

DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Insured Person Liability

The Insurer shall pay **Loss** on behalf of the **Insured Persons** resulting from an **Insured Person 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**, except for **Loss** that an **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.

(B) Corporate Reimbursement

The Insurer shall pay **Loss** on behalf of an **Insured Entity** that such **Insured Entity** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from an **Insured Person 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) Entity Liability (Elective)

If Entity Liability Coverage is included in Item 5 of the Declarations, the Insurer shall pay **Loss** on behalf of an **Insured Entity** resulting from an **Entity Claim** first made against such **Insured Entity** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by an **Insured Entity**.

This Insuring Agreement shall be subject to the Entity Liability Coverage Retention and Prior or Pending Date in Item 5 of the Declarations.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) "Claim" means any:

- (1) **Insured Person Claim**; or
- (2) **Entity Claim**.

(B) "Entity Claim" means any:

- (1) written demand for civil damages or other civil relief commenced by the receipt of such demand, including a demand to toll the running of a statute of limitations; or
- (2) civil proceeding, including a civil administrative or regulatory proceeding, or an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading;

against an **Insured Entity**.

After, and only to the extent that, an investigation qualifies as an **Insured Person Claim** in accordance with section II.(D)(3) herein, **Entity Claim** also means any civil administrative or regulatory investigation of the **Insured Entity** upon such **Insured Entity's** receipt of a formal

order of investigation. **Entity Claim** shall not include any other investigation.

(C) "**Insured Person**" means any:

- (1) **Manager**; or
- (2) **Employee**.

(D) "**Insured Person Claim**" means any:

- (1) written demand for civil damages or other civil relief commenced by the receipt of such demand, including a demand to toll the running of a statute of limitations; or
- (2) civil proceeding, including a civil administrative or regulatory proceeding, or an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading;

against an **Insured Person**; or

- (3) civil administrative or regulatory investigation of an **Insured Person** in which such **Insured Person** has been identified by name in a target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual), or formal order of investigation, as someone against whom a proceeding as set forth in (2) through (4) above may be brought.

However, **Insured Person Claim** shall not include any investigation other than those qualifying as such under section II.(D) (3) herein.

(E) "**Insured(s)**" means any:

- (1) **Insured Entity**; or
- (2) **Insured Person**.

(F) "**Loss**" means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, settlement amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

Loss also includes punitive and exemplary damages and the multiple portion of any multiplied damage award and the 10% excise tax imposed upon an **Insured Person** pursuant to 26 U.S.C. 4958(a)(2) as the result of such **Insured Person's** alleged participation in an excess benefit transaction. Notwithstanding subparagraph (3) below, with respect to punitive, exemplary, and the multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.

However, **Loss** shall not include:

- (1) taxes, fines or penalties imposed by law (other than the 10% excise tax imposed upon an **Insured Person** pursuant to 26 U.S.C. 4958(a)(2));
- (2) non-monetary relief;

- (3) any other matters uninsurable pursuant to any applicable law, including, but not limited to, disgorgement, restitution or the return of any ill-gotten gains;
- (4) the return of funds, including those that the **Insured** received under any type of grant, program, contract or similar agreement or arrangement; or
- (5) any actual or alleged excess compensation which was paid to or received by any **Insured Person**.
- (G) “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** at the written request of an **Insured Entity**.
- (H) “**Outside Entity**” means any:
- i. not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986,
 - ii. entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy,
- that is not an **Insured Entity**.
- (I) “**Publishers and Advertisers Injury**” means any actual or alleged libel, slander, defamation, plagiarism, misappropriation of ideas, infringement of copyright or trademark and unauthorized use of title.
- (J) “**Personal Injury**” means any actual or alleged false arrest, wrongful detention or imprisonment, malicious prosecution, wrongful entry or wrongful eviction.
- (K) “**Wrongful Act**” means any actual or alleged:
- (1) error, misstatement, misleading statement, act, omission, neglect, breach of duty, **Personal Injury**, or **Publishers and Advertisers Injury** committed by an **Insured Person** in their capacity as such, or in their **Outside Capacity**, or, with regard to Insuring Agreement (C), an **Insured Entity**; or
 - (2) matter claimed against an **Insured Person**, solely by reason of their serving in such capacity, including service in an **Outside Capacity**.

III. COVERAGE EXTENSION FOR OUTSIDE DIRECTORSHIP LIABILITY

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, coverage is afforded for **Loss** resulting from any **Insured Person 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 Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer’s Limit of Liability available under this Policy for such **Claim**.

IV. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not pay **Loss**:

- (A) 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 or diminution of value thereof;
- (B) in connection with any **Claim** based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;
- (C) in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance, situation or **Wrongful Act** that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other directors and officers, management liability, or similar insurance policy;
- (D) in connection with any **Claim** based upon, arising from, or in any way related to any:
- (1) actual or alleged discharge, dispersal, release, or escape of **Pollutants**, or any threat of such discharge, dispersal, release or escape; or
 - (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (E) in connection with any **Claim** based upon, arising from, or in any way related to any employment-related **Wrongful Act**, including but not limited to any:
- (1) claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
 - (2) actual or alleged violation of the Fair Labor Standards Act, Equal Pay Act, Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, or any similar law;
- (F) in connection with any **Claim** based upon, arising from, or in any way related 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;
- (G) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged violation of **ERISA** or any similar law;
- (H) in connection with any **Claim** brought or maintained by, on behalf of, or for the benefit of an **Insured Entity**; or
- (I) of an **Insured Person** based upon, arising from, or in any way related to such **Insured Person's** service, at any time, as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Entity** even if such service is at the direction or request of such **Insured Entity**, provided that this exclusion shall not apply to coverage afforded under Section III. of this **Liability Coverage Part** for a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (J) in connection with any **Claim** by or on behalf of any **Outside Entity** upon which an **Insured Person** is serving or has served in an **Outside Capacity**, or any past or present director, officer, trustee, regent, governor or equivalent executive of such **Outside Entity**.

- (K) in connection with any **Claim** based upon, arising from, or in any way related to any listing or offering of securities of an **Insured Entity** or the purchase or sale of such securities subsequent to such listing or offering, or the violation of any securities laws or regulations anywhere in the world;
- (L) of an **Insured**, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which such **Insured** is not legally entitled if a judgment or other final adjudication establishes that such a gain did occur; or
- (M) of an **Insured**, based upon, arising from, or in any way related to any criminal or deliberately fraudulent act or omission or any willful violation of law by such **Insured** if a judgment or other final adjudication establishes such an act, omission or violation; provided, however, that this exclusion shall only apply to **Insured Entities** under Insuring Agreement (C), if elected, if a past or present **Notice Manager** of the **Named Entity** committed such an act, omission or willful violation.

Regarding exclusions (L) and (M) above: The **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**.

V. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (C)

- (A) The Insurer shall not pay **Loss** under Insuring Agreement (C) in connection with any **Claim** based upon, arising from, or in any way related to any actual or alleged:
 - (1) 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; or
 - (2) discrimination or sexual harassment.
- (B) The Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim** based upon, arising from, or in any way related to the actual or alleged payment by an **Insured Entity** of inadequate consideration in connection with an **Insured Entity's** purchase of securities issued by any **Insured Entity**.

VI. ADDITIONAL LIMIT OF LIABILITY FOR CLAIMS AGAINST MANAGERS

Subject to the terms and conditions of this Policy and **Liability Coverage Part**, an additional Limit of Liability of \$500,000 shall be available for **Loss** resulting from **Insured Person Claims** against **Managers**, provided that:

- (A) such **Claims** are covered under Insuring Agreement (A);
- (B) such additional Limit of Liability shall be excess of all other insurance available to pay **Loss** for such **Claims**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be exhausted prior to this additional Limit of Liability becoming available to pay **Loss**; and
- (C) such additional Limit of Liability shall be available for the second covered **Claim** made during the **Policy Period** and all subsequent **Claims**. This Limit of Liability shall not be provided for the first **Claim** made for which coverage is provided under this Policy. 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 for such **Claim**.

The additional Limit of Liability described above shall be the maximum aggregate amount that the Insurer shall pay for all **Loss** from all **Claims** covered under this provision.

VII. ORDER OF 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 available Limit of Liability for this **Liability Coverage Part**, the Insurer shall first pay **Loss** covered under Insuring Agreement (A) prior to paying **Loss** under any other Insuring Agreements.
- (B) If **Loss** is incurred that is acknowledged by the Insurer to be covered under any Insuring Agreement other than (A), the **Named Entity** shall have the right to direct the Insurer to delay payment of such **Loss** until such time as the **Named Entity** specifies. Any such direction by the **Named Entity** to delay or make payment of **Loss** shall be by written notice to the Insurer. Any such delayed payment of **Loss** shall be available to the Insurer to pay **Loss** covered under Insuring Agreement (A). Any payment of **Loss** under Insuring Agreement (A) out of funds withheld by the Insurer pursuant to this provision shall terminate the Insurer's liability to make a delayed payment of **Loss** under any Insuring Agreement other than (A) by the amount of the payment under Insuring Agreement (A). No interest shall be due regarding any delayed payment of **Loss**. Nothing in this provision shall increase the Insurer's Limit of Liability applicable to this **Liability Coverage Part**.

VIII. RETENTION WAIVER

No Retention shall apply to **Defense Costs** incurred in connection with a **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Retention otherwise applicable to such **Claim**, if a:

- (A) final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
- (B) complete and final settlement with prejudice;

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.