

# DIRECTORS AND OFFICERS LIABILITY COVERAGE PART

**THIS IS A CLAIMS-MADE POLICY  
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (the "Insurer"), including the statements made in the **Proposal Form**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and the Insurer agree:

## Section I. Insuring Agreements

- A. The Insurer will pay to or on behalf of the **Insured Persons** all **Loss** which the **Insured Persons** are legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** or the Discovery Period, if purchased, for a **Wrongful Act** by the **Insured Persons**, except for **Loss** which the **Company** actually pays as advancement or indemnification.
- B. The Insurer will pay to or on behalf of the **Company** all **Loss** which the **Insured Persons** are legally obligated to pay as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** or the Discovery Period, if purchased, for a **Wrongful Act** by the **Insured Persons**, but only to the extent the **Company** is required or permitted by law to pay such **Loss** to or on behalf of the **Insured Persons** as advancement or indemnification.
- C. If it is stated in ITEM 4 of the Declarations that the Optional Entity Coverage under INSURING AGREEMENT C of this Coverage Part has been purchased, the Insurer will pay to or on behalf of the **Company** all **Loss** which the **Company** is legally obligated to pay as a result of a **Claim** first made against it during the **Policy Period** or the Discovery Period, if purchased, for a **Wrongful Act** by the **Company**.
- D. If it is stated in ITEM 4 of the Declarations that the Optional Investigation Costs Coverage under INSURING AGREEMENT D of this Coverage Part has been purchased, the Insurer will pay to, or on behalf of the **Company**, **Investigation Costs** which the **Company** is legally obligated to pay as a result of a **Derivative Demand** first received by the **Company** during the **Policy Period** or the Discovery Period, if purchased.

## Section II. Definitions

- A. For purposes of this Coverage Part, the term "**Claim**" will include an administrative or regulatory investigation of an **Insured Person** which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document specifically identifying in writing such **Insured Person** as a person against whom a **Claim**, as defined in Section II.A of the GENERAL TERMS AND CONDITIONS, may be brought. "**Claim**" will also include an extradition order or similar document.
- B. "**Derivative Demand**" will mean any written demand by or on behalf of any holder of securities issued by the **Company**, in his or her capacity as such, made upon the board of directors or managers of the **Company** to bring a civil proceeding against one or more of the **Insured Persons** for a **Wrongful Act**, but only if such demand is made totally independently of, and without the solicitation, assistance, active participation or intervention of, the **Company** or any **Insured Person**.
- C. "**Employee**" will mean:
  - 1. any individual whom the **Company** compensates by wages, salary and/or commissions and whose labor or service is directed by the **Company**, whether such individual performs such labor or service on a full-time, part-time, seasonal or temporary basis;

2. any individual who performs labor or services for the **Company** as a volunteer; and
3. any individual who is leased or loaned to the **Company** to perform labor or service for the **Company**, but only if the **Company** provides indemnification to such individual in the same manner and to the same extent as to its other **Employees**.

D. For purposes of this Coverage Part, the term "**Insured**" will mean the **Company** and all **Insured Persons**.

E. For purposes of this Coverage Part, the term "**Insured Person**" will mean:

1. any past, present or future duly elected or appointed director, officer or member of the board of managers or management committee of the **Company**;
2. any in-house general counsel of the **Company**;
3. any executive of the **Company** located outside of the United States of America who holds a position with respect to the **Company** equivalent to any position described in Sections II.C.1 or II.C.2 above; or
4. any **Employee**.

F. "**Investigation Costs**" will mean reasonable and necessary expenses incurred by the **Company** or any committee of the **Company's** board of directors or managers in the investigation and evaluation of a **Derivative Demand**; provided, however, that **Investigation Costs** will not include salaries, wages, overhead or benefit expenses associated with any **Insured**.

G. For purposes of this Coverage Part, the term "**Loss**" will include pre- and post-judgment interest and, if it is stated in ITEM 4 that Optional Investigation Costs Coverage has been purchased, **Investigation Costs**. "**Loss**" shall not include any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of the **Company's** securities.

With respect to any **Claim** arising out of any Public or Private Offering of Securities of the **Company**, the Insurer shall not assert that the portion of any settlement and/or **Costs of Defense** of that **Claim** which relates to any alleged violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes uninsurable loss and shall treat that portion of such settlement and/or **Cost of Defense** as constituting **Loss** under the Policy.

H. "**Outside Capacity**" will mean service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity**, but only if such service is with the knowledge and consent of, or at the request of, the **Company**.

I. "**Outside Entity**" will mean any corporation or organization other than the **Company** which is exempt from taxation under Sections 501(c)(3) - (10), 501(c)(19), 501(d) or 509(a)(1) - (3) of the Internal Revenue Code of 1986, as amended, or any rule or regulation promulgated thereunder.

J. For purposes of this Coverage Part, the term "**Wrongful Act**" will mean:

1. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by any **Insured Person** in his or her capacity as such with the **Company**;
2. any matter claimed against any **Insured Person** solely by reason of his or her status with the **Company**;
3. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by any **Insured Person** in his or her **Outside Capacity**; or

4. with respect only to coverage under INSURING AGREEMENT C, if purchased, any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Company**.

### Section III. Exclusions

**A.** The Insurer will not be liable under this Coverage Part to make any payment of **Loss**, including **Costs of Defense**, in connection with any **Claim** made against any **Insured**:

1. brought about or contributed to by:
  - a. the gaining by any **Insured** of any profit, advantage or remuneration to which such **Insured** was not legally entitled; or
  - b. the deliberately fraudulent or criminal acts of any **Insured**;provided, however: (i) this exclusion shall only apply if it is finally adjudicated such conduct in fact occurred; (ii) this exclusion shall not apply to coverage provided under Insuring Agreement B; and (iii) sub-paragraph (a) of this exclusion above shall not apply to any **Claim** arising out of an initial public offering, secondary public offering, a follow-on public offering, or private placement offering of securities of the **Company**;
2. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given under any other policy of which this Coverage Part is a renewal or replacement;
3. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving the **Company**, any **Insured** as of the Prior and Pending Date stated in ITEM 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding;
4. for any actual or alleged:
  - a. bodily injury, sickness, disease or death of any person, mental anguish, emotional distress, invasion of privacy, trespass, nuisance, wrongful entry or eviction, assault, battery, loss of consortium, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, defamation or slander; or
  - b. damage to or destruction of any tangible property, including the loss of use thereof;
5. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder;
6. for any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by any **Insured Person** in his or her capacity as an **Employee**, director, officer, trustee, regent, governor or equivalent executive of any entity other than the **Company** or an **Outside Entity**, even if directed or requested by the **Company** to serve in such capacity;
7. for any **Wrongful Act** of any **Insured Person** in his or her **Outside Capacity** with respect to any **Outside Entity**, if such **Claim** is brought by or on behalf of the **Outside Entity** or any **Employee**, director, officer, trustee, regent, governor or equivalent executive thereof;
8. by or on behalf of any **Insured** or any security holder of the **Company**; provided, however, that this exclusion shall not apply to any **Claim**:

- a. brought by any **Insured** where such **Claim** is in the form of a cross-claim or third party claim for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded by the terms of this Coverage Part; or
  - b. brought by any security holder of the **Company**, whether directly or derivatively, if the security holder bringing such **Claim** is acting totally independently of, and without the solicitation, assistance, active participation or intervention of, the **Company** or any **Insured Person**;
  - c. brought in any bankruptcy proceeding by or against any entity included within the term "**Company**" by any creditors committee, examiner, trustee, receiver, liquidator or rehabilitator appointed with respect to such entity;
  - d. brought by any **Insured Person** who has neither served in such capacity nor as consultant to any entity included within the term "**Company**" for at least three (3) years prior to such **Claim** having been first made;
  - e. brought by any **Insured Person** of any entity included within the term "**Company**" formed and operating outside the United States of America or any of its territories or possessions against such **Company** or any **Insured Person** thereof, if such **Claim** is brought and maintained outside the United States of America, Canada or any other common law jurisdiction; or
  - f. arises out of, is based upon, or is attributable to any whistleblower activity, including but not limited to any such activity protected under the Sarbanes-Oxley Act of 2002, the False Claims Act, or any similar federal, state, local or foreign law or statute;
9. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission or contamination of any kind; provided, however, that this exclusion shall not apply to any **Claim** alleging any violation of the securities laws of the United States of America, brought by a security holder of the **Company** if the security holder bringing such **Claim** is acting totally independently of, and without the solicitation, assistance, active participation or intervention of, the **Company** or any **Insured Person**;
  10. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any initial public offering of the **Company's** securities or any registration statement or prospectus related thereto; provided, however, that if such initial public offering is not completed or consummated, this exclusion will not apply to **Wrongful Acts** in connection with the **Company's** preparation for such initial public offering, including any related road show, or its failure to go public.
  11. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving the performance by any **Insured** of professional services for others for a fee or other compensation or remuneration; provided, however, that this exclusion will not apply to any **Claim** brought by a security holder of the **Company**, alleging any violation of the securities laws of the United States of America, if the security holder bringing such **Claim** is acting totally independently of, and without the solicitation, assistance, active participation or intervention of, the **Company** or any **Insured Person**, or brought by a security holder of the **Company** alleging that the **Insured Persons** failed to supervise or manage or were negligent in supervising or managing the **Insureds'** performance of professional services for others for a fee or other compensation or remuneration;
  12. for any **Wrongful Act** of any **Subsidiary** or the **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or the **Insured Persons** of such entity that merges with the **Company** occurring:
    - a. prior to the date such entity became a **Subsidiary** or was merged with the **Company**;

- b. subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
- c. subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**.

**B.** The Insurer will not be liable under the Optional Entity Coverage under INSURING AGREEMENT C, if purchased, to make any payment of **Loss**, including **Costs of Defense**, in connection with any **Claim** made against the **Company**:

- 1. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any liability under any contract or agreement; provided, however, that this exclusion will not apply to the extent the **Company** would have been liable in the absence of such contract or agreement;
- 2. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
  - a. wrongful dismissal, discharge or termination;
  - b. sexual or other workplace harassment, including quid pro quo and hostile work environment;
  - c. unlawful employment discrimination;
  - d. employment-related invasion of privacy, defamation (including libel and slander) or negligent or intentional infliction of emotional distress;
  - e. failure of the **Company** to create, provide for or enforce adequate or consistent employment-related policies;
  - f. retaliatory treatment on account of an **Employee's** exercise or attempted exercise of his or her employment-related rights under law, including but not limited to Sections 806 and 1107 of the Sarbanes - Oxley Act of 2002;
  - g. violation of employment-related civil rights relating to any of the above; or
  - h. violation of the Family and Medical Leave Act of 1993;
- 3. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged infringement or misappropriation of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets or other intellectual property, however this exclusion will not apply to a **Claim** alleging any violation of the securities laws of the United States, brought by a security holder of the **Company** if the security holder bringing such **Claim** is acting totally independently of, and without the solicitation, assistance, active participation or intervention of, the **Company** or any **Insured Person**;
- 4. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other statute or law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or activities in restraint of trade.

- C. For the purpose of determining the applicability of the foregoing exclusions, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**, and only the **Wrongful Acts** of any president, chief executive officer or chief financial officer of the **Company** shall be imputed to the **Company**.

#### Section IV. Claims Against Insured Persons for Wrongful Acts in Their Outside Capacity

- A. In the event a **Claim** is made against an **Insured Person** for **Wrongful Acts** in his or her **Outside Capacity** with respect to any **Outside Entity**, the coverage afforded under this Coverage Part in respect of such **Claim** will be specifically excess of, and will not contribute with, any insurance available to such **Insured Person** from such **Outside Entity** and any advancement or indemnification such **Outside Entity** is required or permitted to make to such **Insured Person**. If the Insurer shall have issued any policy or policies of insurance to such **Outside Entity**, payment by the Insurer under any such policy in respect of such **Claim** will reduce and may therefore exhaust, by the amount of such payment, the Insurer's Limit of Liability available under this Coverage Part for such **Claim**.
- B. For purposes of this Section IV, the certificate of incorporation, charter or other organizational documents of each **Outside Entity**, including by-laws and resolutions, will be deemed to require advancement and indemnification of **Loss** to such **Outside Entity's** directors, officers, trustees, regents, governors and equivalent executives to the fullest extent permitted by law.

#### Section V. Additional Excess Aggregate Limit of Liability

- A. Notwithstanding anything in this Policy or this Coverage Part to the contrary, the Additional Excess Aggregate Limit of Liability Dedicated for Directors and Officers will be an additional Excess Limit of Liability in an aggregate amount not to exceed the amount stated in Item 5.a.1 of the Declarations, which amount is in addition to and not part of the Limits of Liability stated in Item 5.a. of the Declarations.

In the event the Additional Excess Aggregate Limit of Liability Dedicated for Directors and Officers is exhausted by payment of **Loss**, or has been tendered to or on behalf of Directors and Officers, then any and all obligations of the Insurer hereunder shall be deemed to be completely fulfilled and extinguished.

- B. No coverage shall be provided by Section V of this Coverage Part for the first **Claim** made for which coverage is provided under this Coverage Part. This Additional Excess Aggregate Limit of Liability Dedicated for Directors and Officers is available solely for **Loss** resulting from any subsequent **Claim** that is covered under Insuring Agreement A of this Coverage Part. The first **Claim** made for which coverage is provided under this Coverage Part shall be determined by the chronological time such **Claim** was made regardless of when coverage is acknowledged by the Insurer.
- C. The Additional Excess Aggregate Limit of Liability Dedicated for Directors and Officers 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 costs of defense, as those terms are defined by such excess insurance, before the Insurer shall have any obligation to make any payment on account of the Additional Excess Aggregate Limit of Liability Dedicated for Directors and Officers.

D. For purposes of this provision only, Directors and Officers shall only mean:

1. any past, present or future duly elected or appointed director, officer or member of the board of managers or management committee of the **Company**;
2. any in-house general counsel of the **Company**; or  
any executive of the **Company** located outside of the United States of America who holds a position with respect to the **Company** equivalent to any position described in Sections V.D.1 or V.D.2 above.



## Section VI. Waiver of Retention under Certain Circumstances

- A. No retention will apply under this Coverage Part to **Loss**, including **Costs of Defense**, incurred by the **Insured Persons** if advancement or indemnification of such **Loss** by the **Company** is neither required nor permitted under applicable law or, if advancement or indemnification of such **Loss** by the **Company** is required or permitted under applicable law, such advancement or indemnification is not made solely by reason of the **Company's Financial Insolvency**.
- B. If, in connection with any **Claim**, a final adjudication, with prejudice, pursuant to a trial, motion to dismiss or motion for summary judgment or a complete and final settlement, with prejudice, establishes that no **Insured** is liable for any **Loss** in connection with such **Claim**, no retention will apply to **Costs of Defense** incurred in connection with such **Claim** and, subject to all other terms, conditions and limitations of this Policy applicable to this Coverage Part, the Insurer will reimburse the **Insureds** for any covered **Costs of Defense** paid by them in connection with such **Claim**.

## Section VII. Sub-Limit of Liability and Retention Applicable to Investigation Costs

- A. The Insurer's maximum aggregate Limit of Liability for **Investigation Costs** will be the amount set forth in ITEM 5.a.i of the Declarations, which amount will be part of, and not in addition to, the Insurer's maximum aggregate Limit of Liability for all **Loss** under this Coverage Part as set forth in ITEM 5.a of the Declarations.
- B. No retention amount will apply to **Investigation Costs** payable under this Coverage Part.

## Section VIII. Order of Payments

- A. **Loss**, including **Costs of Defense**, covered under this Coverage Part will be paid by the Insurer in the following order:
  1. first, the Insurer will pay such **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENT A of this Coverage Part;
  2. with respect to whatever amount of the Insurer's Limit of Liability under this Coverage Part remains after the payment of **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENT A of this Coverage Part, the Insurer will then pay such **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENT B of this Coverage Part; and
  3. with respect to whatever amount of the Insurer's Limit of Liability under this Coverage Part remains after the payment of **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENTS A and B of this Coverage Part, the Insurer will then pay such **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENT C of this Coverage Part; and
  4. with respect to whatever amount of the Insurer's Limit of Liability under this Coverage Part remains after the payment of **Loss**, including **Costs of Defense**, covered under INSURING AGREEMENTS A, B and C of this Coverage Part, the Insurer will then pay such other **Loss**, including **Costs of Defense**, covered under this Coverage Part.
- B. Nothing in this Section VIII is intended, nor shall it be construed, to increase the Insurer's maximum aggregate Limit of Liability applicable to **Loss**, including **Costs of Defense**, under this Coverage Part.