable, but in no event later than ninety (90) days after the termination of the **Policy Period** or, if exercised, the Extended Reporting Period, and (2) the **Insureds** had no knowledge of the possible violations prior to the **Policy Period**.

The Underwriter's maximum Limit of Liability for all Loss in connection with all voluntary resolutions as described above is \$50,000, which includes all penalties assessed under CAP, VCR or TVC, and all Defense Costs incurred by the **Insureds** in investigating the alleged violations and completing any resolution under CAP, VCR or TVC. This Limit of Liability is also deemed to be part of and not in addition to the Limit of Liability as set forth in Item 3(A) of the Declarations, and payment of all or any portion of this Limit of Liability shall reduce the amount set forth in Item 3 (A) of the Declarations.

- Section III. Definition B.3 is replaced with the following:

any government-mandated insurance program for worker's compensation, unemployment, social security or disability benefits for employees of the **Company**, including programs governed by the Consolidated Omnibus Reconciliation Act of 1985 and the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto,

The Underwriter's maximum Limit of Liability for all Loss in connection with the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto as described above is \$50,000. This Limit of Liability is deemed to be part of and not in addition to the Limit of Liability as set forth in Item 3 (A) of the Declarations, and payment of all or any portion of this Limit of Liability shall reduce the amount set forth in Item 3 (A) of the Declarations.

All other terms and conditions remain unchanged.

Signed by:

Authorized Representative

Date

2/11/08

# Amend Insured Versus Insured



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

**Directors & Officers Liability and Company Reimbursement Coverage Section 1**

Exclusion IV. A. 3 of Coverage Section 1, is amended to include the following additional exceptions:

- e **Claim** brought or maintained by an **Insured Person** if that **Insured Person** has not acted as a Director or Officer or was an Employee of or advisor to the **Company** in any way in the past four years.
- f. a **Claim** that is a shareholder derivative action brought and maintained on behalf of the **Company** without any active assistance or participation of, or solicitation by, any **Insured Person** (other than assistance, participation or solicitation for which Section 806 of the Sarbanes-Oxley Act of 2002, or any similar "whistleblower" protection provision of an applicable federal, state, local or foreign securities law, affords protection to such **Insured Person**).
- g. any **Claim** brought by an **Insured Person** of a **Subsidiary** formed and operating in a **Foreign Jurisdiction** against such a **Subsidiary** or any **Insured Person** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada, or any other common law country (including any territories thereof) or,

All other terms and conditions remain unchanged.

Signed by:

Authorized Representative

Date

2/11/08



## Amend Definition of Claim



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

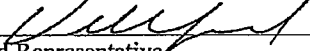
**Directors & Officers Liability and Company Reimbursement: Coverage Section 1**

**Employment Practices Liability: Coverage Section 2**

It is agreed that:

- 1 The definition of **Claim** in Coverage Section 1 and Coverage Section 2 are amended by the addition of the following:  
**Claim** shall also mean a written request received by an **Insured** to toll or waive a statute of limitations, relating to a potential **Claim** as described above.

All other terms and conditions remain unchanged.

Signed by:   
Authorized Representative

2/11/08  
Date

## Omnibus Benefit Plans – Fiduciary Liability Coverage



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	Not Applicable	Not Applicable

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES, LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced**

**Fiduciary Liability Coverage: Coverage Section 3**

It is agreed that:

Item 1. in the definition of **Benefit Program**, Section III.B., of Coverage Section 3 is deleted in its entirety and replaced with the following:

1. Any **Pension Benefit Plan** sponsored, operated, maintained or administered by the Company for the benefit of the employees of the Company, subject to the provisions of Section V.A., Changes in Exposure.

Signed by: \_\_\_\_\_

Authorized Representative

\_\_\_\_\_ 2/11/08  
Date

## Amend Definition of Insured Persons – Fiduciary Liability



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	Not Applicable	Not Applicable

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES, LLC  
5847 SAN FELIPE ST., STE 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced**

**Fiduciary Liability Coverage: Coverage Section 3**

It is agreed that section III.G, definition of **Insured Persons**, is deleted in its entirety and replaced with the following:

- G. **Insured Persons**, either in the singular or plural, means any natural persons serving as a past, present or future employee, trustee, director, officer **Manager** of the **Company** or any **Benefit Program**.

Signed by: \_\_\_\_\_

Authorized Representative

\_\_\_\_\_ 2/11/08  
Date

# Punitive Damages



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
 618 CHURCH STREET, SUITE 520  
 NASHVILLE, TN 37219  
 USA

**Producer:**

LOCKTON COMPANIES LLC  
 5847 SAN FELIPE ST., STE. 320  
 HOUSTON, TX 77057-3000  
 USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy: Coverage Section 1 and Coverage Section 2**

It is agreed that:

1. In Coverage Section 1 and Coverage Section 2, Subsection III.G. is deleted in its entirety and is replaced with the following:

- G. Loss means the total amount which the **Insured Persons** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, and **Defense Costs**. Loss does not include (1) any amount not indemnified by the **Company** for which the **Insured Persons** are absolved from payment by reason of any covenant, agreement or court order, (2) any amount incurred by the **Company** (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Company**, (3) fines or penalties imposed by law or the multiple portion of any multiplied damage award, or (4) matters uninsurable under the law pursuant to which this policy is construed.

Loss shall include punitive or exemplary damages unless:

- (a) providing insurance for punitive or exemplary damages is expressly prohibited by any statute, regulation or administrative code of the applicable jurisdiction; or
- (b) providing insurance for punitive or exemplary damages is expressly prohibited by a decision of an appropriate court of the applicable jurisdiction or interpreting the laws of the jurisdiction.

If neither (a) or (b), above, is applicable with respect to any **Claim**, it is agreed that the insuring of punitive or exemplary damages is deemed permitted under the laws and public policy of the applicable jurisdiction.

The term “applicable jurisdiction” shall mean for the purposes of this endorsement that jurisdiction most favorable to the insurability of punitive or exemplary damages provided that the jurisdiction must be:

- where the punitive or exemplary damages were awarded or imposed; or
- where any **Wrongful Act** took place; or
- where the **Company** is incorporated, resides, or has its principal place of business.

2. In Coverage Section 3, Subsection III.H. is deleted in its entirety and replaced with the following:

- H. Loss means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against him or her for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, **Defense Costs**, civil penalties of five percent (5%) or less imposed upon an **Insured** as a fiduciary under Section 502(i) of the Employee Retirement Income Security Act of 1974, as amended, and civil penalties of twenty percent (20%) or less

imposed upon an **Insured** as a fiduciary under Section 502(l) of the Employee Retirement Income Security Act of 1974, as amended.

**Loss** shall not include:

1. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
2. taxes;
3. fines or penalties imposed by law, other than the civil penalties described above;
4. the cost to comply with any injunctive or non-monetary relief, or with any agreement to provide any such relief; or
5. matters uninsurable under the law to which this policy is construed.

**Loss** shall include punitive or exemplary damages unless:

- (a) providing insurance for punitive or exemplary damages is expressly prohibited by any statute, regulation or administrative code of the applicable jurisdiction; or
- (b) providing insurance for punitive or exemplary damages is expressly prohibited by a decision of an appropriate court of the applicable jurisdiction or interpreting the laws of the jurisdiction.

If neither (a) or (b), above, is applicable with respect to any **Claim**, it is agreed that the insuring of punitive or exemplary damages is deemed permitted under the laws and public policy of the applicable jurisdiction.

The term "applicable jurisdiction" shall mean for the purposes of this endorsement that jurisdiction most favorable to the insurability of punitive or exemplary damages provided that the jurisdiction must be:

- where the punitive or exemplary damages were awarded or imposed; or
- where any **Wrongful Act** took place; or
- where the **Company** is incorporated, resides, or has its principal place of business.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

Date

2/11/08

## Sublimit Fiduciary Liability Coverage



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	Not Applicable	Not Applicable

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES, LLC  
5847 SAN FELIPE ST., STE 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced**

**Fiduciary Liability Coverage: Coverage Section 3**

It is agreed that

With regards to coverage provided under Coverage Section 3 of this policy, our maximum limit of liability is \$3,000,000. This limit is a part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations.

The Limit of Liability and the Self Insured Retention are reduced or exhausted by **Defense Costs**.

All other terms and conditions remain unchanged.

Signed by: \_\_\_\_\_

Authorized Representative

\_\_\_\_\_ 2/1/08  
Date



Endorsement #21

**Endorsement**



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

SMALL SMILES HOLDING COMPANY, LLC  
618 CHURCH STREET, SUITE 520  
NASHVILLE, TN 37219  
USA

**Producer:**

LOCKTON COMPANIES LLC  
5847 SAN FELIPE ST., STE. 320  
HOUSTON, TX 77057-3000  
USA

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced**

It is agreed that:

1. Endorsement #20, Sublimit Fiduciary Liability Coverage, is deleted in its entirety.

All other terms and conditions remain unchanged.

Signed by:

*Stacy Abbott*  
Authorized Representative

Date

*4/25/2008*

# Additional Named Insured



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

## Named Insured and Mailing Address:

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

## Producer:

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**Zurich Private Solutions – Enhanced Policy**

**Employment Practices Liability Coverage Section 2**

It is agreed that:

1. Item 1 of the Declarations is amended by adding the following:

Small Smiles of Akron, LLC – Kenneth E. Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dentistry of Albany, LLC  
 Small Smiles Dentistry for Children, Albuquerque, P.C.  
 Small Smiles of East Albuquerque, P.C.  
 Small Smiles of Atlanta, P.C.  
 Small Smiles of Augusta, P.C.  
 6<sup>th</sup> Street of Denver Dental Clinic, P.C.  
 Small Smiles of Austin, PLLC  
 Small Smiles of Baltimore, P.C.  
 Small Smiles of Beaumont, PLLC  
 Small Smiles Dental Clinic of Boise, PLLC  
 Small Smiles Dental Center of Brockton, LLC  
 Children's Dental Clinic of Charleston, LLC  
 Small Smiles of Cincinnati LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dentistry for Children, P.C.  
 Children's Medicaid Dental of Columbia, LLC  
 Small Smiles of Columbus, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles of Dayton, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Smile High Dentistry for Children, P.C.  
 Children's Dental Clinic of Florence, LLC  
 Small Smiles of Dothan, P.C.  
 Small Smiles Dental Center of East Liberty, LLC  
 Children's Dental Clinic of Florence, LLC  
 Small Smiles of Fort Wayne, LLC  
 Children's Dental Clinic of Gary, LLC  
 Small Smiles of Greeley, P.C.  
 Children's Medicaid Dental of Greenville, LLC  
 Small Smiles Dental Center of Harrisburg, LLC  
 Small Smiles Dental Center of Hartford, PC  
 Small Smiles Dental Center of Holyoke, LLC  
 The Indian Springs Dental Clinic, LLC  
 The Children's Dental Clinic of Indianapolis, LLC  
 Dental Clinic of Indianapolis at Eagledale Plaza, LLC

Small Smiles of Langley Park, P.C.  
 Small Smiles of Lawrence, LLC  
 Small Smiles of Dental Center of Lexington, P.S.C.  
 Small Smiles of Louisville, P.S.C.  
 Small Smiles Dental Center of Lubbock, PLLC  
 Small Smiles of Lynn, LLC  
 Small Smiles of Macon, P.C.  
 Small Smiles of Manassas, LLC  
 Small Smiles Dental Center of Manchester, PLLC  
 Small Smiles of Mattapan, LLC  
 Robert F. Andrus, D.D.S., P.C.  
 Small Smiles of Myrtle Beach, LLC  
 Small Smiles Dentistry of Newburgh, LLC  
 Small Smiles Dental Center of New Haven, PC  
 Small Smiles Dental Center of North Austin, PLLC  
 Small Smiles of North Baltimore, PC  
 Small Smiles Dental Center of Northwest Baltimore, PC  
 Small Smiles Dental Center of Odessa, PLLC  
 Children's Dental Clinic of Oklahoma City, PLLC  
 Children's Dental Clinic of Oklahoma City at Portland Plaza, PLLC  
 Small Smiles of Omaha, P.C.  
 Small Smiles of Oxon Hill, PC  
 Children's Medicaid Dental Clinic, P.C.  
 DeRose Children's Dental Clinic, P.C.  
 Small Smiles of Reno, LLC  
 Small Smiles of Richmond, LLC  
 Small Smiles of Roanoke, LLC  
 Small Smiles Dentistry of Rochester, LLC  
 Small Smiles of Roselawn, LLC- Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles Dental Center of San Antonio, PLLC  
 Small Smiles Dentistry for Children, Santa Fe, P.C.  
 Small Smiles of Savannah, P.C.  
 Small Smiles of South Bend, LLC  
 Small Smiles Dental Center of South Houston, PLLC  
 Small Smiles of Spartanburg, LLC  
 Small Smiles of Springfield, LLC  
 Small Smiles Dentistry of Syracuse, LLC  
 Children's Dental Clinic of Thornton, P.C.  
 Topeka Dental Clinic, LLC  
 Children's Dental Clinic of Tucson, L.L.C.  
 Children's Dental Clinic of Tulsa, PLLC  
 Small Smiles Dental Center of Waco, PLLC  
 Small Smiles of Washington D.C., PC  
 Small Smiles Dental Center of West Columbus, LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 Small Smiles of Wichita, LLC  
 Small Smiles of Worcester, LLC  
 Small Smiles of Youngstown, LLC-Kenneth Knott, DDS and Robert F. Andrus, DDS  
 FORBA Holdings, LLC Pueblo Office  
 FORBA Holdings, LLC Nashville Office

All other terms and conditions remain unchanged.

Signed by: Alacy Abbott  
 Authorized Representative

4/25/2008  
 Date

**Limits of Liability Amendment**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
DOC 9140750 01	12/13/2007	12/13/2008	12/13/2007	36408000	N/A	N/A

**Named Insured and Mailing Address:**

**SMALL SMILES HOLDING COMPANY, LLC**  
**618 CHURCH STREET, SUITE 520**  
**NASHVILLE, TN 37219**  
**USA**

**Producer:**

**LOCKTON COMPANIES LLC**  
**5847 SAN FELIPE ST., STE. 320**  
**HOUSTON, TX 77057-3000**  
**USA**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under:

**The Zurich Private Solutions -Enhanced Policy**

It is agreed that:

**I. The Declarations are amended as follows:**

1. Coverage Sections 4 and 5 are deleted from Item 2.
2. Item 3 is replaced with the following:

**Limits of Liability:**

(A) Coverage Section 1	Each Claim and in the Aggregate Each Policy Period:	\$10,000,000
(B) Coverage Section 2	Each Claim and in the Aggregate Each Policy Period:	\$10,000,000
(C) Coverage Section 3	Each Claim and in the Aggregate Each Policy Period:	\$3,000,000
(D) Aggregate each Policy Period	for all Coverage Sections combined:	\$13,000,000

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

(E) Additional Aggregate Each Policy Period for excess **Defense Costs** under Coverage Section 2: \$N/A

3. Coverage Sections 4 and 5 are deleted from Item 5.
4. Item 9 is deleted.

**II. The COMMON POLICY TERMS are amended as follows:**

1. Section I. LIMITS OF LIABILITY, SELF INSURED RETENTION, SINGLE CLAIMS AND COORDINATION OF COVERAGE is replaced with the following:

**A. Limits of Liability**

1. **Aggregate Each Policy Period:**

Except as otherwise provided in Subsection 4. below, the Insurer's maximum aggregate liability under this policy for all **Loss**, whether covered under one or more Coverage Section, shall be the Aggregate Limit of Liability set forth in Item 3.(D) of the Declarations.

2. **Each Claim and in the Aggregate Each Policy Period**

The Limits of Liability set forth in Item 3.(A) through 3.(D) are the Insurer's maximum liabilities under this policy for **Loss** subject to such Limits and are part of and not in addition to the Aggregate Each Policy Period Limit of Liability set forth in Item 3.(D) of the Declarations.

3. **Defense Costs** shall be part of and not in addition to the applicable Limits of Liability set forth in Item 3(A) through 3(D) of the Declarations, and **Defense Costs** shall reduce such Limits of Liability. The Insurer is entitled

to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

4. Additional Aggregate Each Policy Period for excess **Defense Costs** under Coverage Section 2

Notwithstanding Subsections 1, 2 and 3 above, if the aggregate Limit of Liability set forth in Item 3.(B) of the Declarations is exhausted by the Insurer's payment of **Loss**, the Insurer's maximum liability under the corresponding Coverage Section, if included, for any **Defense Costs** which are otherwise covered under such Coverage Section, shall be the Additional Aggregate Each Policy Period Limit of Liability for Defense Costs set forth in Item 3.(E) of the Declarations.

B. Self Insured Retention

Except as otherwise provided in any Coverage Section, the Insurer's liability with respect to **Loss** arising from each **Claim** covered under Coverage Sections 1, 2 or 3 shall apply only to that part of **Loss** which is excess of the applicable Self Insured Retention set forth in Item 5 of the Declarations. If different portions of a single **Claim** are subject to different Self Insured Retentions, the largest applicable Self Insured Retention will apply.

C. Single Claims

For Coverage Sections 1, 2 and 3, if included, all **Claims** arising out of the same **Wrongful Act** or **Wrongful Employment Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed one **Claim** and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against the **Insureds**, regardless of whether such date is before or during the **Policy Period**.

D. Coordination of Coverage

1. If the amount of covered **Loss** exceeds the available Limit of Liability of this policy, the Insurer shall first pay that portion of **Loss** covered under Coverage Section 1. Any remaining amount of **Loss** shall be paid under any other applicable Coverage Section, subject to its terms, conditions and limitations.
2. Subject to the immediately preceding paragraph, the Insurer shall, at the written request of the **Parent Company**, delay payment of **Loss** for which coverage is provided under any Coverage Section, other than Coverage Section 1, until such time as the **Parent Company** designates, provided the Underwriter's liability with respect to such delayed payment shall not be increased, and shall not include any interest, as a result of such delay.
3. This Subsection D. shall replace any contrary Coordination of Coverage provision in any applicable Coverage Section.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Signed by: Mary Abbott  
Authorized Representative

4/25/2008  
Date

## Disclosure Statement



Small Smiles Holding Company, LLC  
DOC 9140750 01

It is our pleasure to present the enclosed policy to you  
for presentation to your customer.

### **INSTRUCTION TO AGENT OR BROKER:**

**WE REQUIRE THAT YOU TRANSMIT THE ATTACHED/ENCLOSED DISCLOSURE  
STATEMENT TO THE CUSTOMER WITH THE POLICY.**

Once again, thank you for your interest, and we look forward to meeting your needs and those of  
your customers.

## Disclosure Statement



Small Smiles Holding Company, LLC  
DOC 9140750 01

### ZURICH AGENT/BROKER COMPENSATION DISCLOSURE

Dear Policyholder:

On behalf of Zurich, we are glad you have chosen us as your insurance company. We look forward to meeting your insurance needs and want you to understand clearly our business relationship with the agent or broker you chose to represent your company's interests in the placement of insurance coverages.

As is the case with many insurance companies in the United States, Zurich distributes many of its insurance products through agents or brokers. This means that your agent or broker is not employed by Zurich and, in fact, may represent many insurance companies. Because we do not employ your agent or broker, the way they are compensated may vary. We recommend you discuss these arrangements with your agent or broker.

For an explanation of the nature and range of compensation Zurich may pay to your agent or broker in connection with your business, please go to <http://www.zurichna.com>. Click on the information link located on the Agent/Broker Compensation Disclosure section. Where appropriate, insert the Access Code provided below, and you will be able to view this information. Alternatively, you may call (877) 347-6465 to obtain this type of information.

Thank you.

Access Code: 0112982711



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> FORBA Holdings, LLC	<b>DEFENDANTS</b> Zurich American Insurance Company
<b>(b) County of Residence of First Listed Plaintiff</b> <u>Davidson County, TN</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>County of Residence of First Listed Defendant</b> <u>Cook County, IL</u> (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Robert J. Walker, J. Mark Tipps, Emily B. Warth, Walker Tipps & Malone, 150 4th Ave. N., # 2300, Nashville, TN 37219,	<b>Attorneys (If Known)</b>

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input checked="" type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<b>CONTRACT</b> <input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. § 1332(a)(1)</u> Brief description of cause: breach of contract and declaratory judgment for insurance coverage
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>over \$75,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE 10/28/2010	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

FORBA HOLDINGS, LLC

*Plaintiff*

v.

ZURICH AMERICAN INSURANCE CO.

*Defendant*

Civil Action No.

3 10 1018

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Zurich American Insurance Co.  
c/o State of Tennessee  
Department of Commerce and Insurance  
Attn: Service of Process  
500 James Robertson Parkway  
Nashville, TN 37243-1131

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert J. Walker, J. Mark Tipps and Emily B. Warth  
Walker, Tipps & Malone PLC  
150 Fourth Avenue North, Suite 2300  
Nashville, TN 37219  
(615)313-6000

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

KEITH THROCKMORTON

Date:

OCT 28 2010

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: