
Section 1: 8-K

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): August 16, 2018

Protective Insurance Corporation
(Exact Name of Registrant as Specified in Charter)

Indiana
(State or Other Jurisdiction
of Incorporation)

0-5534
(Commission
File Number)

35-0160330
(I.R.S. Employer
Identification No.)

111 Congressional Boulevard, Carmel IN
(Address of Principal Executive Offices)

46032
(Zip Code)

Registrant's Telephone Number, Including Area Code

9800

317-636-

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with

any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On August 16, 2018, Protective Insurance Corporation (the "Company") entered into an employment agreement (the "Agreement") with W. Randall Birchfield, the Company's Chief Executive Officer, President, and Chief Operating Officer. Under the Agreement, Mr. Birchfield will serve as Chief Executive Officer through December 31, 2021, with automatic one-year extensions unless either party gives notification not less than 180 days prior to the expiration of the term or the Agreement is earlier terminated in accordance with its terms.

In connection with the execution of the Agreement, Mr. Birchfield will receive a cash bonus of \$200,000, which is subject to full or partial repayment by Mr. Birchfield if his employment is terminated by the Company for cause (as defined in the Agreement) or by him without good reason (as defined in the Agreement) prior to August 16, 2020. Mr. Birchfield will also be eligible for two equity incentive awards (the "Retention Awards"). Mr. Birchfield will receive 52,500 restricted shares of the Company's Class B common stock, which shares will vest equally over the next twelve quarters, beginning September 30, 2018. Mr. Birchfield will also be eligible to receive up to 97,500 shares of the Company's Class B common stock based on the achievement of certain Company performance targets over the period of July 1, 2018 through December 31, 2021.

Under the Agreement, Mr. Birchfield's base salary is \$600,000, subject to annual review and merit salary increases, but may not be decreased without his consent. Mr. Birchfield is also eligible to receive awards under the Company's incentive bonus plans, including an annual award under the Annual Incentive Plan ("AIP") in a target amount equal to at least 166.7% of his base salary, awards under the Long-Term Incentive Plan ("LTIP") with a target annual value of at least \$400,000, and awards under the Value Creation Incentive Plan ("VCIP") with a target annual value of at least \$400,000. He is also entitled to participate in all benefit plans offered to other senior executives and to Company employees generally.

The Agreement contains a change in control benefit that is payable if Mr. Birchfield's employment is terminated by the Company without cause and in anticipation of a change in control (as defined in the Agreement) to be effectuated within 120 days of the termination date or by either the Company without cause or by Mr. Birchfield for good reason on or before the 24-month anniversary of a change in control. This benefit would be a lump sum cash payment equal to 200% of the sum of his annual base salary in effect at the time of the termination plus his target AIP and LTIP bonuses in effect upon his separation from the Company. If a change in control occurs, any awarded but unvested AIP, LTIP or VCIP awards and any unvested portion of the Retention Awards will become fully vested and payable.

The Company may terminate Mr. Birchfield's employment at any time with or without cause. If Mr. Birchfield is terminated without cause or resigns for good reason or if the term of the Agreement expires after the Company provides a notice of non-extension, he would receive a cash payment equal to his annual base salary in effect at the time of termination plus his target AIP and LTIP bonuses in effect upon his separation from the Company, a pro-rated share of both his AIP and LTIP for the year in which termination occurs, the vesting of any unvested equity awards, including any unvested portion of the Retention Awards, and the reimbursement of his costs associated with the continuation of certain health and welfare benefits for a period of up to 12 months. If Mr. Birchfield's employment is terminated due to his death or disability, he would receive a pro-rated share of both his AIP and LTIP for the year in which termination occurs and the vesting of any unvested equity awards, including any unvested portion of the Retention Awards. If the term of the Agreement expires after Mr. Birchfield provides a notice of non-extension, Mr. Birchfield will be entitled to the vesting of any unvested equity awards by reason of his retirement.

The Agreement includes provisions requiring Mr. Birchfield to maintain the confidentiality of the Company's confidential information and subjects Mr. Birchfield to non-competition and non-solicitation provisions during the term of the Agreement and for twelve months thereafter.

The Agreement supersedes the Severance, Confidentiality, Non-Competition, and Non-Solicitation Agreement between the Company and Mr. Birchfield dated May 10, 2018.

The preceding description of the Agreement is a summary of its material terms, does not purport to be complete, and is qualified in its entirety by reference to the Agreement, a copy of which is being filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) The following item is filed as an exhibit to this Current Report on Form 8-K:

Exhibit 10.1 Employment Agreement, dated as of August 16, 2018, by and between the Company and W. Randall Birchfield

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PROTECTIVE INSURANCE CORPORATION

August 22, 2018

By: /s/ W. Randall Birchfield
W. Randall Birchfield,
President, Chief Executive Officer &

[\(Back To Top\)](#)

Section 2: EX-10.1

EMPLOYMENT AGREEMENT

AGREEMENT, dated as of August 13, 2018 (the "Effective Date") by and between Protective Insurance Corporation, an Indiana corporation (together with its successors and assigns, the "Company"), and W. Randall Birchfield (the "Executive");

WITNESSETH:

WHEREAS, the Company desires to continue to retain its employment of the Executive as its Chief Executive Officer, to have the Executive serve as a member of the Board of Directors of the Company (the "Board"), and to enter into an agreement embodying the terms of such employment;

WHEREAS, the Executive desires to continue such employment with the Company, and serve on the Board, subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt of which is mutually acknowledged, the Company and the Executive (collectively, the "Parties") agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meanings set forth in Exhibit A.
2. **Term.** The Company hereby employs the Executive under this Agreement, and the Executive hereby accepts such employment, for the "Term". The Term shall commence as of the Effective Date and shall end on December 31, 2021; provided, however, that the Term shall thereafter be automatically extended for unlimited additional one-year periods unless, at least 180 days prior to the date of expiration of the Term, either Party gives notice to the other that he/it is electing not to so extend the Term. Notwithstanding the foregoing, the Term may be earlier terminated in accordance with the provisions of Section 8.

3. **Positions, Duties and Location.**

(a) During the Term, the Executive shall serve as the Chief Executive Officer of the Company; shall serve as a member of the Board; shall have all authorities, duties and responsibilities customarily exercised by an individual serving in those positions at an entity of the size and nature of the Company; shall be assigned no duties or responsibilities that are materially inconsistent with, or that materially impair his ability to discharge, the foregoing duties and responsibilities; and shall have such additional duties and responsibilities, consistent with the foregoing, as may be from time to time assigned to him by the Board; and in his capacity as Chief Executive Officer of the Company, shall report solely and directly to the Board. The terms of this Agreement shall remain in full force and effect regardless of whether additional titles or roles currently held by the Executive (either for the Company or any of its Subsidiaries) change by reason of position elimination, reassignment, removal, or otherwise.

(b) During the Term, the Executive shall devote substantially all of his business time and efforts to the business and affairs of the Company. However, nothing in this Agreement shall preclude the Executive from: (i) serving on the boards of a reasonable number of business entities, trade associations and charitable organizations, (ii) engaging in charitable activities and community affairs, (iii) accepting and fulfilling a reasonable number of speaking engagements, and (iv) managing his personal investments and affairs; provided that such activities do not either individually or in the aggregate materially interfere with the proper performance of his duties and responsibilities hereunder, or in any way create or present a conflict of interest. If, during the Term or during the twelve (12) months following the Termination Date, Executive chooses to serve on the board of another business entity, trade association, or charitable organization, such position must receive prior approval from the Board's Nominating & Governance Committee to ensure no potential conflict is present; such approval shall not be unreasonably withheld.

(c) During the Term, the Executive's principal office, and principal place of employment, shall be in Carmel, Indiana, or within 40 miles thereof.

4. **Base Salary.** Commencing as of the Effective Date, the Executive shall receive an annualized Base Salary of \$600,000, payable in accordance with the Company's regular payroll practices. The Base Salary shall be reviewed no less frequently than annually during the Term for increase in the sole discretion of the Board or its compensation committee (the "Compensation Committee"). The Base Salary shall not be decreased at any time, or for any purpose, during the Term (including, without limitation, for the purpose of determining benefits due under Section 8), without the express prior written consent of the Executive.

5. **Retention Bonus Awards.**

(a) The Executive shall receive a "Retention Bonus" of \$200,000, payable in a cash lump sum no later than fourteen (14) days after the Effective Date. If, prior to the second anniversary of the Effective Date, the Executive's employment hereunder is terminated by the Company for Cause or by the Executive without Good Reason, then the Executive shall repay to the Company an amount equal to (i) \$200,000, times (ii) a fraction, the numerator of which is the number of months remaining between the Termination Date and the second anniversary of the Effective Date and the denominator of which is 24.

(b) The Board shall grant to the Executive, no later than fourteen (14) days after the Effective Date, "Retention Awards" for (i) 52,500 shares of the Company's Class B Common Stock, subject to quarterly vesting of one-twelve (1/12) of the Retention Award on the last day of each calendar quarter that follows the Effective Date (with the first such quarterly vesting date occurring on September 30, 2018), and (ii) 97,500 shares of the Company's Class B Common Stock that vest ratably and cumulatively over the initial Term of this Agreement based on the attainment of Company performance goals to be reasonably determined by the Board (in consultation with the Executive), with such award (x) vesting for all 97,500 shares if achievement of the performance goals is 100% or better, (y) not vesting at all if achievement of the performance goals is less than 25%, and (z) vesting on a pro-rata basis for performance between 25% and 100%. The performance goals applicable to the Retention Awards shall be finalized and documented by the parties no later than seven (7) days after the Effective Date.

6. **Annual and Long-Term Incentives.**

(a) The Executive shall be eligible to receive an annual incentive award under the Company's Annual Incentive Plan, as amended from time to time (the "AIP") in respect of each calendar year ending during the Term in a target amount equal to at least 166.7% of his annualized Base Salary (the "Target AIP"). Each AIP award shall be (i) determined by the Compensation Committee and (ii) paid in a cash lump sum, as soon as reasonably practicable following the close of the calendar year to which they relate, but no later than March 15 of the calendar year following the year to which the AIP relates; provided, however, that up to 25% of each AIP award may be paid in the form of unrestricted shares of the Company's Class B Common Stock, as determined in the sole discretion of the Board and/or Compensation Committee. The resulting payout of any AIP award will be calculated based upon the Company's achievement of certain Company performance targets, as set annually by the Board and/or Compensation Committee, and may be subject to further discretionary adjustment from the Compensation Committee based on the Executive's individual performance. The Company performance targets utilized for the Executive's AIP awards shall be the same as those utilized for AIP awards granted to other senior executives of the Company generally. AIP awards shall otherwise be subject to the terms of the AIP and any applicable award agreements.

(b) During the Term, the Executive shall be eligible for additional equity-based and other long-term incentives, and for special awards, in each case at a level, and on terms and conditions, that are commensurate with his positions and responsibilities at the Company. Consistent with the foregoing, the Executive shall be eligible to receive LTIP awards (the "LTIP") under the Company's Long-Term Incentive Plan, as amended from time to time, with a target annual value of at least \$400,000 (the "Target LTIP"). Consistent with LTIP awards granted to other senior executive officers, the resulting payout of any LTIP award will be calculated based upon the Company's achievement of certain Company performance targets, as set annually by the Board and/or Compensation Committee, and may be subject to further discretionary adjustment from the Compensation Committee based on the Executive's individual performance. The Company performance targets utilized for the Executive's LTIP awards shall be the same as those utilized for LTIP awards granted to other senior executives of the Company generally. LTIP awards shall otherwise be subject to the terms of the LTIP and any applicable award agreements.

(c) During the Term, the Executive shall be eligible to receive Value Creation Incentive awards (the "VCIP") under the Company's Long-Term Incentive Plan, with a target annual value of at least \$400,000. The resulting payout of any VCIP award will be calculated based upon the Company's achievement of certain Company performance targets, as set annually by the Board and/or Compensation Committee, and may be subject to further discretionary adjustment from the Compensation Committee based on the Executive's individual performance. The Company performance targets utilized for the Executive's VCIP award shall be the same as those utilized for VCIP awards granted to other senior executives of the Company generally. The VCIP shall be subject to the terms of the LTIP and any applicable award agreements.

7. **Other Benefits.**

(a) **Employee Benefits and Perquisites.** During the Term, the Executive shall be eligible to participate in all employee benefit plans, programs and arrangements, and all fringe benefit and perquisites arrangements, made available generally to other senior executives of the Company, in each case in accordance with their terms; provided, that the Company reserves the right to unilaterally revise, amend, suspend or terminate any employee benefit, fringe and perquisite plans, practices, policies and arrangements the Company makes available from time to time to its senior executives generally.

(b) **Reimbursement of Business and Other Expenses.** The Executive shall be promptly reimbursed for all expenses reasonably incurred by him in connection with his service under this Agreement, subject to documentation in accordance with standard policies and procedures adopted by the Company. The Executive shall also be promptly reimbursed for reasonable attorneys' fees incurred by him in connection with the negotiation, documentation and implementation of this Agreement, upon submission of appropriate supporting documentation.

8. Termination of Employment. The Company may terminate the Executive's employment hereunder at any time, or for any reason, by delivering written notice to the Executive. The Executive may terminate his employment hereunder by delivering sixty (60) days advance written notice to the Company (or thirty (30) days advance written notice in the case of a termination with Good Reason). During any such notice period, the Company reserves the right to suspend any or all of the Executive's duties or responsibilities and limit the Executive's communications with any customers, suppliers, agents, or employee of the Company, as the Company determines in its sole discretion.

(a) **Termination Due to Death or Disability.** Subject to the terms and conditions of this Agreement, in the event that the Executive's employment hereunder is terminated due to his death or Disability, the Term shall expire and he or his estate or his beneficiaries (as the case may be) shall be entitled to the following:

- (i) a Pro-Rata AIP;
 - (ii) a Pro-Rata LTIP;
 - (iii) full vesting for any unvested portion of the Retention Awards, and any restricted stock, restricted stock unit award or any other award granted under the LTIP, VCIP or AIP; (the vesting described in this clause (iii) being the "Award Vesting");
 - (iv) Base Salary earned, but unpaid through the Termination Date;
 - (v) The cash payment of any annual, long-term, or other incentive award earned in respect to the performance period ending prior to the Termination Date and payable (but not yet paid) on or prior to the Termination Date, provide, with respect to any such performance-based award, the award amount shall be determined based solely on the achievement of Company-wide performance goals through the performance period without any exercise of negative discretion (the "Accrued Awards"); and
 - (vi) such other benefits in accordance with the terms of any applicable plan, program, agreement, corporate governance document or other arrangement of the Company and its Affiliates (collectively, "Company Arrangements").
-

(b) **Termination for Cause.** Subject to the terms and conditions of this Agreement, in the event that the Executive's employment hereunder is terminated by the Company for Cause, the Term shall expire and the Executive shall be entitled to the following:

- (i) Base Salary earned, but unpaid through the Termination Date;
- (ii) such other benefits in accordance with the terms of any applicable Company Arrangements.

No termination of the Executive's employment hereunder for Cause shall be effective as a termination for Cause unless the provisions of this Section 8(b) shall first have been complied with. The Executive shall be given written notice by the Board of its intention to terminate his employment for Cause, such notice (the "Cause Notice") (x) to state in reasonable detail the circumstances that constitute the grounds on which the proposed termination for Cause is based and (y) to be given no later than one hundred eighty (180) days after such Board first has actual knowledge of such circumstances. The Executive shall then be entitled to a hearing before the Board. Such hearing shall be held within fifteen (15) days of his receiving such Cause Notice, provided that he requests such hearing within ten (10) days of receiving such Cause Notice. If, within ten (10) days following such hearing the Board gives written notice to the Executive confirming that Cause for terminating his employment on the basis set forth in the original Cause Notice exists, his employment hereunder shall thereupon be terminated for Cause, subject to de novo review, at the Executive's election, through arbitration in accordance with Section 14. The Company's timeframe for providing any payment due to Executive shall not begin until the conclusion of any such review.

(c) **Termination Without Cause or Resignation for Good Reason.** Subject to the terms and conditions of this Agreement, in the event that the Executive resigns his employment with the Company for Good Reason or the Executive's employment hereunder is terminated by the Company other than (x) for death or Disability in accordance with Section 8(a), or (y) for Cause in accordance with Section 8(b), the Term shall expire and the Executive shall receive:

- (i) a Pro-Rata AIP;
 - (ii) a Pro-Rata LTIP;
 - (iii) an amount, payable in a cash lump sum by the sixty-fifth (65th) day following the Termination Date, equal to the sum of his annualized Base Salary plus his Target AIP plus his Target LTIP bonuses applicable to the year in which the Termination Date occurs;
 - (iv) the Award Vesting;
 - (v) if the Executive timely elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company shall provide the Executive with a reimbursement of his costs associated with the continuation of his medical, dental and vision benefits under COBRA for a period equal to the lesser of (1) twelve (12) months following the Termination Date, or (ii) the date the Executive first becomes eligible to receive health benefits under another employer-provided plan;
 - (vi) Base Salary earned, but unpaid through the Termination Date;
 - (vii) The Accrued Awards; and
 - (viii) such other benefits in accordance with the terms of any applicable Company Arrangements.
-

(d) **Non-Extension of Term by the Company.** Subject to the terms and conditions of this Agreement, in the event that the Term expires after the Company delivers a notice of non-extension as described in Section 2, the Executive's employment shall be terminated on the last day of the Term and the Executive shall have the same entitlements as provided under Section 8(c) in the case of a termination without Cause.

(e) **Resignation without Good Reason; Retirement after Non-Renewal by Executive.** Subject to the terms and conditions of this Agreement, in the event that the Executive terminates his employment hereunder during the Term, other than for Good Reason, the Term will expire and the Executive shall have the same entitlements as provided in Section 8(b) in the case of a termination for Cause. In the event that the Executive's employment hereunder terminates upon expiration of the Term pursuant to a notice of non-extension from the Executive as described in Section 2, (i) the Executive shall be entitled to the Award Vesting by reason of his retirement from the Company, and (ii) all AIP, LTIP and VCIP bonus awards for the last performance year of the Term will be determined and paid based on the actual Company performance attained for the relevant performance period (as applicable) and without the exercise of negative discretion for the Executive's individual performance; provided, however, that such Award Vesting and award payments shall be forfeited if the Executive has materially violated his obligations under Section 11, and such violation (if curable) remains uncured for ten (10) days after the Executive receives written notice of the breach from the Company.

(f) **Change in Control.** Subject to the terms and conditions of this Agreement, in the event that (i) the Executive's employment hereunder is terminated (x) by the Company without Cause (in accordance with Section 8(c)) and in anticipation of a Change in Control to be effectuated within 120 days of the Termination Date or (y) by either Party on or before the twenty four (24) month anniversary of the occurrence of a Change of Control and (ii) such termination is governed by Section 8(c) (relating to terminations without Cause or for Good Reason), then the Executive shall receive, in lieu of the amount provided for in Section 8(c)(iii), a cash lump-sum amount, paid on the sixty-fifth (65th) day following the Termination Date, equal to two times the sum of his annualized Base Salary plus his Target AIP plus his Target LTIP bonuses applicable to the year in which the Termination Date occurs.

(g) **No Mitigation; No Offset.** In the event of any termination of the Executive's employment hereunder, the Executive shall be under no obligation to seek other employment or otherwise mitigate the obligations of the Company under this Agreement, and there shall be no offset against amounts or benefits due the Executive under this Agreement or otherwise on account of (x) any Claim that the Company may have against him except for any outstanding loans to the extent then due and payable by him to the Company or (y) any remuneration or other benefit earned or received by the Executive after such termination. There shall also be no reduction of, or offset against, any amount due under any provision of this Agreement by any amount due under any other provision of this Agreement. Any amounts due under this Section 8 are considered to be reasonable by the Company and are not in the nature of a penalty.

(h) **Mutual Release.** The Executive shall not be entitled to the payments and benefits described in Sections 8(c)(i)-(v) unless (x) he first timely executes and delivers the Company's standard mutual release of claims c (the "Mutual Release") within twenty-one (21) days following the Termination Date, (y) such Mutual Release has become irrevocable by him in accordance with its terms, and (z) within fourteen (14) days of the Termination Date, Executive delivers to Company a notice of resignation from his role as a director of the Company and all other capacities and positions with the Company, as applicable.

9. **Change in Control.**

(a) In the event that a Change in Control occurs (either during the Term or thereafter following a non-renewal of the Term by the Company), any awarded but unvested AIP, LTIP or VCIP award, and any unvested portion of the Retention Awards, shall become fully vested and payable. With respect to any AIP award, LTIP award or Retention Awards that are subject to performance-based vesting, the payout of such award shall be based on the greater of (i) the payout for the target level of performance, and (ii) the payout based on the actual level of performance attained as of the date of the Change in Control, without any exercise of negative discretion. With respect to any VCIP award, such vesting shall be for at least the target number of shares applicable to such award.

(b) If (i) the aggregate of all amounts and benefits due to the Executive, under this Agreement or under any other Company Arrangement, would, if received by the Executive in full and valued under Section 280G of the Code, constitute "parachute payments" as such term is defined in and under Section 280G of the Code (collectively, "280G Benefits"), and if (ii) such aggregate would, if reduced by all federal, state and local taxes applicable thereto, including the excise tax imposed pursuant to Section 4999 of the Code, be less than the amount the Executive would receive, after all taxes, if the Executive received aggregate 280G Benefits equal (as valued under Section 280G of the Code) to only three times the Executive's "base amount", as defined in and under Section 280G of the Code, less \$1.00, then (iii) such cash 280G Benefits (in reverse order of maturity, to the extent that the reduction of such cash 280G Benefits can achieve the intended result) shall be reduced or eliminated to the extent necessary so that the 280G Benefits received by the Executive will not constitute parachute payments. The determinations with respect to this Section 9(b) shall be made by an independent auditor (the "Auditor") paid by the Company. The Auditor shall be the Company's regular independent auditor unless the Executive reasonably objects to the use of that firm, in which event the Auditor will be a nationally recognized firm chosen by the Parties.

(c) It is possible that after the determinations and selections made pursuant to Section 9(b) the Executive will receive 280G Benefits that are, in the aggregate, either more or less than the amount provided under Section 9(b) (hereafter referred to as an "Excess Payment" or "Underpayment", respectively). If it is established, pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved, that an Excess Payment has been made, such Excess Payment shall be deemed for all purposes to be a loan to the Executive made on the date the Executive received the Excess Payment and the Executive shall promptly repay the Excess Payment to the Company, together with interest on the Excess Payment at the applicable federal rate (as defined in and under Section 1274(d) of the Code) from the date of the Executive's receipt of such Excess Payment until the date of such repayment. In the event that it is determined (x) by arbitration pursuant to Section 14, (y) by a court or (z) by the Auditor upon request by any of the Parties, that an Underpayment has occurred, the Company shall promptly pay an amount equal to the Underpayment to the Executive, together with interest on such amount at the applicable federal rate from the date such amount would have been paid to the Executive had the provisions of Section 9(b) not been applied until the date of payment.

10. **Indemnification.**

(a) If the Executive is made a party, is threatened to be made a party, or reasonably anticipates being made a party, to any Proceeding by reason of the fact that he is or was a director, officer, member, employee, agent, manager, trustee, consultant or representative of the Company or any of its Affiliates or is or was serving at the request of the Company or any of its Affiliates, or in connection with his service hereunder, as a director, officer, member, employee, agent, manager, trustee, consultant or representative of another Person, or if any Claim is made, is threatened to be made, or is reasonably anticipated to be made, that arises out of or relates to the Executive's service in any of the foregoing capacities, then the Executive shall promptly be indemnified and held harmless (and advanced expenses) to the fullest extent permitted or authorized by the Certificate of Incorporation or Bylaws of the Company.

(b) A directors' and officers' liability insurance policy (or policies) shall be kept in place, during the Term and thereafter until the later of (x) the sixth anniversary of the Termination Date and (y) the date on which all claims against the Executive that would otherwise be covered by such policy (or policies) become fully time-barred, providing coverage to the Executive that is no less favorable to him in any respect (including, without limitation, with respect to scope, exclusions, amounts, and deductibles) than the coverage then being provided to any other present or former senior executive or director of the Company.

11. **Restrictive Covenants.**

(a) **Confidentiality.** The Executive acknowledges and agrees that he/she shall maintain the confidentiality of this Agreement and shall not disclose it to any other employee of the Company or other person; provided, however, he/she may disclose it to his/her spouse and/or legal counsel or as required by law and he/she may disclose or discuss any items of this Agreement which the Company has disclosed in its annual proxy statement filed in accordance with the Exchange Act or other applicable regulation.

The Executive acknowledges and agrees that the Confidential Information, and all physical embodiments thereof, are valuable, special and unique assets of the business of the Company and its Subsidiaries (the "Company Group") and have been developed by the Company Group at considerable time and expense. Such Confidential Information is the sole property of the Company Group and the Executive has no individual right or ownership interest in any of the Confidential Information. The Executive further acknowledges that access to Confidential Information will be needed in connection with the performance of his duties and responsibilities during his employment with the Company. Therefore, the Executive agrees that, except as necessary in regard to his assigned duties and responsibilities with the Company, he shall hold in confidence all Confidential Information and will not reproduce, use, distribute, disclose, publish, or otherwise disseminate any Confidential Information, in whole or in part, and will take no action causing, or fail to take any reasonable action necessary to prevent causing, any Confidential Information to lose its character as Confidential Information, nor willfully make use of such information for his/her own purposes or for the benefit of any person, firm, corporation, association, or other entity (except the Company Group) under any circumstances.

Notwithstanding the above, the Executive may disclose Confidential Information pursuant to a court order, subpoena, or other legal process, provided that, at least ten (10) days (or such lesser period as is practicable given the terms of any order, subpoena or other legal process) in advance of any legal disclosure, he shall furnish the Company with a copy of the judicial or administrative order requiring that such information be disclosed together with a written description of the information to be disclosed (which description shall be in sufficient detail to allow the Company to determine the nature and scope of the information proposed to be disclosed), and the Executive agrees to cooperate with the Company Group to deliver the minimum amount of information necessary to comply with such order.

Executive agrees to maintain in trust, as the Company's property, all documents, information and Confidential Information, both in tangible and intangible form, concerning the Company's Business or the Executive's role for Company. The Executive agrees to return to Company all documents or other property belonging to the Company, including any and all copies thereof (whether in tangible or intangible form) in the possession or under the control of the Executive upon separation of employment or at any other time upon request of Company.

The provisions of this Section 11(a) shall apply to Confidential Information during the Term and at all times thereafter, and shall survive the termination of the Executive's employment. This Agreement supplements and does not supersede Executive's obligations under all statute(s) and common law(s) that protect the Company's trade secrets and/or property. However, nothing in this Agreement or elsewhere shall prohibit the Executive from making disclosures of Confidential Information (w) when requested to do so by a governmental or quasi-governmental agency with apparent jurisdiction, or when disclosure is protected by law (e.g., by whistleblower statutes), (x) in the course of any proceeding under Section 11 (c) or 14 of this Agreement, (y) in confidence to an attorney for the purpose of securing legal advice, or (z) retaining (for personal use only) copies of documents relating to his personal rights, obligations and tax liabilities.

(b) The Executive shall not, for his own benefit or the benefit of any other Person, without the prior written consent of the Company and other than in connection with his services hereunder during the Term:

(i) during the Term and for a period of twelve (12) months thereafter, directly or indirectly perform services for, or otherwise have material involvement with (whether as an officer, director, partner, consultant, security holder, owner, employee, independent contractor or otherwise), any Competitor; provided that the Executive may in any event (x) own up to a 5% passive ownership interest in any public or private entity, and (y) be employed by, or otherwise have material association with, any business that owns a majority of this interests in a Competitor if his employment or association is with a separately managed and operated division or Affiliate of such business that is not the Competitor and he has no business communication with employees of the Competitor.

(ii) during the Term and for a period of twelve (12) months thereafter, personally solicit, aid in the solicitation of, induce or otherwise encourage (whether directly or indirectly) any individual who is or was, at the time of such encouragement or within the six (6) months prior to such encouragement, employed as an executive, highly-compensated employee, or managerial/supervisory employee of the Company or a Subsidiary, to cease such employment or interfere in any way with the relationship between the Company or a Subsidiary and such employee; or

(iii) during the Term and for a period of twelve (12) months thereafter, directly or indirectly solicit, aid in the solicitation of, induce, or otherwise encourage (whether directly or indirectly) any Customer for the purpose of (a) selling Competitive Services or Products to such Person in competition with the Company or (b) inducing such Person to cancel, transfer or cease doing their business with the Company; provided, that the restrictions set forth in clauses (i), (ii) and (iii) of this Section 11(b) shall immediately expire in the event that the Company, or any of its Affiliates, shall have materially breached, on or after the Termination Date, any of their material obligations to the Executive under this Agreement or otherwise, which breach shall have continued uncured for 10 days after the Executive has given written notice requesting cure.

(c) The Executive acknowledges and agrees that the business of the Company is highly competitive, and that the restrictions contained in this Section 11 are reasonable and necessary to protect the Company's legitimate business interests. The Executive further acknowledges that any actual or prospective breach may irreparably cause damage to the Company for which money damages may not be adequate. Therefore, in the event of any actual or threatened breach by the Executive of any of the provisions of Section 11(a) or 11(b) above, the Company shall each be entitled to seek, through arbitration in accordance with Section 14 or from any court with jurisdiction over the matter and the Executive, temporary, preliminary and permanent equitable/injunctive relief restraining the Executive from violating such provision and to seek money damages, together with any and all other remedies available under applicable law.

(d) The purpose of this Section 11, among other things, is to protect the Company from unfair or inappropriate competition, to protect its confidential information and trade secrets, and to prevent competitors from raiding employees of the Company. If the scope or enforcement of this Section 11 is ever disputed, a court, arbitrator or other trier of fact may modify and enforce its provisions to the extent it believes is lawful and appropriate. If any provision of this Section 11 is construed to be invalid, illegal or unenforceable, then the remaining provisions therein shall not be affected thereby and shall be enforceable without regard thereto.

12. **Assignability; Binding Nature.**

(a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs (in the case of the Executive) and assigns.

(b) No rights or obligations of the Company under this Agreement may be assigned or transferred by the Company except that such rights and obligations may be assigned or transferred pursuant to a merger, consolidation or other combination in which the Company is not the continuing entity, or a sale or liquidation of all or substantially all of the business and assets of the Company, provided that the assignee or transferee is the successor to all or substantially all of the business and assets of the Company and such assignee or transferee expressly assumes the liabilities, obligations and duties of the Company as set forth in this Agreement. In the event of any merger, consolidation, other combination, sale of business and assets, or liquidation as described in the preceding sentence, the Company shall use its best reasonable efforts to cause such assignee or transferee to promptly and expressly assume the liabilities, obligations and duties of the Company hereunder.

(c) No rights or obligations of the Executive under this Agreement may be assigned or transferred by the Executive other than his rights to compensation and benefits, which may be transferred only by will or by operation of law, or as otherwise provided in Section 17 (e).

13. **Representations.**

(a) The Company represents and warrants that (i) it is fully authorized by action of its Board (and of any other Person or body whose action is required) to enter into this Agreement and to perform its obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement by it does not violate any applicable law, regulation, order, judgment or decree or any agreement, arrangement, plan or corporate governance document to which it is a party or by which it is bound and (iii) upon the execution and delivery of this Agreement by the Parties, this Agreement shall be its valid and binding obligation, enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(b) The Executive represents and warrants that (i) to the best of his knowledge and belief, delivery and performance of this Agreement by him does not violate any law or regulation applicable to the Executive, (ii) delivery and performance of this Agreement by him does not violate any applicable order, judgment or decree or any agreement to which the Executive is a party or by which he is bound and (iii) upon the execution and delivery of this Agreement by the Parties, this Agreement shall be a valid and binding obligation of the Executive, enforceable against him in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

14. **Resolution of Disputes.** Any Claim arising out of or relating to this Agreement, any other agreement between the Executive and the Company or its Affiliates, the Executive's employment with the Company, or any termination thereof (collectively, "**Covered Claims**") shall (except to the extent otherwise provided in Section 11(c) with respect to certain requests for injunctive relief) be resolved by binding confidential arbitration, to be held in Indianapolis, Indiana, in accordance with the Commercial Arbitration Rules (and not the National Rules for Resolution of Employment Disputes) of the American Arbitration Association and this Section 14. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Promptly upon written request by the Executive, accompanied by appropriate supporting documentation, the Company shall pay (or, if already paid, shall reimburse the Executive for) any reasonable expense (including, without limitation, attorneys fees and other charges of counsel) incurred by him in connection with a Covered Claim, subject to prompt repayment by the Executive to the Company to the extent that Company substantially prevails on the Covered Claim at issue. Pending the resolution of any Covered Claim, the Executive (and his beneficiaries) shall continue to receive all payments and benefits due under this Agreement or otherwise, except to the extent that the arbitrators otherwise provide.

15. **Tax Matters.** Notwithstanding anything anywhere to the contrary, this Agreement is intended to be interpreted and applied so that the payment and the benefits set forth herein shall either be exempt from the requirements of Section 409A of the Code or any regulations or guidance thereunder ("**Section 409A**") or shall comply with the requirements of Section 409A. To the extent that any amounts payable in accordance with this Agreement are subject to Section 409A, this Agreement shall be interpreted and administered in such a way as to comply with Section 409A to the maximum extent possible. Notwithstanding anything anywhere to the contrary, if the Executive is a "specified employee" (within the meaning of Section 409A), any payments or arrangements due upon a termination of the Executive's employment under any arrangement that constitutes a "deferral of compensation" (within the meaning of Section 409A), and which do not otherwise qualify under the exemptions under Treas. Regs. Section 1.409A, shall be delayed and paid or provided on the earlier of (i) the date which is six months after the Executive's "separation from service" (as such term is defined in Section 409A) for any reason other than death, and (ii) the date of the Executive's death. Each series of payments under this Agreement or otherwise shall be treated as separate payments for purposes of Section 409A. "Termination of employment," "resignation" or words of similar import, as used in this Agreement shall mean, with respect to any payments subject to Section 409A, the Executive's "separation from service" as defined by Section 409A. If any payment subject to Section 409A is contingent on the delivery of a release by the Executive and could occur in either of two calendar years, the payment will occur in the second calendar year. To the extent that reimbursements or other in-kind benefits under this Agreement constitute "nonqualified deferred compensation" subject to Section 409A, (i) all such expenses or other reimbursements hereunder shall be paid on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by the Executive, (ii) no such reimbursement, expenses eligible for reimbursement, or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to provided, in any other taxable year, and (iii) the Executive's right to such reimbursement or in-kind benefits shall not be subject to liquidation or exchange for any other benefit. Nothing in this Agreement shall be construed as a guarantee of any particular tax treatment to the Executive. The Executive shall be solely responsible for the tax consequences with respect to all amounts payable under this Agreement, and in no event shall the Company have any responsibility or liability if this Agreement does not meet any applicable requirements of Section 409A.

(c) **Inconsistencies.** In the event of any inconsistency between any provision of this Agreement and any provision of any Company Arrangement, the provisions of this Agreement shall control unless the Executive otherwise agrees in a writing that expressly refers to the provision of this Agreement whose control he is waiving.

(d) **Headings.** The headings of the Sections and sub-sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

(e) **Beneficiaries/References.** The Executive shall be entitled, to the extent permitted under applicable law, to select and change a beneficiary or beneficiaries to receive any compensation or benefit hereunder following the Executive's death by giving written notice thereof. In the event of the Executive's death or a judicial determination of his incompetence, references in this Agreement to the Executive shall be deemed, where appropriate, to refer to his beneficiary, estate or other legal representative.

(f) **Survivorship.** Except as otherwise set forth in this Agreement, the respective rights and obligations of the Parties hereunder shall survive any termination of the Executive's employment.

(g) **Severability.** To the extent that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall remain in full force and effect so as to achieve the intentions of the Parties, as set forth in this Agreement, to the maximum extent possible.

(h) **Withholding Taxes.** The Company may withhold from any amount or benefit payable under this Agreement taxes that it is required to withhold pursuant to any applicable law or regulation.

(i) **Cooperation.** During the Term and thereafter, the Executive agrees to cooperate with the Company and be available to the Company with respect to continuing and/or future matters related to his employment with the Company (if occurring after termination of employment, to the extent not interfering with the Executive's other business endeavors or personal commitments), whether such matters are business-related, legal, regulatory or otherwise (including, without limitation, the Executive appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into the Executive's possession). Following the Term, the Company shall reimburse the Executive for all reasonable out of pocket expenses incurred by the Executive in rendering such services that are approved by the Company.

(j) **Governing Law.** This Agreement shall be governed, construed, performed and enforced in accordance with its express terms, and otherwise in accordance with the laws of the State of Indiana, without reference to principles of conflict of laws.

(k) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. Signatures delivered by facsimile (including, without limitation, by "pdf") shall be effective for all purposes.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

Protective Insurance Corporation

By: _____
Name:
Title:

The Executive

W. Randall Birchfield

DEFINITIONS

- (a) "Affiliate" of a Person shall mean any Person that directly or indirectly controls, is controlled by, or is under common control with, such Person.
- (b) "Agreement" shall mean this Employment Agreement, which includes for all purposes its Exhibits.
- (c) "Cause" shall mean, for purposes of this Agreement, the occurrence of any of the following events:
- i. the Executive is convicted of, or pleads guilty or nolo contendere to, a felony;
 - ii. the Executive's perpetration of an act of fraud, embezzlement, theft or any other material violation of law that occurs in the course of the Executive's employment with the Company;
 - iii. the Executive's intentional damage to the assets of the Company or any of its Affiliates;
 - iv. the Executive's intentional and material disclosure of Confidential Information contrary to this Agreement or any agreements between the Executive and the Company or any of its Affiliates;
 - v. the Executive's breach of his obligations under this Agreement or any agreement between the Executive and the Company or any of its Affiliates;
 - vi. the Executive's engagement in any competitive activity which would constitute a breach of the Executive's duty of loyalty or of his obligations under this Agreement or any agreement between the Executive and the Company or any of its Affiliates;
 - vii. the Executive's material breach of any of the Company's written policies;
 - viii. the Executive's willful and continued failure to substantially perform his duties under this Agreement (other than as a result of incapacity due to physical or mental illness); or
 - ix. any regulatory agency recommends or determines that Executive is ineligible, unauthorized, or unfit to hold any director or officer position with the Company or any of its subsidiaries or Affiliates; or
 - x. any misconduct by the Executive that is materially injurious to the business or financial reputation of the Company or any of its Affiliates.

For purposes of determining whether an event of Cause has occurred, an act, or a failure to act, shall not be deemed willful or intentional, as those terms are defined herein, unless it is done, or omitted to be done, by the Executive in bad faith or without a reasonable belief that his action or omission was in the best interest of the Company. Failure to meet performance standards or objectives, by itself, shall not constitute "Cause". "Cause" also includes any of the above grounds for dismissal regardless of whether the Company learns of it before or after terminating the Executive's employment.

- (d) "Change in Control" shall mean the occurrence of any of the following events:
- (1) Any Person, other than the Shapiro Family or Entities (the "Shapiro Family or Entities"), acquires ownership of the Class A Common Stock that, together with Class A Common Stock previously held by the acquirer, constitutes more than fifty percent (50%) of the total market value or Voting Securities of the Company's outstanding stock. If any Person is considered to own more than fifty percent (50%) of the total market value or Voting Securities of the Company's outstanding stock, the acquisition of additional stock by the same Person does not cause such a change in ownership. An increase in the percentage of stock owned by any Person as a result of a transaction in which the Company acquires its stock in exchange for property, is treated as an acquisition of stock;
 - (2) Any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by that Person) ownership of the Company's stock possessing at least thirty percent (30%) of the Company's Voting Securities;
 - (3) A majority of the members of the Board is replaced during any twelve (12) month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of appointment or election;
 - (4) (x) The Company combines with another entity and is the surviving entity, or (y) all or substantially all of the assets or business of the Company is disposed of pursuant to a sale, merger, consolidation, liquidation, dissolution or other transaction or series of transactions (each of (x) and (y) being a "Triggering Event") unless the holders of Voting Securities of the Company immediately prior to such Triggering Event own, directly or indirectly, more than two-thirds of the Voting Securities (measured both by number of Voting Securities and by voting power) of (1) in the case of a combination in which the Company is the surviving entity, the surviving entity and (2) in any other case, the entity (if any) that succeeds to all or substantially all of the Company's business and assets; or
 - (5) Any Person acquires (or has acquired during the twelve (12) month period ending on a date of the most recent acquisition by that Person) assets from a corporation that have a total gross fair market value equal to at least forty percent (40%) of the total gross fair market value of all the Company's assets immediately prior to the acquisition or acquisitions. Gross fair market value means the value of the Company's assets, or the value of the assets being disposed of, without regard to any liabilities associated with these assets.

The Shapiro Family or Entities shall mean any and all of any and all of Nathan Shapiro, Steven A. Shapiro, Robert Shapiro, and Norton Shapiro, including their spouses, siblings and descendants of them and all related holdings as disclosed in the definitive proxy statements filed by the Company with the Securities Exchange Commission and as determined from time to time by the Company in its sole discretion;

In determining whether a Change of Control occurs, the attribution rules of Code Section 318 apply to determine stock ownership. For purposes of the definition of Change of Control, a "Person" shall mean any person, entity or "group" within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, except that such term shall not include (a) the Company or any of its subsidiaries, (b) a trustee or other fiduciary holding securities under an employee benefit plan of any member of the Company Group, (c) an underwriter temporarily holding securities pursuant to an offering of such securities or (d) an entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of the Company.

(e) "Claim" shall include, without limitation, any claim, demand, request, investigation, dispute, controversy, threat, discovery request, or request for testimony or information.

(f) "Code" shall mean the Internal Revenue Code of 1986, as amended. Any reference to a particular section of the Code shall include any provision that modifies, replaces or supersedes such section.

(g) "Competitive Services or Products" shall mean those products offered by or in development by the Company during the Term. A list of Competitive Services and Products shall be finalized and documented by the parties no later than seven (7) days after the Effective Date, which may be updated in writing during the Term by the Company.

(h) "Competitor" shall mean any existing or newly-formed Person or entity, including divisions or subsidiaries thereof that offers, markets or administers Competitive Products or Services.

(i) "Confidential Information" shall mean all confidential or proprietary information developed or used by the Company or its Affiliates relating to their business, operations, employees, customers, suppliers or distributors including, but not limited to: confidential or proprietary customer lists, purchase orders, financial data, pricing information and price lists; confidential or proprietary business plans and market strategies and arrangements; confidential or proprietary books, records, manuals, advertising materials, catalogues, correspondence, mailing lists, production data, sales materials, sales records, purchasing materials, purchasing records, personnel records and quality control records; confidential or proprietary trademarks, copyrights and patents, and applications therefor; trade secrets; confidential or proprietary inventions, processes, procedures, research records, market surveys and marketing know-how; and confidential or proprietary technical papers, software, computer programs, data bases and documentation thereof, including but not limited to source codes, algorithms, processes, formulae and flow charts. The term "Confidential Information" shall not include any document, record, data compilation, or other information that (x) has previously been disclosed to the public, or is in the public domain, other than as a result of the Executive's breach of Section 11(a), or (y) is known or generally available to the public or within any trade or industry of the Company or any of its Affiliates.

(j) "Customer" shall mean any Person to whom the Company or a Subsidiary sold or distributed products or services during the two years prior to the Termination Date and any prospective customer who the Company has provided a proposal for products or services at the time of Termination (or within the prior six (6) month period).

(k) "Good Reason" shall mean, for purposes of this Agreement, the occurrence of any of the following events without either the Executive's prior written consent or, if curable, full cure within thirty (30) days after the Executive gives written notice to the Company describing the event and requesting cure, provided that such notice is given within ninety (90) days after the Executive has knowledge of such event and that the Executive terminates his employment within one hundred eighty (180) days after such event occurs:

(i) any failure by the Company to continue the Executive as Chief Executive Officer of the Company or to nominate the Executive for election to the Board;

(ii) any material diminution in the Executive's responsibilities or authorities; the assignment to him of duties that are materially inconsistent with, or materially impair his ability to perform, the duties then assigned to him; or any change in the reporting structure so that the Executive is required to report, in his role as Chief Executive Officer of the Company, to any person other than the entire Board or a duly authorized committee of the Board;

(iii) any relocation of the Executive's principal office, or principal place of employment, to a location that is more than 40 miles from its location in Carmel, Indiana as of the Effective Date;

(iv) any material breach by the Company or its Affiliates of any of their obligations under Sections 3 through 10, or of any of their representations or warranties in Section 13(a), or of any material term of, or representation in, any Company Arrangement;

(v) the resignation or removal from the Board of at least three Independent Directors without their each being promptly (within 6 months) replaced by new Independent Directors; or

(vi) any failure of the Company to obtain the assumption in writing of its obligations under this Agreement by any successor to all or substantially all of its business or assets within thirty (30) days after the occurrence of any amalgamation, combination, merger, consolidation, sale, liquidation, dissolution or similar transaction.

(l) "Disability" shall mean the Executive's inability, with or without reasonable accommodation and due to physical or mental incapacity, to substantially perform his duties and responsibilities hereunder such that Executive is eligible for benefits under the Company's then-current long-term disability plan.

- (m) "Executive" shall have the meaning set forth in the preamble to this Agreement, as modified by Section 17(e).
- (n) "Independent Directors" shall mean the members of the Board on the Effective Date who are "independent directors" within meaning of applicable Nasdaq listing standards;
- (o) "1933 Act" shall mean the Securities Act of 1933, as amended.
- (p) "1934 Act" shall mean the Securities Exchange Act of 1934, as amended.
- (q) "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, estate, board, committee, agency, body, employee benefit plan, or other person or entity.
- (r) "Proceeding" shall include, without limitation, any actual, threatened or reasonably anticipated action, suit or proceeding, whether civil, criminal, administrative, investigative, appellate, formal, informal or other.
- (s) "Pro-Rata AIP" shall mean an amount equal to the product obtained by multiplying (x) the aggregate amount of the Target AIP that the Executive would have been eligible to receive for the calendar year in which his employment hereunder terminated, if his employment hereunder had continued times (y) a fraction, the numerator of which is 365 minus the number of days remaining in such year after the Termination Date and the denominator of which is 365. Any Pro-Rata AIP shall be paid in a cash lump sum by the sixty-fifth (65th) day following the Termination Date.
- (t) "Pro-Rata LTIP" shall mean an amount equal to the product obtained by multiplying (x) the aggregate amount of the Target LTIP that the Executive would have been eligible for the calendar year in which his employment hereunder terminated, if his employment hereunder had continued times (y) a fraction, the numerator of which is 365 minus the number of days remaining in such year after the Termination Date and the denominator of which is 365. Any Pro-Rata LTIP shall be paid in a cash lump sum by the sixty-fifth (65th) day following the Termination Date.
- (u) "Subsidiary" shall mean any entity for which the Company owns a majority of the entity's Voting Securities.
- (v) "Termination Date" shall mean the date on which the Executive's employment hereunder terminates in accordance with this Agreement.
- (w) "Voting Securities" shall mean issued and outstanding securities of any class or classes having general voting power, under ordinary circumstances in the absence of contingencies, to elect, the members of the board of directors (or similar governing body) of the issuer.

[\(Back To Top\)](#)