

I. INSURING AGREEMENT**A. Management Liability (Individual) – Non-Indemnifiable Loss**

The Insurer shall pay on behalf of the **Insured Persons** (including **Outside Entity Executives**) that **Loss** up to the applicable limit of liability, resulting from any **Claim** first made against them during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**, except and to the extent that the **Insured Entity** has indemnified them for such **Loss**.

B. Management Liability – Indemnifiable Loss

The Insurer shall pay on behalf of an **Insured Entity** that **Loss**, in excess of the retention (if any) and up to the applicable limit of liability, for which such **Insured Entity** has indemnified an **Insured Person** and which results from any **Claim** first made against such **Insured Person** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act**.

C. Insured Entity Liability

The Insurer shall pay on behalf of **Insured Entity**:

1. that **Loss**, in excess of the retention (if any) and up to the applicable limit of liability, resulting from any **Claim** first made during the **Policy Period** or the Extended Reporting Period, if applicable, against the **Insured Entity** for a **Wrongful Act**; and
2. all **Investigative Costs**, up to the applicable sublimit of liability, resulting from any **Shareholder Demand** first made during the **Policy Period** or the Extended Reporting Period, if applicable, against the **Insured Entity** for a **Wrongful Act**.

Provided, however, that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

II. EXCLUSIONS**A. Exclusions Applicable to All Insureds**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

1. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease, emotional distress, mental anguish, humiliation, libel, slander or defamation of any person, or **Property Damage** except that this exclusion does not apply to any actual or alleged emotional distress, mental anguish or humiliation made in connection with any employment-related **Wrongful Act**;

2. Claims by Insureds

by or on behalf of any **Insured** in any capacity provided, however that this exclusion shall not apply to:

- a. any **Claim** brought derivatively on behalf of the **Insured Entity** provided that such **Claim** is brought and maintained solely by persons acting independent of and without the solicitation, assistance, active participation or intervention of the **Insured Entity** or any **Executive** (unless such solicitation, assistance, participation or intervention is **Whistleblower Activity**);
- b. any **Claim** that is in the form of a cross claim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- c. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver, rehabilitator or creditors committee for an **Insured Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator or creditors committee;

- d. any **Claim** brought by any past **Executive** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the Board of **Managers**, General Counsel (or equivalent position) of an **Insured Entity** for at least three (3) years prior to such **Claim** being first made by any such person;
- e. any **Claim** brought by an **Executive**, who is also an **Employee**, for any actual or alleged wrongful dismissal, discharge or termination of employment;
- f. any **Claim** (other than an employment-related **Claim**) brought by an **Employee** who is not an **Executive**; or,
- g. any **Claim** brought and maintained in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of the **Named Company** or any **Subsidiary** chartered in such foreign jurisdiction;

3. **Discrimination or Harassment/Fair Labor Standards Act**

by any third party or independent contractor alleging any actual or alleged:

- a. discrimination or harassment including but not limited to violation of any federal, state or local laws (whether common-law or statutory) concerning discrimination including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866; or
- b. violation of the Fair Labor Standards Act as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies;

4. **ERISA or any Similar Act**

for any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by **ERISA or any Similar Act**;

5. **Illegal Profits/Deliberate Acts**

where:

- a. such **Insureds** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled; or
- b. such **Insureds** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage,

as evidenced by a final adjudication by a judge, jury or arbitrator in any proceeding;

For purposes of determining the applicability of this exclusion:

- 1. the facts pertaining to and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
- 2. only facts pertaining to and knowledge possessed by any past, present or future Chief Executive Officer, Chairperson, Chief Financial Officer, President (or any equivalent position) of an **Insured Entity** shall be imputed to all **Insured Entities**;

6. **Outside Entity vs. Insured Persons**

made against an **Outside Entity Executive** by or on behalf of the **Outside Entity** or one or more of the **Outside Entity's** directors, officers, trustees, governors or equivalent executives; provided, however, that this exclusion shall not apply to:

- a. any **Claim** brought derivatively on behalf of the **Outside Entity** provided that such **Claim** is brought and maintained solely by persons acting independent of and without the solicitation, assistance, active participation or intervention of the **Outside Entity** or any **Outside Entity Executive** (unless such solicitation, assistance, participation or intervention is **Whistleblower Activity**);

- b. any **Claim** that is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy;
- c. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, liquidator, receiver, rehabilitator or creditors committee for an **Outside Entity** or any assignee of such trustee, examiner, liquidator, receiver or rehabilitator or creditors committee;
- d. any **Claim** brought by any past directors, officers, trustees, governors or equivalent executives of an **Outside Entity** who has not served as a duly elected or appointed past directors, officers, trustees, governors or equivalent executives of for an **Outside Entity** for at least three (3) years prior to such **Claim** being first made against any person; or,
- e. any **Claim** brought and maintained by a director, officer, trustee or governor, management committee member or **Manager** of an **Outside Entity** in a jurisdiction outside the United States of America, Canada or Australia;

7. Pollutants

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;
- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss to the **Insured Entity** or any **Outside Entity**, their security holders, or their creditors resulting from any of the aforementioned matters;

However, this exclusion shall not apply to the extent:

- i. there is no indemnification of the **Insured Persons** for such **Claim** by the **Insured Entity**; and,
- ii. such **Claim** is brought by or on behalf of any owners of securities in their capacity as such while acting totally independently of and totally without the solicitation, assistance, participation or intervention of the **Insured Entity** or any **Insured Persons**;

8. Prior Notice

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

9. Prior or Pending

based upon or arising out of or constituting any civil, criminal, administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

10. Prior Wrongful Acts of Subsidiaries

for:

- a. any **Wrongful Act** by **Insured Persons** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**; or,

- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

11. Professional Services

based upon or arising out of any **Wrongful Act** in connection with the performance of professional services by or on behalf of the **Insured Entity** for the benefit of any other entity or natural person; provided, however, this exclusion shall not apply to any **Claim** which alleges that any **Executive**, in his or her capacity as such, failed to supervise those who performed such professional services;

12. Public Offerings

based upon or arising out of:

- a. the public offer, sale, solicitation or distribution of securities issued by the **Insured**; or
- b. the actual or alleged violation of any federal, state, local or provincial statute relating to securities or any rules or regulations promulgated thereunder if such violation actually or allegedly occurred after a transaction described in a. above;

provided that if, at least 30 days prior to the transaction described in a. above, the Insurer receives notice of the proposed transaction and any additional information requested by the Insurer, the Insurer shall offer to the **Insured Entity** a proposal to delete this exclusion subject to the terms and conditions, and payment of any additional premium, described in such proposal;

However this exclusion shall not apply:

1. to the extent that such **Claim** is made by a security holder of the **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of the **Insured Entity**; or
2. to any offer, purchase or sale of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933;

13. Wrongful Acts of Executives of other Entities

for any **Wrongful Act** by such **Insured Person** while serving in the capacity, or solely by reason of their status, as a director, officer, trustee, governor, manager, employee or similar position in any entity, other than an **Insured Entity** or an **Outside Entity**;

B. Exclusions Applicable to the Insured Entity

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against the **Insured Entity**:

1. Corporate Distributions

based upon or arising out of:

- a. the actual or proposed payment by an **Insured** of an allegedly inadequate price or consideration for the purchase of securities issued by an **Insured Entity**; or
- b. any dividends or other distributions of corporate profits of an **Insured Entity** to any shareholder of an **Insured Entity**;

provided however, that the Insurer shall provide a defense of such Claim and will pay Defense Costs in connection with such Claims subject to the applicable limits of liability and retentions;

2. Employment Related Wrongful Acts

based upon or arising out of any employment-related **Wrongful Act**;

3. Failure of Product

based upon or arising out of any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;

4. Intellectual Property

for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property rights;

5. Unfair Trade Practices

based upon or arising out of:

- a. charges of price fixing, restraint of trade, monopolization or unfair trade; or
- b. any actual or alleged violation of:
 - i. the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - ii. any rules or regulations promulgated under or in connection with the above statutes; or
 - iii. any similar provision of any state, federal or local statutory law or common law.

III. INVESTIGATIVE COSTS SUBLIMIT

The Insurer shall reimburse the **Insured**, subject to the maximum aggregate Limit of Liability, up to \$250,000.00 for all **Investigative Costs** arising out of all **Shareholder Demands** first made against an **Insured Entity** during the **Policy Period** or the Extended Reporting Period (if applicable). This **Investigative Costs** Sublimit shall be part of and not in addition to the aggregate limit of liability stated in the Management Liability **Coverage Part** Declarations. No retention applies to **Investigative Costs**.

IV. ORDER OF PAYMENTS

If the amount of any covered **Loss** which is otherwise due and owing by the Insurer under this **Coverage Part** exceeds the then-remaining Limit of Liability of this Policy, the Insurer shall pay such **Loss** under this **Coverage Part** (subject to such Limit of Liability) in the following priority:

1. first, the Insurer shall pay **Loss** for which coverage is provided under Insuring Agreement A. of this **Coverage Part**; then
2. only after payment of **Loss** has been made pursuant to 1. above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the chief executive officer, or equivalent officer, of the **Named Insured**, the Insurer shall either pay or withhold payment of such other **Loss** for which coverage is provided under Insuring Agreements B. and C. of this **Coverage Part**.

In the event the Insurer withholds payment pursuant to Paragraph 2. above, then the Insurer shall at such time and in such manner as shall be set forth in written instructions from the Chief Executive Officer, or equivalent officer, of the **Named Insured** remit such payment to an **Insured Entity** or directly to or on behalf of an **Insured Person**. The Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

The bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Part** pursuant to this Section.

V. COORDINATION WITH EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

If a **Claim** is covered under both this **Coverage Part** and the Employment Practices Liability **Coverage Part** then such **Claim** first shall be covered pursuant to the Employment Practices Liability **Coverage Part**, including its limit



DIRECTORS & OFFICERS LIABILITY COVERAGE PART

of liability and retention. Any remaining **Loss** otherwise covered by this **Coverage Part** which is not paid under such Employment Practices Liability **Coverage Part** shall be covered pursuant to this **Coverage Part**, including its limit of liability and retention; provided any applicable Retention under this **Coverage Part** shall be reduced by the amount of **Loss** (otherwise covered by this **Coverage Part**) which is paid by the **Insureds** as the retention under such Employment Practices Liability **Coverage Part**.