

# DIRECTOR, OFFICERS, AND CORPORATE LIABILITY INSURANCE COVERAGE SECTION

## CLAIMS MADE AND REPORTED WARNING FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.**

**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 on all statements in the "Proposal" and all other information provided to the "Insurer", and subject to all provisions of this "Policy", the "Insurer" and "Insureds" agree as follows:

### SECTION I. – INSURING AGREEMENTS

#### A. Directors and Officers Liability Insurance

This "Policy" shall pay on behalf of the "Insured Persons" all "Loss" arising from any "Claim" first made against the "Insured Persons" during the "Policy Period" and reported to the "Insurer" in writing during the "Policy Period" or within 90 days thereafter, for any actual or alleged "Wrongful Act", except and to the extent that the "Insured Entity" has indemnified the "Insured Persons".

#### B. Corporate Indemnification Insurance

This "Policy" shall pay on behalf of the "Insured Entity" all "Loss" arising from any "Claim" first made against the "Insured Persons" during the "Policy Period" and reported to the "Insurer" in writing during the "Policy Period" or within 90 days thereafter, for any actual or alleged "Wrongful Act", but only to the extent that the "Insured Entity" has indemnified the "Insured Persons" for such "Loss" as permitted by law.

#### C. Corporate Insurance

This "Policy" shall pay on behalf of the "Insured Entity" all "Loss" arising from any "Claim" first made against the "Insured Entity" during the "Policy Period" and reported to the "Insurer" in writing during the "Policy Period" or within 90 days thereafter, for any actual or alleged "Wrongful Act".

### SECTION II. – EXTENSIONS

#### A. Severability of Exclusions

The "Wrongful Act" of an "Insured" shall not be imputed to any other "Insured" for the purpose of determining the applicability of the Exclusions set forth in section IV. of this "Coverage Section".

#### B. Priority of Payments

In the event of "Loss" arising from any "Claim" for which payment is due under the provisions of this "Coverage Section", then the "Insurer" shall:

1. first, pay such non-indemnifiable "Loss" for which coverage is provided under Insuring Agreement I. A. of this "Coverage Section", and
2. then, with respect to whatever remaining amount of the applicable Limit of Liability stated in Item 4. of the Declarations is available after payment of such non-indemnifiable "Loss", at the written request of the Chief Executive Officer of the "Named Insured", either pay or withhold payment of such other "Loss" for which coverage is provided under this "Coverage Section".

In the event the "Insurer" withholds payment pursuant to subparagraph 2. above, then the "Insurer" shall at such time and in such manner as shall be set forth in written instructions of the Chief Executive Officer of the "Named Insured", remit such payment to the "Named Insured" or directly to the "Insured Persons".

**C. Application of Deductible when Indemnification is not Available**

If the "Insured Entity" is permitted or required by common or statutory law, to indemnify the "Insured Persons" for "Loss", then when the "Insured Entity":

1. is financially or legally unable to pay such "Loss" by reason of "Financial Insolvency", no Deductible amount shall apply with regard to such "Loss", or
2. fails to indemnify the "Insured Person" for "Loss" (except by reason of its "Financial Insolvency"), any payment by the "Insurer" of such "Loss" shall be subject to the Deductible for Insuring Agreement I. B. as stated in Item 5. 1. B. of the Declarations. The charter, by-laws, shareholder and board of director's resolutions of the "Insured Entity" shall be deemed to provide indemnification for such "Loss" to the fullest extent permitted by law.

**D. Additional Excess Aggregate Limit of Liability Dedicated for Insured Persons**

1. Notwithstanding anything in this "Policy" to the contrary, the Additional Excess Aggregate Limit of Liability Dedicated for "Insured Persons" will be an additional excess aggregate Limit of Liability in an amount not to exceed \$500,000, which amount is in addition to, and not part of, the applicable Limits of Liability stated in Item 4. of the Declarations. In the event the Additional Excess Aggregate Limit of Liability Dedicated for "Insured Persons" is exhausted by payment of "Loss", or has been tendered to or on behalf of the "Insured Persons", then any and all obligations of the "Insurer" hereunder shall be deemed to be completely fulfilled and extinguished.
2. No coverage shall be provided by section II. D. of this "Coverage Section" for the first "Claim" made for which coverage is provided under this "Policy". This Additional Excess Aggregate Limit of Liability Dedicated for "Insured Persons" is available solely for "Loss" resulting from any subsequent "Claim" that is covered under Insuring Agreement I. A. of this "Coverage Section". The first "Claim" made for which coverage is provided under this "Policy" shall be determined by the chronological time such "Claim" was made regardless of when coverage is acknowledged by the "Insurer".
3. The Additional Excess Aggregate Limit of Liability Dedicated for "Insured Persons" shall be excess of any insurance available to pay "Loss" for such "Claims", including this "Policy" and all insurance that is specifically excess to this "Policy". Such excess insurance must be completely exhausted by payment of loss, damages or defense costs thereunder before the "Insurer" shall have any obligation to make any payment on account of the Additional Excess Aggregate Limit of Liability Dedicated for "Insured Persons".

**E. Securities Offerings**

**1. Private Placements**

If during the "Policy Period" any of the "Insureds" conduct a private placement or private sale of securities of an "Insured Entity", then this "Policy" shall continue in full force and effect.

**2. Public Offering Exposures for Incomplete Offerings**

If during the "Policy Period" any of the "Insureds":

1. prepare documents for a public offering of the securities of an "Insured Entity", or
2. make any "Road Show" presentations to potential investors or other similar presentations via any medium in connection with such public offering of the securities of an "Insured Entity"

and the offering does not occur, then this "Policy" shall continue in full force and effect. As used herein, "Road Show" means a promotional presentation by the "Insured Entity" to potential buyers of its securities.

### 3. **Guaranteed Quote for Offerings**

If during the "Policy Period" any of the "Insureds" prepare and file any offer or sale of securities of the "Insured Entity" pursuant to Title III. Crowdfunding of the Jumpstart Our Business Startups Act of 2012, including amendments thereto, rules or regulations promulgated under the Act, or any similar state statutes, rules, regulations or common law regulating securities similar to the foregoing, then the "Insurer" must offer a quote for coverage subject to such terms, conditions and additional premium as the "Insurer" may require.

## **SECTION III. – DEFINITIONS**

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section of this "Policy", defined terms are in quotation marks throughout this "Policy" and may be used in either the singular or plural as appropriate.

A. "Claim" means:

1. a written demand for monetary or non-monetary relief, or
2. a civil, criminal, administrative or arbitration proceeding, or
3. any proceeding brought or initiated by or before a federal, state or local government agency, or
4. a formal civil, criminal, administrative or regulatory investigation of an "Insured Person" but only after such "Insured Person" is identified in writing by the investigating authority as a person against whom such proceeding described above may be commenced, or
5. a written request made by a claimant to the "Named Insured" to toll or waive the statute of limitations for any "Wrongful Act", or
6. the service of a subpoena,

provided, however, the term "Claim" shall not include any grievance or arbitration subject to a collective bargaining agreement with respect to Insuring Agreement I. C. of this "Coverage Section". A "Claim" shall be deemed to have been first made at the time notice of the "Claim" is first received by any "Insured".

B. "Costs of Defense" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered "Claim" against the "Insureds", but excluding salaries, wages, overhead or benefit expenses associated with any "Insured", or any amount covered by the duty to defend obligation of any other insurer.

C. "Damages" means:

1. a monetary judgment, award or settlement, or
2. pre-judgment interest and post-judgment interest,

provided, however, "Damages" shall not include:

- a. taxes, civil or criminal fines, sanctions, or penalties imposed by law, or
- b. costs incurred by any "Insured" to make any building or property more accessible or accommodating to any disabled person, or
- c. commissions, bonuses, profit sharing or severance payments, or

- d. payment by the "Insured Entity" of allegedly inadequate price or consideration for the purchase of its own securities or the securities of a "Subsidiary", or
  - e. matters which are uninsurable under the law pursuant to which this "Policy" is construed, or
  - f. any amount incurred by the "Named Insured" to comply with any injunctive or other non-monetary relief or any agreement to provide such relief.
- D. "Employee" means an individual whose labor or service is engaged by and directed by an "Insured Entity", including a part-time, leased, seasonal or temporary individual. An independent contractor is not an "Employee". An individual's employment status shall be determined as of the date of the "Wrongful Act".
- E. "Insured" means any "Insured Person" or any "Insured Entity".
- F. "Insured Person" means:
- 1. any past, present or future duly elected or appointed director or officer of an "Insured Entity", or
  - 2. any past, present or future duly elected or appointed member of the board of managers, member of the management committee, or equivalent executive of an "Insured Entity" if organized as a limited liability company, or
  - 3. any "Employee" of an "Insured Entity".
- Coverage will automatically apply to all new "Insured Persons" after the "Policy" inception date.
- G. "Outside Entity" means a nonprofit organization, or any other entity, partnership, joint venture or other organization listed by endorsement to this "Policy".
- H. "Wrongful Act" means:
- 1. with respect to the "Insured Persons", any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the "Insured Persons" in their respective capacities as such, or any matter claimed against them by reason of their status as "Insured Persons", or any matter claimed against them arising out of their serving as a director, officer, trustee or governor of an "Outside Entity" in such capacities, but only if such service is at the specific request or direction of the "Insured Entity", or
  - 2. with respect to an "Insured Entity", any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the "Insured Entity".

#### **SECTION IV. – EXCLUSIONS**

In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section of this "Policy", the "Insurer" shall not be liable to make any payment for "Loss" in connection with a "Claim" made against any "Insured":

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the gaining of any profit or advantage to which an "Insured" was not legally entitled, provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the "Insureds" in such "Claim" shall establish that such "Insureds" gained such profit or advantage to which an "Insured" was not legally entitled;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any criminal or deliberate fraudulent act, provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the "Insureds" in such "Claim" shall establish that such "Insureds" committed such criminal or deliberate fraudulent act;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving payments to an "Insured" of any remuneration without the previous approval of the security holders of the "Insured Entity", which payment without such previous approval shall

be held to have been illegal, provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the "Insureds" in such "Claim" shall establish that such "Insureds" received such payments;

When A., B. or C. above applies, the "Insured" shall reimburse the "Insurer" for any "Costs of Defense".

D. for:

1. physical injury to or destruction of any tangible property, including the loss of use thereof, or
2. bodily injury, sickness, disease, death, assault or battery of any person, or
3. invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel, slander, mental anguish, humiliation, emotional distress, oral or written publication of defamatory or disparaging material;

E. for any actual or alleged violations of the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of state statutory law or common law;

F. by, on behalf of, or in the right of any "Insured" in any capacity, or any security holder of the "Insured Entity", provided, however, this exclusion does not apply to:

1. any "Claim" by any security holder of the "Insured Entity", whether directly or derivatively, but only if such "Claim" is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, any "Insured", or
2. any "Claim" by any "Insured Person" for contribution or indemnity, if such "Claim" directly results from another "Claim" covered under this "Policy", or
3. any "Claim", in any bankruptcy proceeding by or against the "Insured Entity", brought by the Creditors' Committee, Examiner or Trustee of the "Insured Entity", or any assignee of such Creditors' Committee, Examiner or Trustee, or
4. any "Claim" brought by any former "Insured Person", who has not served as such for at least 2 years prior to such "Claim" being first made against any "Insured", or
5. any "Claim" by any "Insured Entity", "Employee" or "Insured Person" pursuant to any federal or state whistleblower protection statute or any regulation promulgated thereunder, provided, however, this exception does not apply to any "Claim" arising from any actual or potential employment relationship, or
6. any "Claim" brought and maintained in a jurisdiction that does not have a Common Law Legal System when such "Claim" is brought and maintained by the Supervisory Board of the "Insured Entity" chartered in such foreign jurisdiction, or
7. any "Claim" by any "Employee" of the "Insured Entity", provided, however, this exception does not apply to any "Claim" arising from any actual or potential employment relationship;

G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any "Wrongful Act" of an "Insured Person" serving in their capacity as director, officer, trustee, employee, member or governor of any other entity other than an "Insured Entity" or an "Outside Entity", or by reason of their status as director, officer, trustee, employee, member or governor of such other entity;

H. for any "Wrongful Act" arising out of an "Insured Person" serving in their capacity as a director, officer, trustee, employee, member or governor of an "Outside Entity":

1. if such "Claim" is brought by the "Outside Entity" or any of its directors or officers, or by any security holder of the "Outside Entity", whether directly or derivatively, unless such

- security holder's "Claim" is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or participation of, or intervention of, the "Outside Entity", any of its directors or officers, or any "Insured", or
2. if such "Wrongful Act" occurred prior to the "Prior and Pending Litigation Date", or
  3. to the extent such "Insured Person" is indemnified for such "Loss" by such "Outside Entity", and which is insured in whole or in part under any policy issued to or for the benefit of any "Outside Entity" or its directors or officers, then this "Policy" shall apply only to "Loss" excess over such indemnification and insurance;
- I. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any past, present or future actual or potential employment relationship;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any prior or pending litigation, administrative or arbitration proceeding, or investigation as of the "Prior and Pending Litigation Date", or
  2. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, administrative or arbitration proceeding, or investigation, regardless of the legal theory upon which such "Claim" is predicated;
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the performance of any professional services for others for a fee, and caused by any act, error or omission, provided, however, this exclusion shall not apply with respect to Insuring Agreement I.A. or I.B. of this "Coverage Section";
- L. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violations of the federal, state, local or foreign wage and hour laws, including, without limitation, the Fair Labor Standards Act;
- M. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged breach of any oral or written contract or agreement, provided, however, this exclusion shall not apply:
1. with respect to Insuring Agreement I. A. or I. B. of this "Coverage Section", or
  2. to the extent that an "Insured Entity" would have been liable in the absence of the contract or agreement;
- N. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
1. plagiarism or piracy, or
  2. infringement of copyright, patent, title or slogan, or
  3. idea misappropriation, or
  4. intellectual property rights,
- provided, however, this exclusion shall not apply with respect to Insuring Agreement I. A. or I. B. of this "Coverage Section";
- O. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any public offering or public sale of securities of the "Insured Entity" undertaken and consummated by the "Insured Entity", including but not limited to any offering or sale of securities of the "Insured Entity" pursuant to:
1. the filing of an offering statement with the Securities and Exchange Commission, including but not limited to a filing with the Securities and Exchange Commission under Title III. Crowdfunding of the Jumpstart Our Business Startups Act of 2012, including amendments

thereto, rules or regulations promulgated under the Act, or any similar state statutes, rules, regulations or common law regulating securities similar to the foregoing, or

2. the filing of a registration statement for a public offering with the Securities and Exchange Commission pursuant to the Securities Act of 1933, including all activities in connection therewith;

provided, however, this exclusion shall not apply if the offering does not occur or if, pursuant to section II. E. 3. of this "Coverage Section", the "Insurer" has agreed in writing to extend coverage for "Wrongful Acts" in connection with such public offering or public sale of securities and the "Insureds" have paid the premium required by the "Insurer" for such coverage extension.

- P. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged "Claim" alleging a "Wrongful Act" by reason of or in connection with the efficacy, performance, health, or safety standards and/or proprietary licensing rights for any services, products or technologies offered, promised, delivered, produced, processed, packaged, sold, marketed, distributed, advertised and/or developed by the "Insured Entity", provided however this exclusion shall not apply with respect to Insuring Agreement I. A. or I. B. of this "Coverage Section".

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