

Berkley Insurance Company

Side A Directors and Officers Liability Insurance Policy
with Difference in Conditions

This is a Claims Made Policy. Please read it carefully.

CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED PERSONS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE).

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance upon all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this Policy, the **Insurer** and **Insured Persons** agree as follows:

I. Insuring Agreement

The **Insurer** shall pay on behalf of the **Insured Persons** **Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or the Extended Reporting Period (if applicable) for a **Wrongful Act**, except to the extent that such **Loss** is paid by any other **Insurance Program** or as indemnification or advancement from any source. In the event that **Loss** is not paid by such other **Insurance Program** or as indemnification or advancement from any source, this Policy shall respond on behalf of the **Insured Persons** as if it were primary, subject to all of its terms, conditions, and limitations, including but not limited to section V. Limit of Liability C. and D., and without prejudice to the **Insurer's** excess position.

II. Extended Reporting Period

- A. If the **Insured Persons** or the **Insurer** does not renew this Policy, then the **Insured Persons** shall have the right, upon payment of an additional premium set forth in Item 4. of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** first made during the period of time set forth in Item 4. of the Declarations after the Policy expiration date, but only with respect to a **Wrongful Act** occurring prior to Policy expiration date.
- B. As a condition precedent to the right to purchase the Extended Reporting Period the total premium for this Policy must have been paid in full. The right of the **Insured Persons** to purchase the Extended Reporting Period shall be immediately terminated if the **Insurer** does not receive written notice by the **Insured Persons** advising they wish to purchase the Extended Reporting Period together with full payment of the premium for the Extended Reporting Period within 30 days after the Policy expiration date.
- C. If the **Insured Persons** elect to purchase the aforementioned Extended Reporting Period, the entire premium for the Extended Reporting Period shall be deemed to be fully earned at the inception date of the Extended Reporting Period.
- D. The purchase of the Extended Reporting Period shall not in any way increase the Limit of Liability set forth in Item 3. of the Declarations and the Limit of Liability with respect to **Claims** made during the Extended Reporting Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

III. Definitions

Whenever printed in boldface type, and whether in the singular or plural form, the following terms shall have the meanings indicated below.

- A. "**Change in Control**" means the:
 1. merger or acquisition of the **Parent Organization**, or of all or substantially all of its assets by another entity such that the **Parent Organization** is not the surviving entity, or
 2. acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than 50 percent of the directors of the **Parent Organization**, or
 3. court appointment of any person or entity with authority comparable to that of the **Insured Persons**, to liquidate or reorganize the **Parent Organization**.
- B. "**Claim**" means:
 1. a written demand for monetary or non-monetary relief, or
 2. any civil or criminal judicial proceeding in a court of law or equity, or arbitration, or
 3. a formal civil, criminal, administrative, or regulatory proceeding or formal investigation, or
 4. an official request for **Extradition** of an **Insured Person**.
- C. "**Company**" means the **Parent Organization** and any **Subsidiary** created or acquired on or before the inception date set forth in Item 2. of the Declarations or during the **Policy Period**, subject to section VIII. D. Changes in Exposure.

- D. **"Costs of Defense"** means reasonable legal fees and expenses incurred in the defense or investigation of any **Claim**. **Costs of Defense** shall not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, or employees.
- E. **"Domestic Partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Parent Organization**.
- F. **"Extradition"** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- G. **"Insurance Program"** means any:
1. existing Management Liability insurance, Directors and Officers Liability insurance, or similar insurance, or
 2. other existing insurance under which coverage may be owed.
- H. **"Insured Person"** means:
1. any past, present, or future director or officer, general counsel, or member of the Board of Managers, of the **Company** and those persons serving in a functionally equivalent role for the **Parent Organization** or any **Subsidiary** operating or incorporated outside the United States, or
 2. the lawful spouse or **Domestic Partner** of any **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or **Domestic Partner** of an **Insured Person**, including a **Claim** that seeks damages recoverable from property jointly held by the **Insured Person** and the spouse or **Domestic Partner**, or property transferred from the **Insured Person** to the spouse or **Domestic Partner**; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**, subject to this Policy's terms, conditions and exclusions, or
 3. in the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** shall be deemed to be a **Claim** against such **Insured Person**.
- I. **"Insurer"** means the entity issuing this Policy as listed on the Declarations Page.
- J. **"Loss"** means damages, judgments, settlements or other amounts (including pre-judgment and post-judgment interest, punitive or exemplary damages, or the multiplied portion of any damage award, where insurable by law) and **Costs of Defense** that the **Insured Persons** are obligated to pay. **Loss** shall not include:
1. matters which are uninsurable under the law pursuant to which this Policy is construed, or
 2. fines, penalties or taxes imposed by law; provided, however, that **Loss** shall include fines, penalties or taxes that an **Insured Person** is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such **Insured Person's** service with respect to an entity included within the definition of **Company** that is financially insolvent.
- Further, with respect to coverage for punitive, exemplary or multiplied damages or fines, penalties or taxes, the law of the applicable jurisdiction most favorable to the insurability of such amounts shall control.
- K. **"Outside Capacity Wrongful Act"** means any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person**, while acting in his or her capacity as a director, officer, trustee, regent, or governor of any **Outside Entity**, if serving in such capacity at the specific written request of the **Company**.
- L. **"Outside Entity"** means any corporation or organization other than the **Company** of which any **Insured Person** serves as a director, officer, trustee, regent, or governor, but only if such service is at the specific written direction of the **Company**.
- M. **"Parent Organization"** means the entity designated in Item 1. of the Declarations.
- N. **"Policy Period"** means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this Policy.
- O. **"Proposal"** means any signed application, including any attachment and other material submitted therewith or incorporated therein, submitted by the **Insured Persons** to the **Insurer** for this Policy.
- P. **"Related Wrongful Act"** means **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts circumstances, situations, transactions, or events.
- Q. **"Subsidiary"** means any entity during any time in which the **Parent Organization** owns, directly or through one of more **Subsidiary**, more than 50 percent of the outstanding securities representing the right to vote for the election of such entity's directors.

- R. **"Wrongful Act"** means any:
1. actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person**, while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the **Company** or a functionally equivalent role for the **Parent Organization** or any **Subsidiary** operating or incorporated outside the United States, or
 2. matter asserted against an **Insured Person** solely by reason of his or her status as a director, officer, general counsel, or member of the Board of Managers of the **Company**, or
 3. **Wrongful Employment Act**, or
 4. **Outside Capacity Wrongful Act**.
- S. **"Wrongful Employment Act"** means any actual or alleged:
1. wrongful termination of employment whether actual or constructive, or
 2. employment discrimination of any kind, or
 3. sexual or other harassment in the workplace, or
 4. wrongful deprivation of career opportunity, employment related misrepresentation, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, or refusal to hire.

IV. Exclusions

- A. Except for **Costs of Defense**, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim**:
1. brought by or on behalf of, or at the direction of, the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity**, except and to the extent such **Claim** is:
 - a. brought and maintained by a security holder of the **Company** or such **Outside Entity**, but only if such security holder is acting independently of, and without the solicitation, assistance, participation or intervention of, the **Company**, any **Insured Person**, or any **Outside Entity**, or
 - b. brought by the Bankruptcy Trustee or Examiner of the **Company** or such **Outside Entity**, or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company** or such **Outside Entity**, or
 - c. brought and maintained in a non-common law jurisdiction outside the United States of America or its territories or possessions, or
 - d. made after the **Parent Organization** has undergone a **Change in Control**;
 2. brought about or contributed to in fact by any:
 - a. intentionally dishonest, fraudulent, or criminal act or omission or any willful violation of any statute, rule, or law, or
 - b. profit or remuneration gained by any **Insured Person** to which such **Insured Person** is not legally entitled;as determined by a final adjudication in the underlying action; provided, however, this exclusion IV. A. 2. shall not apply to any portion of any **Loss** in connection with any **Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, or to the portion of any **Loss** attributable to such violations.
- B. The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim**:
1. for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, defamation, slander, libel, disease or death of any person, or damage or destruction of any tangible property including **Loss** of use thereof; provided, however, this exclusion IV. B. 1. shall not apply to any **Claim**:
 - a. brought by a security holder of the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity** for any actual or alleged violation of the Securities Act of 1933, the Securities Act of 1934, or any state securities statute, or
 - b. in the form of a derivative action, but only if such **Claim** is brought by or on behalf of, or in the name or right of, the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity** and is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of the **Company**, any **Insured Person**, or any **Outside Entity**, or
 - c. for libel, slander, defamation, mental anguish or emotional distress if and only to the extent that such allegations are made as part of a **Claim** for a **Wrongful Employment Act**;

2. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the inception date of this Policy, was the subject of any notice given under any other Management Liability insurance, Directors and Officers insurance, or other similar insurance.

No conduct of any **Insured Person** shall be imputed to any other **Insured Person** to determine the application of any of the above Exclusions.

V. Limit of Liability

- A. The Limit of Liability stated in Item 3. of the Declarations is the maximum limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insured Persons** during the **Policy Period** and the Extended Reporting Period (if purchased).
- B. **Costs of Defense** are part of, and not in addition to, the Limit of Liability set forth in Item 3. of the Declarations. Payment by the **Insurer** of **Costs of Defense** shall reduce and may exhaust the Limit of Liability.
- C. The **Insured Persons** and the **Company** understand and agree that all coverage under this Policy shall be specifically excess over, and shall not contribute with:
 1. all indemnification and advancement to which an **Insured Person** may be entitled from any source, including but not limited to the **Company** or any **Outside Entity**, and
 2. any **Insurance Program** maintained by the **Company** or any **Outside Entity**, whether such other insurance is stated to be primary, contributing, excess, or otherwise.Provided, however, if **Loss** is not paid by such other insurance or as indemnification or advancement, this Policy shall respond on behalf of the **Insured Persons** as if it were primary, subject to all of its terms, conditions and limitations and without prejudice to the **Insurer's** excess position.
- D. This Policy shall not be subject to the terms or conditions of any other insurance. The **Insurer** does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed, or from any person or entity from which an **Insured Person** is entitled to indemnification or advancement, including the **Company** and any **Outside Entity**.
- E. If the **Insurer's** Limit of Liability as set forth in Item 3. of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in Item 5. of the Declarations shall be fully earned, all obligations of the **Insurer** under this Policy will be completely fulfilled and exhausted, and the **Insurer** shall have no further obligations of any kind whatsoever under this Policy.

Supplemental Coverage - Securities Act of 1933 Sections 11 and 12 Extension

- F. It is agreed that if a **Claim** against the **Insured Persons** alleges violations of Sections 11 or 12 of the Securities Act of 1933, as amended, the **Insurer** shall not assert that any portion of any settlement in such **Claim** constitutes uninsurable loss and shall treat that portion of all such settlements, judgments and **Costs of Defense** as constituting **Loss** under this Policy.

VI. Defense, Cooperation and Settlement

- A. It shall be the duty of the **Insured Persons** and not the duty of the **Insurer** to defend **Claims**. No **Insured Person** may incur any **Costs of Defense** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the **Insurer's** consent, such consent not to be unreasonably withheld.
- B. Upon written request, the **Insurer** shall pay on a current basis any **Costs of Defense** before the disposition of the **Claim** for which this Policy provides coverage. In the event of such advancement, the **Insured Persons** agree that they shall repay the **Insurer**, severally according to their interests, any **Loss**, including **Costs of Defense** paid to or on behalf of the **Insured Persons** if it is finally determined that the **Loss** incurred is not covered under this Policy.
- C. Except for such **Costs of Defense**, the **Insurer** shall pay **Loss** only upon the final disposition of any **Claim**.
- D. The **Insured Persons** and the **Company** agree to provide the **Insurer** with all information, assistance and cooperation that the **Insurer** may reasonably request, and further agree that they shall do nothing which in any way increases the **Insurer's** exposure under this Policy or in any way prejudices the **Insurer's** potential or actual rights of recovery.

VII. Notice of Claim and Multiple Claims

- A. As a condition precedent to any right to payment under this Policy with respect to any **Claim**, the **Insured Persons** or the **Company** shall give written notice to the **Insurer** of any **Claim** as soon as practicable after it is first made.
- B. If during the **Policy Period**, the **Insured Persons** or the **Company** first becomes aware of a specific **Wrongful Act** and, if during the **Policy Period**, the **Insured Persons** or the **Company**:
1. provide the **Insurer** with written notice of the specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the **Insured Persons** first became aware of such **Wrongful Act**, and
 2. request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;
- then any **Claim** subsequently made arising out of such **Wrongful Act** shall be treated as if it had been first made during the **Policy Period**.
- C. All **Claims** arising from the same **Related Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to section VII. A. or B. above, if applicable.
- D. In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insured Persons** or the **Company** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

VIII. General Conditions

A. Termination of Policy

1. This Policy may not be cancelled by the **Insured Persons**, the **Company**, or the **Insurer**, other than by the **Insurer** for non-payment of any premium when due. The **Insurer** shall provide at least 20 days written notice to the **Parent Organization** prior to any cancellation for non-payment of any premium. Any notices to be given to the **Parent Organization** under this section VIII. shall be provided to the **Parent Organization** at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.
2. The **Insurer** shall not be entitled to rescind this Policy under any circumstances.

B. Proposal

The **Proposal** shall all be construed as a separate **Proposal** for each **Insured Person**. Each **Insured Person** represents that, to the best of his or her knowledge, the statements and particulars contained in the **Proposal** are true, accurate and complete, and each **Insured Person** agrees that this Policy is issued in reliance on the truth of that representation and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. In the event that any statements and particulars contained in the **Proposal** are materially untrue, inaccurate or incomplete and are related to a **Claim**, there shall be no coverage afforded under this Policy with respect to such **Claim**, but solely with respect to any **Insured Person** who had actual knowledge as of the inception date of facts or information that were not accurately or completely disclosed as required in the **Proposal**. No knowledge or information possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purposes of determining the availability of coverage with respect to **Claims** made against such other **Insured Person**.

C. Action Against the Insurer

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy, and the amount of the obligation of the **Insured Person** has been finally determined either by judgment against the **Insured Person** after actual trial, or by written agreement of the **Insured Person**, the claimant and the **Insurer**.

Nothing contained herein shall give any person or entity any right to join the **Insurer** as a party to any **Claim** against the **Insured Person** to determine their liability, nor may the **Insured Person** implead the **Insurer** in any **Claim**. Assignment of interest under this Policy shall not bind the **Insurer** unless its consent is endorsed hereon.

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not cause a waiver or change in any part of this Policy or prevent the **Insurer** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the **Insurer**.

D. Changes in Exposure

If during the **Policy Period**:

1. the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity, coverage shall be provided for any **Loss** involving a **Claim** for a **Wrongful Act** occurring after the consummation of the transaction; provided, however, there shall be no coverage available under this Policy for any **Claim** made against any **Insured Person** for any **Wrongful Act** in connection with the acquired, assumed, merged, or consolidated entity, asset, **Subsidiary**, or liability, committed at any time during which such entity, asset, liability, or **Subsidiary** is not included within the definition of **Company**, or
2. any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who because of their service with such **Subsidiary** were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**, or
3. there is a **Change in Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed prior to the time of the **Change in Control**, then coverage will cease with respect to any **Claim** for a **Wrongful Act** committed subsequent to the **Change in Control**, and the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change in Control**.

E. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured Person's** rights of recovery thereof, and the **Insured Person** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured Person**. In no event, however, shall the **Insurer** exercise its rights of subrogation against the **Insured Person** under this Policy unless such **Insured Person** has been convicted of a criminal act, or been judicially determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such **Insured Person** was not legally entitled.

Any amount recovered pursuant to the exercise of such rights of subrogation shall be applied as follows: (1) to the repayment of expenses incurred in the exercising of any rights of subrogation; (2) to damages and/or **Costs of Defense** paid by the **Insured Person** in excess of the Limits of Liability hereunder; and (3) to damages and/or **Costs of Defense** paid by the **Insurer**.

F. Assignment

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

G. Entire Agreement

By acceptance of this Policy, the **Insured Persons** and the **Insurer** agree that this Policy (including the **Proposal**) and any written endorsements attached hereto constitute the entire agreement between the parties.

H. Representation by Parent Organization

It is agreed that the **Parent Organization** shall act on behalf of the **Insured Persons** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this Policy, and the receipt and acceptance of any endorsements issued to form a part of this Policy.

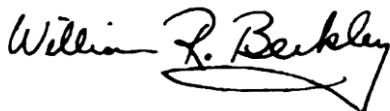
I. Coverage Territory

This Policy applies to any **Wrongful Act** taking place anywhere in the world.

J. Bankruptcy

In the event that a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insured Persons** and the **Company** hereby: (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the **Insurer** or any **Insured Person** or the **Company** to obtain relief from any such stay or injunction.

In witness whereof, the **Insurer** has caused this Policy to be signed by its President and Chairman and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chairman



Secretary