

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY
COVERAGE SECTION ONE
("D&O COVERAGE SECTION")**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application, including its attachments and the material incorporated therein, which form a part of this policy, the Insurer agrees as follows:

1. INSURING AGREEMENTS

With respect to Coverage A and B, solely with respect to Claims first made against an Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy affords the following coverage:

COVERAGE A: INDIVIDUAL INSURED INSURANCE

This policy shall pay the Loss of each and every Individual Insured arising from a Claim first made against such Individual Insureds during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any Wrongful Act of such Individual Insured, except when and to the extent that the Company has indemnified such Individual Insureds. The Insurer shall, in accordance with Clause 4 of this Coverage Section, advance Defense Costs of such Claim prior to its final disposition.

COVERAGE B: PRIVATE COMPANY INSURANCE

This policy shall pay the Loss of the Company arising from a:

- (i) Claim first made against the Company, or
- (ii) Claim first made against an Individual Insured,

during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any Wrongful Act, but, in the case of (ii) above, only when and to the extent that the Company has indemnified the Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the charter or by-laws of the Company duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with Clause 4 of this Coverage Section, advance Defense Costs of such Claim prior to its final disposition.

2. DEFINITIONS

- (a) "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges.

The term "Claim" shall include a Securities Claim.

- (b) "Employee" means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee in his or her capacity as such. Independent contractors and individuals who are leased to the Company are not Employees.
- (c) "Individual Insured(s)" means any:
 - (1) Director(s) or Officer(s) of the Company;
 - (2) Employee(s) of the Company; and
 - (3) Outside Entity Executive.
- (d) "Insured(s)" mean:
 - (1) any Individual Insured; and
 - (2) the Company.
- (e) "Loss" means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this Coverage Section), settlements, and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (f) "Securities Claim" means a Claim made against any Insured:
 - (1) alleging a violation of any law, regulation or rule, whether statutory or common law (including, but not limited to, the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of the Company; or
 - (ii) brought by a security holder or purchaser or seller of securities of the Company, with respect to such security holder's, purchaser's or seller's interest in securities of such Company; or
 - (2) brought derivatively on the behalf of the Company by a security holder of such Company, relating to a Securities Claim as defined in subparagraph (1) above.

The foregoing Definition of Securities Claim shall not include any Claim brought by any Individual Insured of the Company alleging, arising out of, based upon or attributable to the loss of, or failure to receive or obtain, the benefit of stock, stock warrants, stock options or other securities of the Company.

- (g) "Wrongful Act" means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
- (1) with respect to any Director, Officer or Employee of the Company, by such Director, Officer or Employee in his or her capacity as such or any matter claimed against such Director, Officer or Employee solely by reason of his or her status as such;
 - (2) with respect to any Outside Entity Executive, by such Outside Entity Executive in his or her capacity as such or any matter claimed against such Outside Entity Executive solely by reason of his or her status as such; or
 - (3) with respect to Coverage B(i), by the Company.

3. EXCLUSIONS

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured:

- (a) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act;
- (b) arising out of, based upon or attributable to: (1) profits in fact made from the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or (2) payments to an Insured of any remuneration without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held to have been illegal;
- (c) alleging, arising out of, based upon, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim);
- (d) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Individual Insured serving in his or her capacity as a Director, Officer or Employee of any entity that is not the Company or an Outside Entity, or by reason of his or her status as a Director, Officer or Employee of such other entity;
- (e) for any Wrongful Act arising out of an Individual Insured serving in a capacity as an Outside Entity Executive, if such Claim is brought by the Outside Entity or a director, officer, trustee or governor thereof;
- (f) alleging, arising out of, based upon or attributable to the purchase by the Company of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an Affiliate or Subsidiary of the Company; provided, however, this exclusion shall not apply in the event that within thirty (30) days prior to it becoming an Affiliate or Subsidiary, the

Named Entity gives written notice of the transaction to the Insurer together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the Insurer relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;

(g) with respect to Coverage B(i) only:

- (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
 - (2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
 - (3) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any Insured under any contract or agreement (either oral or written);
 - (4) seeking fines or penalties or non-monetary relief against the Company;
 - (5) for the rendering or failure to render any service to a customer or client of the Insured;
- provided, however, that exclusions (g)(4) and (g)(5) shall not apply to any Securities Claim;

(h) for emotional distress, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, that this exclusion shall not apply to a Securities Claim;

(i) which is brought by, on behalf of or in the right of, the Company or any Individual Insured; or which is brought by any security holder or member of the Company, whether directly or derivatively, unless such security holder's or member's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Individual Insured of the Company or the Company; provided, however, this exclusion shall not apply to any Claim brought by an Individual Insured in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a Claim that is covered by this policy; or

(j) alleging, arising out of, based upon or attributable to any public offering of securities by the Company, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such public offering;

provided, however, that this exclusion shall not apply to:

- (1) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the Named Entity shall give the Insurer written notice of any public offering exempted pursuant to Section 3(b), together with full particulars and as soon as practicable, but not later than thirty (30) days after the effective date of the public offering;

- (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (i) the Named Entity shall give the Insurer written notice of such public offering together with full particulars and underwriting information required thereto, and (ii) the Named Entity accepts such terms, conditions and additional premium required by the Insurer for such coverage. Such coverage is also subject to the Named Entity paying when due any such additional premium. In the event the Company gives written notice with full particulars and underwriting information pursuant to (i) above, then the Insurer must offer a quote for coverage under this paragraph.

For the purpose of determining the applicability of the foregoing Exclusions, other than exclusion (i): (1) the facts pertaining to and knowledge possessed by any Insured shall not be imputed to any other Individual Insured; and (2) only facts pertaining to and knowledge possessed by any past, present or future chairman of the board, president, chief executive officer, chief operating officer, chief financial officer (or equivalent positions) of the Company shall be imputed to the Company.

4. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)

The Insurer does not assume any duty to defend. The Insureds shall defend and contest any Claim made against them.

Notwithstanding the foregoing, the Insureds shall have the right to tender the defense of any Claim to the Insurer, which right shall be exercised in writing by the Named Entity on behalf of all Insureds to the Insurer pursuant to the notice provisions of Clause 7 of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the Claim is first made against an Insured, pursuant to Clause 7 of the General Terms and Conditions. Further, from the date the Claim is first made against the Insureds to the date when the Insurer accepts the tender of the defense of such Claim, the Insureds shall take no action, or fail to take any required action, that prejudices the rights of the Insureds or the Insurer with respect to such Claim. Provided that the Insureds have complied with the foregoing, the Insurer shall be obligated to assume the defense of the Claim, even if such Claim is groundless, false or fraudulent. The assumption of the defense of the Claim shall be effective upon written confirmation sent thereof by the Insurer to the Named Entity. Once the defense has been so tendered, the Insured shall have the right to effectively associate with the Insurer in the defense and negotiation of any settlement of any Claim, subject to the provisions of this Clause 4. However, the Insurer shall not be obligated to defend such Claim after the Policy Aggregate Limit of Liability or Separate Limit of Liability, if any, has been exhausted, or after an Insured's rejection of a Settlement Opportunity as defined in this Clause 4.

When the Insurer has not assumed the defense of a Claim pursuant to this Clause 4, the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by the Insureds or the Company, severally according to their respective interests, in the event and to the extent that the Insureds or the Company shall not be entitled under the terms and conditions of this policy to payment of such Loss.

The Insureds shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any Defense Costs without the prior written consent of the Insurer. Only those settlements, stipulated judgments and Defense Costs, which have been consented to by the Insurer, in writing, shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

The Insurer shall have the right to fully and effectively associate with the Company in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Company and the Insureds shall give the Insurer full cooperation and such information as it may reasonably require.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant ("Settlement Opportunity"), and the Insureds consent to such settlement, then the Insured's applicable Retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to such settlement within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimants, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 4(b) of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insureds do not consent to a Settlement Opportunity within the time prescribed, then, subject to the applicable Limit of Liability, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim, plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer ("Settlement Opportunity Amount"), plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 50% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Company and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the applicable Retention amount stated in Item 4(b) of the Declarations.

With respect to: (i) Defense Costs jointly incurred by, (ii) any joint settlement entered into by, or (iii) any judgment of joint and several liability against the Company and any Individual Insured in connection with any Claim, there shall be a fair and equitable allocation as between the Company and any such Individual Insured, taking into account the relative legal and financial exposures and the relative benefits obtained by any such Individual Insured and the Company, without any presumption that the coverage afforded to the Individual Insured shall in any way reduce the allocation to the Company which shall not be insured for such allocation. In the event that a determination as to the amount of Defense Costs to be advanced under the policy cannot be agreed to, then the Insurer shall advance Defense Costs excess of any applicable Retention amount which the Insurer states to be fair

and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

5. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause applies to all Claims under this Coverage Section. Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms (herein "Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of any Claim(s) against any Insured(s) pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 4, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Claim is brought. In the event a Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the Claim is maintained or where the corporate headquarters or state of formation of the Named Entity is located. In such instance, however, the Insurer shall, at the written request of the Named Entity assign a non-Panel Counsel Firm of the Insurer's choice in the jurisdiction in which the Claim is brought to function as "local counsel" on the Claim to assist the Panel Counsel Firm, which will function as "lead counsel" in conducting the defense of the Claim.

With the express prior written consent of the Insurer, an Insured may select (in the case of the Insured defending the Claim), or cause the Insurer to select (in the case of the Insurer defending the Claim), a Panel Counsel Firm different from that selected by other Insured defendants if such selection is required due to an actual conflict of interest.

The list of Panel Counsel Firms may be amended from time to time by the Insurer. However, no change shall be made to the specific list attached to this policy during the Policy Period without the consent of the Named Entity.

6. DISCOVERY CLAUSE

Except as indicated below, if the Named Entity shall cancel or the Named Entity or the Insurer shall refuse to renew this Coverage Section, then solely with respect to this Coverage Section, the Named Entity shall have the right to a period of either one, two or three years following the effective date of such cancellation or nonrenewal upon payment of the respective "Additional Premium Amount" described below (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during said Discovery Period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within thirty (30) days of the effective date of cancellation or nonrenewal.

The Additional Premium Amount for: (1) one year shall be 75% of the "full annual premium"; (2) two years shall be 150% of the "full annual premium"; and (3) three years shall be a reasonable premium

amount to be mutually agreed upon by the Named Entity and the Insurer. As used herein, "full annual premium" means the premium level in effect for this Coverage Section immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 9 of the General Terms and Conditions, the Named Entity shall have the right, within thirty (30) days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than three (3) years or for such longer or shorter period as the Named Entity may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable, except for non-payment of premium. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

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