

GENERAL PROVISIONS

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In consideration of the payment of the premium and in reliance upon the **Application**, the Insurer specified in the Declarations (the “**Insurer**”) and the **Insureds** agree as follows:

GENERAL PROVISIONS

1. APPLICABILITY OF GENERAL PROVISIONS

- A. Except as specifically provided herein, the General Provisions apply to all Coverage Parts.
- B. Except as specifically provided therein, the provisions of each Coverage Part apply to such Coverage Part only.
- C. If there is a conflict between the General Provisions and any Coverage Part, the provisions of the Coverage Part shall control.

2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

- A. “**Application**” means the application for this Policy, including any information and materials submitted therewith or incorporated therein. “**Application**” also means any application, including any information and materials submitted therewith or incorporated therein, for any insurance policy in an uninterrupted series of policies issued by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, of which this Policy is a direct or indirect renewal or replacement. The **Application** shall be deemed attached to and is incorporated into this Policy.
- B. “**Claim**” shall have the meaning specified in the respective **Liability Coverage Part**.
- C. “**Debtor in Possession**” means a “debtor in possession” as defined in Chapter 11 of the United States Bankruptcy Code or any similar law.
- D. “**Defense Costs**” means reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**. **Defense Costs** shall include the premium for any appeal, attachment or similar bond, provided that the **Insurer** shall have no obligation to issue such bond. **Defense Costs** shall not include any compensation, benefit expenses, or overhead of any **Insureds**.
- E. “**Domestic Partner**” means any natural person qualifying as a domestic partner under any federal, state or local law or under the provisions of any formal program established by any **Insured Organization**.
- F. “**Employee**” shall have the meaning specified in the respective Coverage Part.
- G. “**ERISA**” means the Employee Retirement Income Security Act of 1974, the English Pension Scheme Act 1993, the English Pensions Act 1995, or any similar law.
- H. “**Executive**” shall have the meaning specified in the respective Coverage Part.
- I. “**Independent Contractor**” means any natural person working for an **Insured Organization** in the capacity of an independent contractor pursuant to an express

contract or agreement with an **Insured Organization** governing the nature of such person's engagement.

- J.** “**Insolvency**” means the status of any **Insured Organization** due to:
1. the appointment of any conservator, liquidator, receiver, trustee, or similar official to control, supervise, or liquidate such **Insured Organization**; or
 2. such **Insured Organization** becoming a **Debtor in Possession**.
- K.** “**Insured Organization**” means:
1. the **Named Organization**; or
 2. any **Subsidiary**;
- including any such organization as a **Debtor in Possession**.
- L.** “**Insured Person**” shall have the meaning specified in the respective Coverage Part.
- M.** “**Insureds**” shall have the meaning specified in the respective Coverage Part.
- N.** “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- O.** “**Liability Coverage Part**” means any Coverage Part of this Policy other than the Crime Coverage Part.
- P.** “**Loss**” shall have the meaning specified in the respective Coverage Part.
- Q.** “**Named Organization**” means the organization named in Item 1 of the Declarations.
- R.** “**Non-Indemnifiable Loss**” means any **Loss** incurred by **Insured Persons** that all **Insured Organizations** cannot indemnify because of:
1. legal prohibition; or
 2. **Insolvency**.
- In determining **Non-Indemnifiable Loss**, all **Insured Organizations** shall be deemed to provide indemnification to the **Insured Persons** to the fullest extent permitted or required by law.
- S.** “**Policy Period**” means the period specified in Item 2 of the Declarations, subject to any cancellation prior to the scheduled expiration date.
- T.** “**Pollutants**” means any solid, liquid, gaseous, biological, radiological or thermal contaminant or irritant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos containing products, waste or any electric, magnetic, or electromagnetic field of any frequency. “**Waste**” includes, without limitation, material to be recycled, reconditioned, or reclaimed.
- U.** “**Subsidiary**” means any:

1. corporation in which, and for as long as, the **Named Organization** owns or controls, either directly or indirectly, more than 50% of the outstanding securities representing a present right to vote for the election of the board of directors of such corporation;
2. limited liability company in which, and for as long as, the **Named Organization** owns or controls, either directly or indirectly, the right to elect, appoint or designate more than 50% of the members of the board of managers or management committee of such limited liability company;
3. joint venture corporation or limited liability company in which, and for as long as, the **Named Organization**: (i) owns or controls, either directly or indirectly, exactly 50% of the outstanding securities representing a present right to vote for the election of the board of directors of such corporation or the right to elect, appoint or designate exactly 50% of the members of the board of managers or management committee of such limited liability company; and (ii) solely controls the management and operations of such organization pursuant to a written agreement with the other owners of such organization; or
4. foundation, charitable trust, or political action committee in which, and for as long as, the **Named Organization** exclusively sponsors such entity or organization.

V. “**Wrongful Act**” shall have the meaning specified in the respective **Liability Coverage Part**.

3. **COVERAGE TERRITORY**

This Policy shall apply on a worldwide basis.

4. **COVERAGE EXTENSIONS**

Regarding the **Liability Coverage Parts** only:

A. **Spousal Coverage**

Coverage shall apply to a **Claim** made against the lawful spouse or **Domestic Partner** of any **Insured Person** provided that:

1. such **Claim** arises solely out of:
 - a. such person’s status as the spouse or **Domestic Partner** of an **Insured Person**; or
 - b. such person’s ownership of property sought as recovery for a **Wrongful Act**;
2. the **Insured Person** is named in such **Claim** along with the spouse or **Domestic Partner**; and
3. no coverage shall apply to any **Claim** for a **Wrongful Act** of such spouse or **Domestic Partner**.

Coverage for such **Claim** shall be on the same terms and conditions (including, without limitation, the Deductible) as apply to a **Claim** made against an **Insured Person**.

B. Estate Coverage

If any **Insured Person** dies, becomes incapacitated, or files for bankruptcy, any **Claim** made against such person's estate, heirs, assigns or legal representatives for a **Wrongful Act** of such **Insured Person** shall be deemed a **Claim** made against such **Insured Person**. No coverage shall apply to any **Claim** for a **Wrongful Act** of such estate, heirs, assigns or legal representatives.

5. EXTENDED REPORTING PERIOD

Regarding the **Liability Coverage Parts** only:

- A.** If the **Insurer** or **Named Organization** shall refuse to renew this Policy, or if the **Named Organization** shall cancel this Policy, the **Insureds** shall have the right, upon payment of the Additional Premium stated in Item 4 of the Declarations, to a continuation of the coverage afforded by all elected **Liability Coverage Parts** for the Additional Period stated in Item 4 of the Declarations (the "Extended Reporting Period"). If elected, the Extended Reporting Period shall commence upon the effective date of such nonrenewal or cancellation. Such continuation of coverage shall apply only to a **Claim**:
 - 1. first made against the **Insureds** during the Extended Reporting Period for a **Wrongful Act** occurring prior to the end of the **Policy Period**; and
 - 2. otherwise covered by any **Liability Coverage Part**.
- B.** The rights contained in this section shall terminate unless a written notice of election together with the additional premium due is received by the **Insurer** within thirty (30) days after the effective date of nonrenewal or cancellation.
- C.** The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D.** There is no separate limit of liability for the Extended Reporting Period.

6. LIMIT OF LIABILITY

Regarding the **Liability Coverage Parts** only:

- A.** The Limit of Liability specified in Item 6 of the Declarations for each **Liability Coverage Part** shall be the maximum aggregate amount that the **Insurer** shall pay under such **Liability Coverage Part**.
- B.** Notwithstanding the above, if the Liability Coverage Parts Aggregate Limit of Liability Option is elected in Item 6 of the Declarations:
 - 1. such single shared Limit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under all **Liability Coverage Parts** combined; and

2. any amount specified as a Limit of Liability for an elected **Liability Coverage Part** shall be:
 - a. the maximum aggregate amount that the **Insurer** shall pay under such **Liability Coverage Part**; and
 - b. part of, and not in addition to, the amount specified as the Liability Coverage Parts Aggregate Limit of Liability.
- C. **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the **Insurer** shall reduce each applicable Limit of Liability.

7. DEDUCTIBLE

Regarding the **Liability Coverage Parts** only:

- A. The **Insurer** shall pay covered **Loss** arising from each **Claim** covered under any **Liability Coverage Part** only to the extent such **Loss** is in excess of the applicable Deductible specified in Item 6 of the Declarations.
- B. Each Deductible under any **Liability Coverage Part** shall be uninsured.
- C. Any **Loss** paid by the **Insurer** under any **Liability Coverage Part** pursuant to a duty to defend or otherwise that is within any applicable Deductible shall be reimbursed by any **Insured Organization** upon the **Insurer's** request.
- D. If a **Claim** is subject to multiple Deductibles, then each Deductible shall apply separately to such **Claim**, provided that the total Deductible for such **Claim** shall not exceed the highest applicable Deductible.
- E. No Deductible shall apply to **Non-Indemnifiable Loss**.
- F. If any **Insured Organization** is permitted by common or statutory law to indemnify an **Insured Person** for **Loss**, or to advance **Defense Costs** on their behalf, and fails to do so other than because of **Insolvency**, then any coverage under a **Liability Coverage Part** for such **Insured Person** shall apply without any Deductible. In such case, the **Insured Organization** shall reimburse the **Insurer** for the Deductible that would have applied if indemnification or advancement had been made.

8. DEFENSE OF CLAIMS

Regarding the **Liability Coverage Parts** only:

- A. The **Insurer** shall have the right and duty to defend each **Claim** covered under a **Liability Coverage Part** for which the **Insurer** receives notice, even if such **Claim** is groundless, false or fraudulent. The **Insurer** may make any investigation it deems appropriate.
- B. The **Insurer's** duty to defend any **Claim** shall end upon exhaustion of any applicable Limit of Liability. If any applicable Limit of Liability is exhausted, the premium for this Policy shall be fully earned.

- C. The **Insureds** shall neither admit nor 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**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.
- D. The **Insurer** may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If any **Insureds** refuse to consent to the settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, then the **Insurer** shall not pay **Loss** for such **Claim** in excess of the sum of:
 - 1. The amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
 - 2. 80% of **Loss** incurred for such **Claim** in excess of the amount specified in 1. above.
- E. The **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request. Upon the **Insurer's** request, the **Insureds** shall attend proceedings, hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim**.

9. CLAIM AND POTENTIAL CLAIM NOTICES

Regarding the **Liability Coverage Parts** only:

- A. As a condition precedent to coverage, the **Insureds** shall give the **Insurer** written notice of any **Claim** as soon as practicable, but no later than 60 days after the end of the **Policy Period** or the Extended Reporting Period, if applicable. Such notice shall specify the **Liability Coverage Part** under which notice is being given.
- B. If, during the **Policy Period** or Extended Reporting Period, if applicable, the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against an **Insured** for which coverage may be available under a **Liability Coverage Part**, and if written notice of such **Wrongful Act** is given to the **Insurer** during the **Policy Period** or Extended Reporting Period, if applicable, specifying the (i) reasons for anticipating such a **Claim**, (ii) nature and date of the **Wrongful Act**, (iii) identity of the **Insureds** involved, (iv) injuries or damages sustained, (v) names of potential claimants, (vi) manner in which the **Insureds** first became aware of the **Wrongful Act** and (vii) the **Liability Coverage Part** under which such notice is being given, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made at the time that the **Insurer** receives such notice.

10. INTERRELATED CLAIMS

Regarding the **Liability Coverage Parts** only, all **Claims** arising from, based upon, or attributable to the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earliest date that:

- A. any of such **Claims** was first made, even if such date is before the **Policy Period**;

- B. proper notice of such **Wrongful Act** or **Interrelated Wrongful Act** was given to the **Insurer** pursuant to Section 9.B above; or
- C. notice of such **Wrongful Act** or **Interrelated Wrongful Act** was given under any prior insurance policy.

11. ALLOCATION

Regarding the **Liability Coverage Parts** only, if the **Insureds** incur **Loss** that is only partially covered by this Policy because a **Claim** includes both covered and uncovered matters or because a **Claim** is made against both covered and uncovered parties, **Loss** shall be allocated as follows:

- A. 100% of **Defense Costs** shall be allocated to covered **Loss**; and
- B. **Loss** other than **Defense Costs** shall be allocated between covered and non-covered **Loss** based upon the relative legal exposure of the parties to such matters.

12. SUBROGATION

The **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the **Insurer's** position or any rights of recovery.

13. OTHER INSURANCE

Coverage under this Policy shall apply only in excess of any other valid and collectible insurance or bond regardless of whether such other insurance or bond is stated to be excess, contributory, contingent or otherwise, unless such other insurance or bond is written specifically excess of this Policy by reference in such other insurance or bond to this Policy's Policy Number.

14. CORPORATE TRANSACTIONS

A. Takeover of Named Organization

If, during the **Policy Period**:

1. any person or entity or group of persons and/or entities acting in concert acquires securities which result in ownership by such person(s) and/or entity(ies) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or equivalent positions of the **Named Organization**; or
2. the **Named Organization** merges into or consolidates with another organization such that the **Named Organization** is not the surviving organization,

then coverage shall continue under this Policy, but only for **Claims for Wrongful Acts** (under a **Liability Coverage Part**) or covered **Loss** (under the Crime Coverage Part) occurring before such transaction. No coverage shall be available for any **Wrongful Act** (under a **Liability Coverage Part**) or **Loss** (under the Crime Coverage Part) occurring after such transaction. Upon such transaction, the entire

premium for this Policy shall be deemed fully earned. The **Insureds** shall give the **Insurer** written notice of such transaction as soon as practicable, but not later than 90 days after the effective date of such transaction.

B. Acquisition or Creation of Subsidiary

If, before or during the **Policy Period**, any **Insured Organization**:

1. creates or acquires a **Subsidiary**; or
2. merges with another organization such that the **Insured Organization** is the surviving entity,

then such newly created, acquired or merged organization and its **Insureds** shall be covered under this Policy for **Wrongful Acts** (under a **Liability Coverage Part**) or covered **Loss** (under the Crime Coverage Part) occurring after such acquisition, merger or creation. No coverage shall be available for any: (i) **Wrongful Act** (under a **Liability Coverage Part**) or **Loss** (under the Crime Coverage Part) of any new **Insureds** occurring before such transaction; or (ii) any **Interrelated Wrongful Acts** thereto.

If the fair value of the assets of any newly acquired or merged organization exceeds 25% of the total consolidated assets of the **Named Organization** as reflected in its most recent consolidated audited financial statements prior to such merger or acquisition, then as a condition precedent to coverage for such new **Insureds**, the **Named Organization** shall give the **Insurer** written notice of the transaction as soon as practicable, pay any reasonable additional premium, and be subject to any additional terms and conditions required by the **Insurer**. The **Insureds** shall furnish all information regarding such transaction as the **Insurer** shall request.

C. Loss of Subsidiary Status

If, before or during the **Policy Period**, any organization ceases to be a **Subsidiary**, then coverage shall be available under this Policy for such **Subsidiary** and its **Insureds**, but only for **Claims** for covered **Wrongful Acts** (under a **Liability Coverage Part**) or covered **Loss** (under the Crime Coverage Part) occurring before such transaction. No coverage shall be available to such **Insureds** for any **Wrongful Act** (under a **Liability Coverage Part**) or covered **Loss** (under the Crime Coverage Part) occurring after such transaction.

15. APPLICATION

A. The **Insureds** represent that the information contained in the **Application** is true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application** contains misrepresentations or omissions made with intent to deceive or that materially affect the acceptance of the risk or the hazard assumed by the **Insurer**, this Policy shall be void ab initio and shall not afford coverage for any **Insureds** who knew on the inception date of this Policy the facts that were not truthfully disclosed in the **Application**, whether or not the **Insureds** knew the **Application** contained such misrepresentation or omission.

B. For the purpose of determining coverage, knowledge possessed by:

1. any **Insured Person** shall not be imputed to any other **Insured Person**; and

2. the **Named Organization's** chairman of the board, chief executive officer, president, chief operating officer, chief financial officer, limited liability company manager, or anyone signing the **Application** shall be imputed to all **Insureds** other than **Insured Persons**.

16. SUITS AGAINST THE INSURER

- A. No suit or other proceeding shall be commenced by the **Insureds** against the **Insurer** unless there shall have been full compliance with all the terms and conditions of this Policy.
- B. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any **Claim**.

17. ENTIRE AGREEMENT

This Policy, including the Declarations, General Provisions, elected Coverage Part(s), written endorsements, and the **Application** shall constitute the entire agreement between the **Insurer** and the **Insureds** regarding the insurance provided hereunder.

18. CHANGES

This Policy shall not be changed in any manner except by a written endorsement issued by the **Insurer**.

19. ASSIGNMENT

Assignment of any interest under this Policy shall not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.

20. NAMED ORGANIZATION'S AUTHORITY

The **Named Organization** shall act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, election of the Extended Reporting Period, transmission and receipt of notices, reporting of **Claims** and potential **Claims**, acceptance of endorsements, payment of premiums, and receipt of return premiums.

21. CANCELLATION

- A. The **Insurer** may cancel this Policy for non-payment of premium by sending not less than 20 days notice to the **Named Organization**. This Policy may not otherwise be cancelled by the **Insurer**.
- B. Except as otherwise provided, the **Named Organization** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice shall be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- C. If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the **Insurer's** customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall make payment of any unearned premium as soon as practicable.

22. BANKRUPTCY

Bankruptcy or insolvency of any **Insureds** shall not relieve the **Insurer** of any of its obligations under this Policy.

23. NOTICES

- A. Notices to the **Insureds** shall be sent to the **Named Organization** at the address specified in Item 1 of the Declarations.
- B. Notices to the **Insurer** shall be sent to the applicable address specified in Item 5 of the Declarations and become effective upon receipt at such address.
- C. All notices shall be in writing.

24. TITLES

The titles of the sections of, and endorsements to, this Policy are for reference only. Such titles shall not be part of the terms and conditions of coverage.

25. REFERENCES TO LAWS

- A. Any statute, act, or code mentioned in this Policy shall be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.
- B. Any statute, act, or code mentioned in this Policy that is followed by the phrase "or any similar law" shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.

26. COVERAGE PART COORDINATION

Regarding the **Liability Coverage Parts** only:

- A. If any **Loss** is covered under the Employment Practices Liability Coverage Part and any other **Liability Coverage Part**:
 - 1. the **Insurer** shall first pay such **Loss** under the Employment Practices Liability Coverage Part prior to paying such **Loss** under any other **Liability Coverage Part**; and
 - 2. the **Insureds** shall be entitled to recover **Loss** only once.
- B. Regardless of the **Liability Coverage Part** under which a notice of claim or potential claim is given by the **Insureds**, the **Insurer** shall be entitled to make its own determination as to which **Liability Coverage Part**, if any, **Loss** is covered and should be paid.

**DIRECTORS, OFFICERS, & ORGANIZATION
LIABILITY COVERAGE PART**

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DIRECTORS, OFFICERS, & ORGANIZATION LIABILITY COVERAGE PART

1. INSURING AGREEMENTS

A. Insured Person Liability

The **Insurer** shall pay **Non-Indemnifiable Loss** on behalf of the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

B. Organization Reimbursement

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** that such **Insured Organization** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

C. Organization Liability

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** resulting from a **Claim** first made against such **Insured Organization** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by an **Insured Organization**.

D. Derivative Demands

The **Insurer** shall pay **Investigation Costs** on behalf of an **Insured Organization** resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to a Sublimit of Liability of \$250,000. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**. No Deductible shall apply to this Insuring Agreement.

2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

A. "Claim" means any:

1. written demand for monetary or non-monetary relief commenced by the **Insured's** receipt of such demand;
2. civil proceeding commenced by the service upon the **Insured** of a complaint or similar pleading;
3. criminal proceeding commenced by the return of an indictment, information or similar pleading;
4. formal administrative or regulatory proceeding of an **Insured Person** commenced by the filing of a notice of charges or any similar document;

5. formal administrative or regulatory investigation of an **Insured Person** commenced by the service upon or other receipt by such **Insured Person** of a written notice from an investigating authority specifically identifying such **Insured Person** as a target against whom a formal proceeding may be commenced;
 6. written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim** as described above, commenced by the **Insured's** receipt of such request; or
 7. solely for purposes of Insuring Agreement D, any **Derivative Demand**.
- B. "Derivative Demand"** means a written demand by any security holder of an **Insured Organization**, in their capacity as such, upon the board of directors or managers of such **Insured Organization** to bring a civil proceeding on behalf of an **Insured Organization** against an **Insured Person** for a **Wrongful Act** of such **Insured Person** if such demand is made without the assistance, participation or solicitation of any **Executive**. A **Derivative Demand** shall be deemed commenced by the receipt by the board of directors or managers of such demand.
- C. "Derivative Suit"** means any civil proceeding against an **Insured Person** for a **Wrongful Act** of such **Insured Person** made on behalf of, or in the name or the right of, an **Insured Organization** by any security holders of such **Insured Organization**, in their capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Executive**.
- D. "Employee"** means any natural person whose labor or service was, is or shall be engaged and directed by any **Insured Organization**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any **Independent Contractor**.
- E. "Executive"** means any natural person who was, is or shall be a duly elected or appointed:
1. director, officer, or member of the board of the managers or management committee of an **Insured Organization**;
 2. in-house general counsel of an **Insured Organization**; or
 3. manager of an **Insured Organization** organized outside the United States of America if such position is equivalent to those specified in 1 or 2 above.
- F. "Insured Person"** means any:
1. **Executive**; or
 2. **Employee**.
- G. "Insureds"** means any:
1. **Insured Organization**; or
 2. **Insured Person**.
- H. "Investigation Costs"** means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand**, provided that **Investigation Costs** shall not include compensation, benefit expenses, or overhead of any **Insureds**.

- I. “**Loss**” means the amount that the **Insureds** are legally obligated to pay resulting from a **Claim**, including, without limitation, damages, settlements, judgments, pre- and post-judgment interest, **Defense Costs**, and **Investigation Costs**.

Loss shall include punitive and exemplary damages where insurable by law. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall exclude any:

1. taxes, fines or penalties imposed by law;
 2. multiple portion of any multiplied damage award;
 3. matters that are uninsurable under the law pursuant to which this Policy shall be construed;
 4. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**; or
 5. non-monetary relief.
- J. “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Organization** with the knowledge and consent, or at the request, of an **Insured Organization**.
- K. “**Outside Organization**” means any:
1. not-for-profit corporation, community chest, fund or foundation that is not an **Insured Organization** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
 2. organization established for a religious or charitable purpose under any not-for-profit statute; or
 3. organization listed as an **Outside Organization** in a written endorsement issued by the **Insurer**.
- L. “**Wrongful Act**” means any actual or alleged:
1. act, error, omission, misstatement, misleading statement, neglect or breach of duty by **Insured Persons** in their capacity as such or in an **Outside Capacity** or, with respect to Insuring Agreement C, by any **Insured Organization**; or
 2. matter claimed against an **Insured Person** solely by reason of their serving in such capacity, including service in an **Outside Capacity**.

3. **OUTSIDE DIRECTORSHIP LIABILITY COVERAGE**

Subject to the provisions applicable to this **Liability Coverage Part**, coverage is afforded for **Loss** from any **Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Organization**. Payment by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, under any other insurance policy as a

result of such **Claim** shall reduce, by the amount of such payment, the Limit of Liability available under this Policy for such **Claim**.

4. EXCLUSIONS

A. The **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:

1. arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other insurance policy;
2. arising from, based upon, or attributable to any:
 - a. demand, suit or proceeding made or initiated against any **Insured** on or prior to the applicable Pending and Prior Litigation Date in Item 6 of the Declarations; or
 - b. **Wrongful Act** specified in such prior demand, suit or proceeding or any **Interrelated Wrongful Acts** thereto;
3. for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
4. arising from, based upon, or attributable to any:
 - a. discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release, escape, seepage, migration or disposal; or
 - b. direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,

provided that this exclusion shall not apply to any **Non-Indemnifiable Loss** or any **Derivative Demand** otherwise covered under Insuring Agreement D;
5. for any violation of **ERISA** or any similar law;
6. by or on behalf of any **Insured**, provided that this exclusion shall not apply to any **Claim**:
 - a. that is a **Derivative Demand** or **Derivative Suit**;
 - b. by an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;
 - c. by any **Employee** who is not a past or present **Executive** if such **Claim** is made without the assistance, participation or solicitation of any **Executive**;
 - d. by an **Executive** for wrongful employment termination, employment discrimination or other employment practices **Wrongful Acts**;

- e. by a former **Executive** who has not served as an **Executive** for at least four years prior to such **Claim** being made, provided that such **Claim** is made without the assistance, participation or solicitation of any current **Executive** or any former **Executive** who has served as an **Executive** during the four years prior to such **Claim** being made;
 - f. by any trustee appointed to administer the estate of any **Insured Organization** under the United States Bankruptcy Code or any similar law; or
 - g. made in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of an **Insured Organization** organized in such jurisdiction;
7. arising from, based upon, or attributable to any **Insured Person** serving as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Organization** even if such service is at the direction or request of the **Insured Organization**, provided that this exclusion shall not apply to a **Claim** for a **Wrongful Act** by an **Insured Person** in an **Outside Capacity**;
8. by or on behalf of any **Outside Organization**, or any director, officer, trustee, regent, governor or equivalent executive of any **Outside Organization**, provided that this exclusion shall not apply to any **Claim**:
- a. that is a derivative suit made on behalf of an **Outside Organization** by any persons who are not:
 - 1. **Insured Persons**; or
 - 2. directors, officers, trustees, regents, governors or equivalent executives of the **Outside Organization**,

and who make such **Claim** without the solicitation, assistance or participation of any such persons; or
 - b. by any:
 - 1. **Insured Persons**; or
 - 2. directors, officers, trustees, regents, governors or equivalent executives of an **Outside Organization**,

for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this **Liability Coverage Part**;
9. arising from, based upon, or attributable to any public offering of securities of an **Insured Organization** or the purchase or sale of such securities subsequent to such public offering; provided that this exclusion shall not apply to any **Claim**:
- a. for a **Wrongful Act** in an offering of securities of an **Insured Organization** to any accredited investor in a transaction that is exempt from registration under the Securities Act of 1933 (“accredited investor” shall have the meaning specified for such term in Rule 501 of Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933); or

- b. made by any security holders of an **Insured Organization** for the failure of the **Insured Organization** to undertake or complete an initial public offering of securities of such **Insured Organization**;
- 10. arising from, based upon, or attributable to the gaining, in fact, of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled; or
- 11. arising from, based upon, or attributable to any deliberately fraudulent or criminal act or omission or any willful violation of law by such **Insured** if a judgment or other final adjudication in such **Claim** or another proceeding establishes that such act, omission or violation occurred.

Regarding exclusions 10 and 11 above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**; and (ii) only a **Wrongful Act** by a past, present or future chairman of the board, chief executive officer, president, chief operating officer, chief financial officer or limited liability company manager of any **Insured Organization** shall be imputed to an **Insured Organization**.

B. The Insurer shall not pay Loss for any Claim against an Insured Organization:

- 1. arising from, based upon, or attributable to any liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
- 2. arising from, based upon, or attributable to any wrongful employment termination, employment discrimination, or other employment practices **Wrongful Act**;
- 3. arising from, based upon, or attributable to the rendering of, or failure to render, any professional services for others, including, without limitation, services performed by the **Insureds** for or on behalf of a customer or client;
- 4. arising from, based upon, or attributable to defamation, invasion of privacy, wrongful entry or eviction, false arrest or imprisonment, malicious prosecution, abuse of process, assault, battery or loss of consortium;
- 5. arising from, based upon, or attributable to infringement of any intellectual property rights, including, without limitation, copyrights, patents, trademarks, trade names, trade dress, service marks, or trade secrets;
- 6. arising from, based upon, or attributable to price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Anti-Trust Act, Clayton Act, or any similar law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities;
- 7. arising from, based upon, or attributable to discrimination or sexual harassment; or
- 8. arising from, based upon, or attributable to the payment by an **Insured Organization** of inadequate consideration in connection with an **Insured Organization's** purchase of securities issued by any **Insured Organization**; provided that this exclusion shall not apply to **Defense Costs**.

5. PRIORITY OF NON-INDEMNIFIABLE LOSS PAYMENTS

- A. If **Loss** is incurred that is acknowledged by the **Insurer** to be covered under this **Liability Coverage Part** except that such **Loss** exceeds the remaining Limit of Liability for this **Liability Coverage Part**, the **Insurer** shall pay that portion of such **Loss** constituting **Non-Indemnifiable Loss** covered under Insuring Agreement A before paying **Loss** covered under any other Insuring Agreements.
- B. If **Loss** is incurred that is acknowledged by the **Insurer** to be covered under any Insuring Agreement of this **Liability Coverage Part** other than Insuring Agreement A, the **Named Organization** shall have the right to direct the **Insurer** to delay payment of such **Loss** until such time as the **Named Organization** specifies. Any such direction by the **Named Organization** to delay or make payment of **Loss** shall be by written notice to the **Insurer**. The **Insurer's** liability under this Policy shall not be increased, and the **Insurer** shall not be liable for any interest, as a result of any such delayed **Loss** payment. Any such delayed payment of **Loss** shall be available to the **Insurer** to pay **Non-Indemnifiable Loss** covered under Insuring Agreement A. Any **Non-Indemnifiable Loss** payment by the **Insurer** under Insuring Agreement A out of funds withheld pursuant to this provision shall terminate the **Insurer's** liability to make a delayed payment of **Loss** under any other Insuring Agreement by the amount of such **Non-Indemnifiable Loss** payment.

6. ADDITIONAL LIMIT OF LIABILITY

- A. If an Additional \$500,000 Limit of Liability for Claims against Insured Persons ("Additional Limit of Liability") is elected in Item 6 the Declarations, then an additional limit of liability of \$500,000 shall be available to pay **Non-Indemnifiable Loss** covered under Insuring Agreement A.
- B. Any Additional Limit of Liability shall be in addition to, and not part of, the Limit of Liability otherwise applicable to this **Liability Coverage Part** as specified in Item 6 of the Declarations.
- C. Any Additional Limit of Liability shall be excess of any valid and collectible insurance that is specifically excess of this Policy. Such excess insurance must be exhausted by the payment of loss covered thereunder before the **Insurer** shall be liable to pay the Additional Limit of Liability.
- D. **Non-Indemnifiable Loss** covered under Insuring Agreement A shall be allocated between, and paid by the **Insurer** under, the applicable Limit of Liability specified in Item 6 of the Declarations and any Additional Limit of Liability in whatever portions will maximize the total amount of covered **Loss** being paid under this Policy.

7. PUBLIC OFFERING OF SECURITIES

If a public offering of an **Insured Organization's** securities occurs during the **Policy Period** that is not exempt from registration under the Securities Act of 1933, the **Insurer** shall furnish the **Insureds** with a quote for directors and officers liability insurance coverage of such offering, provided that:

- A. at least 30 days prior to the effective date of such offering, the **Insureds** shall give the **Insurer** written notice of such offering together with all information requested by the **Insurer**; and
- B. such quote shall be on such terms and conditions, including any additional premium, as the **Insurer**, in its sole discretion, chooses.

**EMPLOYMENT PRACTICES LIABILITY
COVERAGE PART**

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EMPLOYMENT PRACTICES LIABILITY

COVERAGE PART

1. INSURING AGREEMENTS

A. Employment Practices Liability

The **Insurer** shall pay **Loss** on behalf of the **Insureds** resulting from a **Claim** by or on behalf of an **Employee**, applicant for employment, governmental agency, or **Independent Contractor** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**.

B. Third Party Liability

If Third Party Liability coverage is elected in Item 6 of the Declarations, the **Insurer** shall pay **Loss** on behalf of the **Insureds** resulting from a **Claim** by or on behalf of a **Third Party** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Coverage Sublimit of Liability, Deductible, and Pending and Prior Litigation Date specified in Item 6 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

- A. “**Benefits**” means all compensation other than salary, wages, bonuses, and **Stock Benefits**. **Benefits** include, without limitation, retirement benefits, perquisites, vacation and sick days, medical or insurance benefits, and deferred compensation.
- B. “**Claim**” means any:
1. written demand for monetary or non – monetary relief commenced by the **Insured’s** receipt of such demand;
 2. civil proceeding commenced by the service upon the **Insured** of a complaint or similar pleading;
 3. formal administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document, including, without limitation, proceedings before the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Program;
 4. formal administrative or regulatory investigation commenced by the service upon or other receipt by an **Insured** of a written notice from an investigating authority identifying the **Insured** as a target against whom an administrative or regulatory proceeding may be commenced; or

5. written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim** as described above, commenced by the **Insured's** receipt of such request.

Notwithstanding the above, **Claim** shall not include any labor or grievance proceeding initiated pursuant to any collective bargaining agreement.

C. "Employee" means any natural person whose labor or service was, is or shall be engaged and directed by any **Insured Organization**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any **Independent Contractor**.

D. "Executive" means any natural person who was, is or shall be a duly elected or appointed:

1. director, officer, or member of the board of managers or management committee of an **Insured Organization**;
2. in-house general counsel of an **Insured Organization**; or
3. manager of an **Insured Organization** organized outside the United States of America if such position is equivalent to those specified in 1 or 2 above.

E. "Insured Person" means any:

1. **Executive**;
2. **Employee**; or
3. **Independent Contractor**, but only if an **Insured Organization** agrees in writing within 30 days of the making of a **Claim** to provide indemnification to such **Independent Contractor** for any **Loss** arising out of such **Claim**.

F. "Insureds" means any:

1. **Insured Organization**; or
2. **Insured Person**.

G. "Loss" means the amount that the **Insureds** are legally obligated to pay resulting from a **Claim**, including, without limitation, damages (including front pay and back pay), settlements, judgments, pre- and post-judgment interest, and **Defense Costs**.

Loss shall include: (i) punitive, exemplary and multiple damages; and (ii) liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act, where insurable by law. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall exclude any:

1. taxes, fines or penalties imposed by law;
2. matters that are uninsurable under the law pursuant to which this Policy shall be construed;

3. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**;
 4. non-monetary relief;
 5. future compensation of a claimant who was, is or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of a **Claim**;
 6. **Stock Benefits**; or
 7. compensation earned by or due to the claimant in the course of employment but not paid by an **Insured Organization**, other than back pay or front pay.
- H. “**Retaliation**” means any actual or alleged negative treatment of any **Executive, Employee, or Independent Contractor** by any **Insured Persons** in their capacity as such or by any **Insured Organization** in response to any such person:
1. exercising any rights granted under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
 2. refusing to violate any law;
 3. assisting, testifying in, or cooperating with, a proceeding or investigation regarding violations of law by any **Insured Organization**;
 4. disclosing or threatening to disclose any violations of law to a superior or any governmental agency; or
 5. filing any claim against any **Insured Organization** under the Federal False Claims Act or any similar law protecting “whistleblowers”.
- I. “**Stock Benefits**” means any offering, plan or agreement between any **Insured Organization** and any **Insured Person** granting stock, stock options or stock appreciation rights in any **Insured Organization** to such **Insured Person**, including, without limitation, restricted stock or any other stock grant. Notwithstanding the foregoing, **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- J. “**Third Party**” means any natural person who is a customer, vendor, service provider or other business invitee of any **Insured Organization**. **Third Party** shall not include **Employees**.
- K. “**Wrongful Act**” means:
1. regarding Insuring Agreement A, any actual or alleged:
 - a. wrongful dismissal, discharge or termination of employment, including constructive dismissal, discharge, or termination;
 - b. employment discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, health status, military or veteran status, or any other protected status specified under federal, state or local law;

- c. sexual or other workplace harassment, including, without limitation, hostile work environment;
- d. employment-related misrepresentation;
- e. wrongful deprivation of a career opportunity, demotion, failure to employ or promote, discipline of employees or failure to grant tenure;
- f. breach of any oral, written, or implied employment contract or agreement including, without limitation, any obligation arising out of any employee manual, handbook, or policy statement;
- g. **Retaliation**;
- h. negligent evaluation of employees;
- i. employment-related libel, slander, defamation, or invasion of privacy, including the giving of negative or defamatory statements in connection with an employee reference;
- j. violation of the Family and Medical Leave Act; or
- k. infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate employment policies and procedures, or negligent hiring, retention, supervision or training of **Employees**, if such conduct relates to matters described in paragraphs a through j above;

but only if the **Wrongful Act** described in 1.a through 1.k above is committed or attempted: (i) against an **Employee**, applicant for employment with any **Insured Organization**, or **Independent Contractor**; and (ii) by any **Insured Persons** in their capacity as such or by any **Insured Organization**; or

- 2. regarding Insuring Agreement B, any actual or alleged discrimination, sexual harassment, or violation of a **Third Party's** civil rights relating to such discrimination or sexual harassment, by any **Insured Persons** in their capacity as such or by any **Insured Organization**.

3. EXCLUSIONS

A. The **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:

- 1. arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other insurance policy;
- 2. arising from, based upon, or attributable to any:
 - a. demand, suit or proceeding, or any audit by the Office of Federal Contract Compliance Programs, made or initiated against any **Insured** on or prior to the applicable Pending and Prior Litigation Date in Item 6 of the Declarations; or
 - b. any **Wrongful Act** alleged in any such demand, suit, proceeding, or audit or any **Interrelated Wrongful Acts** thereto;

3. for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof; provided that this exclusion shall not apply to any **Claim** for emotional distress or mental anguish;
4. arising from, based upon, or attributable to any:
 - a. discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release, escape, seepage, migration or disposal; or
 - b. direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,

provided that this exclusion shall not apply to any **Claim** for **Retaliation**;

5. for any violation of: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits laws; (ii) **ERISA** (except Section 510 thereof); (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act; or (viii) any similar laws to those mentioned in (i) through (vii) above; provided that this exclusion shall not apply to any **Claim** for **Retaliation**;
6. arising from, based upon, or attributable to any liability of others assumed by any **Insured** under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement; or
7. arising from, based upon, or attributable to any breach of contract or agreement specifying the terms of an **Insured Organization's** engagement of an **Independent Contractor**.

B. Other than **Defense Costs**, the **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:

1. for costs of any accommodation required by the Americans with Disabilities Act or any similar law;
2. for employment termination severance payments, provided that this exclusion shall not apply to any payments negotiated with and consented to by the **Insurer** as part of a settlement;
3. for **Benefits** or their equivalent value, provided that this exclusion shall not apply to any **Claim** for wrongful dismissal, discharge or termination of employment; or
4. arising from, based upon, or attributable to any breach of any written employment contract or agreement, provided that this exclusion shall not apply to any liability that would have been incurred in the absence of such written employment contract or agreement.

C. Regarding Insuring Agreement B, the **Insurer** shall not pay **Loss** for any **Claim** against an **Insured** arising from, based upon, or attributable to any price discrimination or violation of any anti-trust or other law designed to protect competition or prevent unfair trade practices.

4. OTHER INSURANCE

A. To the extent that any **Claim** is covered under this **Liability Coverage Part** and any other insurance, the coverage provided under this **Liability Coverage Part** shall be primary.

B. Notwithstanding the above:

1. regarding any **Claim** made against a leased or temporary **Employee** or an **Independent Contractor**, coverage under this **Liability Coverage Part** shall be excess of, and not contribute with, any applicable insurance insuring the employee leasing company, temporary employee agency, or **Independent Contractor**; and
2. regarding any **Claim** made by or on behalf of a **Third Party**, coverage under this **Liability Coverage Part** shall be excess of, and not contribute with, any other applicable insurance insuring the **Insureds** on a duty to defend basis,

regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other insurance to this Policy's Policy Number.