

**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.