

ExecSuite®

Directors, Officers and Corporate Liability Insurance Coverage Section

CLAIMS MADE NOTICE 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:

I. Insuring Agreements

A. Directors and Officers Liability Coverage

This **Policy** shall pay on behalf of the **Insured Persons** all **Loss** up to the Limit of Liability applicable to this coverage section arising from any **Claim** first made against the **Insured Persons** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act**, except and to the extent that the **Insured Entity** has indemnified the **Insured Persons**.

B. Corporate Indemnification Coverage

This **Policy** shall pay on behalf of the **Insured Entity** all **Loss** up to the Limit of Liability applicable to this coverage section arising from any **Claim** first made against the **Insured Persons** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, 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 Coverage

This **Policy** shall pay on behalf of the **Insured Entity** all **Loss** up to the Limit of Liability applicable to this coverage section arising from any **Claim** first made against the **Insured Entity** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act**.

D. Derivative Demand Investigations Cost Coverage

This **Policy** shall pay on behalf of the **Insured Entity**, **Derivative Demand Investigations Costs** up to a maximum aggregate sub-limit of \$100,000, resulting from any **Security Holder Derivative Demand** first received by the **Insured Entity** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act**.

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 sub-paragraph 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

In the event the **Insured Entity** is permitted or required by common or statutory law, to indemnify the **Insured Persons** for **Loss**, however, 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. This **Policy** shall include a \$1,000,000 Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons**. Such Limit of Liability only applies to **Loss** arising from a covered **Claim** pursuant to section I. Insuring Agreement A. of this coverage section and shall not exceed \$1,000,000 regardless of the number of **Insured Persons** or **Claims** involved. The Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons** shall not apply to any other **Coverage Section** even if the Shared Limit of Liability applies to this coverage section.
2. The Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons** shall only apply to **Loss** resulting from a **Claim** that is: (a) first made against the **Insured** subsequent to the exhaustion of the Limit of Liability applicable to this coverage section; (b) not related to any **Claim** for which coverage was previously provided by the **Insurer**; and (c) not related to any **Claim** which contributed to the exhaustion of the Limit of Liability applicable to this coverage section.
3. The Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons** is excess of, and shall only apply after the payment in full of: (a) any Separate or Shared Limit of Liability applicable to this coverage section; and (b) any other valid and collectible insurance available to the **Insured Persons**; including without limitation, any insurance which is specifically written as excess over this **Policy** and any other excess limits of liability.
4. The Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons** shall continue in force as primary insurance only upon the exhaustion of the limits of liability described in (a) and (b), of sub-paragraph 3. above. In the event the Additional Excess Aggregate Limit of Liability Dedicated for **Insured Persons** has been exhausted by the payment of **Loss**, or has been offered or tendered to, or on behalf of, the **Insured Persons** or to a court of competent jurisdiction, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.

III. Definitions

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section of this **Policy**, whenever printed in boldface type, and whether in the singular or plural form in this coverage section, the following terms shall have the meanings indicated below.

A. Claim means:

1. a written demand for monetary or non-monetary relief, including but not limited to, any demand for mediation, arbitration, or other alternative dispute resolution process, arising from a **Wrongful Act**; or
2. a civil, criminal, administrative or arbitration proceeding for monetary or non-monetary relief filed against an **Insured** arising from a **Wrongful Act** which is commenced by: (a) service of a complaint or similar pleading; (b) return of an indictment, information or similar document; or (c) receipt or filing of a notice of charges; or
3. a written request made by a claimant to the **Named Insured** to toll or waive the statute of limitations for any **Wrongful Act**; or
4. a **Security Holder Derivative Demand**;

provided, however, the term **Claim** shall not include any grievance or arbitration based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving 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 **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. disgorgement or restitution payment by or on behalf of any **Insured**, including disgorgement or restitution of amounts retained, obtained, or acquired by an **Insured** and any settlement payment arising from any actual or alleged amount that an **Insured** improperly retained, obtained, or acquired; or
 - f. matters which are uninsurable under the law pursuant to which this **Policy** is construed.
- D. **Insured** means any **Insured Person** or any **Insured Entity**.
- E. **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.
- F. **Investigative Costs** means reasonable and necessary costs, charges, fees (including but not limited to, attorneys' fees and experts' fees) and expenses (other than compensation, benefits or expenses of an **Insured Person**) incurred by the **Insured Entity** (including its Board of Directors or any committee of its Board of Directors) while investigating or evaluating whether it is in the best interest of the **Insured Entity** to commence a civil proceeding as demanded by a **Security Holder Derivative Demand**.
- G. **Loss** means **Damages**, **Costs of Defense** and **Derivative Demand Investigations Costs**.
- H. **Outside Entity** means a nonprofit organization, or any other entity, partnership, joint venture or other organization listed by endorsement to this **Policy**.
- I. **Security Holder Derivative Demand** means any written demand by a security holder of an **Insured Entity** upon the board of directors or management board of such **Insured Entity** to bring a civil proceeding in a court of law against any **Insured Person** for a **Wrongful Act**, provided such demand is brought and maintained without any active assistance or participation of, or solicitation by, any **Insured Person**.
- J. **Wrongful Act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by:
1. any **Insured Person** in their respective capacity as such for the **Insured Entity**, or any matter claimed against them by reason of their status as an **Insured Person** with the **Insured Entity**; or
 2. any **Insured Person** arising out of their serving as a director, officer, trustee or governor of an **Outside Entity** in such capacity for the **Outside Entity**, but only if such service is at the specific request or direction of the **Insured Entity**; or
 3. the **Insured Entity**.

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;
- D. for:
 - 1. damage 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; provided, however, this exclusion does not apply to:
 - 1. any **Claim** by any **Insured** solely in their capacity as a 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 support of, or intervention of, or for the benefit 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 or maintained by an **Insured Person** provided that: (a) such **Claim** is based solely upon and arising out of **Wrongful Acts** committed subsequent to the date such **Insured Person** ceased to be a director or officer, member of the board of managers, member of the management committee, or equivalent executive of the **Insured Entity**; and (b) such **Claim** is first made at least 3 years subsequent to the date such **Insured Person** ceased to serve in such capacity with the **Insured Entity**; and (c) such **Claim** is made without the assistance, participation or solicitation of any other **Insured**;
 - 5. any **Claim** by any **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 with the **Insured Entity**; 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;
- 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** and if the **Insured** knew or reasonably could have foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**; 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 actual or alleged employment-related torts, including but not limited to: failure to hire; wrongful dismissal; wrongful discharge; wrongful termination; retaliation; harassment; discrimination; violation of civil rights; or violation of any federal, state, local or foreign laws, whether statutory or common law, concerning discrimination or harassment;
- 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, and caused by any act, error or omission; provided, however, this exclusion does not apply to any **Claim** against an **Insured** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured** in connection with the management or supervision of any division, **Subsidiary** or group of the **Insured Entity** offering any of the aforementioned services;
- 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 any federal, state, local or foreign wage and hour laws, whether statutory or common law, 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 offering or sale of securities of an **Insured Entity** to the public, including but not limited to: alleged violations of the Securities Act of 1933; Securities Exchange Act of 1934; Investment Act of 1940; Title III. Crowdfunding of the Jumpstart Our Business Startups Act of 2012; any state "Blue Sky" securities law; or any similar state statutes, rules, regulations or common law regulating securities similar to the foregoing, including amendments thereto, and any similar federal, state, local or common law, including any rules and regulations promulgated thereunder; provided, however, this exclusion shall not apply to **Loss** in connection with a **Claim** made against any **Insured**:
1. based upon or arising out of the offering, sale or purchase of securities, whether debt or equity, in a transaction or series of transactions that are exempt from registration under the Securities Act of 1933, including any amendments thereto, or any rules or regulations promulgated thereunder; or
 2. brought by any 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** to the public; or

3. based upon or arising out of an **Insured Entity's** preparation for any offering or sale of securities of the **Insured Entity** to the public, including any "Road Show" presentation to potential investors or other similar presentation made by the **Insureds** in connection with such public offering but only if such offering does not occur; or
4. based upon or arising out of any private offering or sale of securities of the **Insured Entity** to accredited investors, including but not limited to: angel investors, venture capital firms, private equity firms, or any other similar accredited investor.

V. General Conditions

Other Insurance

Unless specifically stated otherwise, the coverage afforded under this coverage section shall apply only as excess over any other valid and collectible insurance, unless such other insurance is specifically written as excess insurance over the Separate Limit of Liability or Shared Limit of Liability applicable to this coverage section. This coverage section shall be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this coverage section may be obligated to pay **Loss**.

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



President



Secretary

SPECIMEN