



# Directors and Officers Liability Insurance Policy

**THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THE INSURER HAS NO DUTY TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

**In consideration of the payment of the premium, in reliance on the Application, and subject to all of the terms, conditions and limitations of, and any endorsements to, this Policy, the Underwriter, the Insured Persons and the Insured Entity agree as follows:**

## I. INSURING AGREEMENTS

- (A) On behalf of the **Insured Persons**, the **Underwriter** will pay **Loss** from **Claims** first made during the **Policy Period** against the **Insured Persons** for **Wrongful Acts**, except for **Loss** which the **Insured Entity** is required or permitted to pay to or on behalf of the **Insured Persons** as indemnification.
- (B) On behalf of the **Insured Entity**, the **Underwriter** will pay **Loss** for **Claims** first made during the **Policy Period** against the **Insured Persons** for **Wrongful Acts** which the **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification; and
- (C) On behalf of the **Insured Entity**, the **Underwriter** will pay the **Insured Percentage** of **Loss** from **Securities Claims** first made during the **Policy Period** against the **Insured Entity**.

## II. EXCLUSIONS

- (A) No coverage will be available under this Policy for **Loss**, other than **Defense Expenses**, from **Claims**:
  - (1) against any **Insured** brought about or contributed to in fact by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured**; or
  - (2) against any **Insured** brought about or contributed to in fact by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled; or
  - (3) based on, arising out of, directly or indirectly resulting from, or in any way involving any actual or proposed payment by the **Insured Entity** of allegedly inadequate consideration in connection with the purchase or sale of securities issued by the **Insured Entity**.

In determining the application of EXCLUSION (A)(1) and (A)(2),

- (i) the conduct of any **Insured Person** will not be imputed to any other **Insured Person**; and
- (ii) the conduct of any **Executive Officer** will be imputed to the **Insured Entity**.

If any **Insured** in fact engaged in the conduct specified in EXCLUSION (A)(1) or (A)(2), or if such conduct is imputed to the **Insured Entity**, such **Insured** and the **Insured Entity** will reimburse the **Underwriter** for any **Defense Expenses** advanced to or on behalf of such **Insured**.

- (B) No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims** based on, arising out of, directly or indirectly resulting from, or in any way involving any:
- (1) actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, libel, slander, oral or written publication of defamatory or disparaging material, or damage to or destruction of any tangible property including loss of use thereof; or
  - (2) actual, alleged or threatened exposure to, or generation, storage, manifestation, transportation, discharge, emission, release, dispersal, seepage, migration, escape, appearance, presence, reproduction, growth, treatment, removal or disposal of any **Pollutant**; or
  - (3) cost, expense or charge to test, monitor, clean up, remediate, mitigate, remove, contain, treat, detoxify, neutralize, rehabilitate, or in any other way respond to or assess the effect(s) of any **Pollutant**; or
  - (4) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutant**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;

provided that; EXCLUSIONS (B)(2) – (B)(4) will not apply to those portions of any **Claim** that (i) allege that **Wrongful Acts** resulted in any actual or alleged violation of any **Securities Laws**, or (ii) are a derivative action by or on behalf of, or in the name or right of, the **Insured Entity** brought by a security holder of the **Insured Entity** and maintained independently of, and without the solicitation, assistance, participation or intervention of, any **Insured**.

- (C) No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims** based on, arising out of, directly or indirectly resulting from, or in any way involving:
- (1) any prior or pending litigation or administrative or regulatory proceeding as of the Inception Date in ITEM 2 of the Declarations, or any fact, circumstance, situation, transaction, event, or **Wrongful Act** underlying or alleged in any such litigation or proceeding; or
  - (2) any fact, circumstance, situation, transaction, event, or **Wrongful Act** which, before the Inception Date in ITEM 2 of the Declarations, was the subject of any notice given under any other policy of directors and officers liability or similar insurance; or
  - (3) any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) or any similar federal, state or local statutory or common law, or any rules or regulations promulgated thereunder; or
  - (4) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance; or
  - (5) the service by any **Insured Person** as a director or officer of any entity other than the **Insured Entity** or an **Outside Entity**; or
  - (6) any failure or omission by the **Insured** to effect or maintain adequate insurance.

- (D) No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims**:
- (1) by, on behalf of, for the benefit of, or in the name or right of, the **Insured Entity** or any **Insured Person**; except that this EXCLUSION (D)(1) will not apply to:
    - (a) any derivative action by, on behalf of, for the benefit of, or in the name or right of, the **Insured Entity** brought by a security holder of the **Insured Entity**, and brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, any **Insured**; or
    - (b) any **Claim** in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
    - (c) any **Claim** for any actual or alleged wrongful discharge or termination of employment, including constructive discharge, against an **Insured Person**;
  - (2) by or on behalf of, or in the name or right of, any **Outside Entity** against an **Insured Person** for a **Wrongful Act** in his or her **Outside Capacity** with respect to such **Outside Entity**; or
  - (3) against any **Subsidiary**, or the **Insured Persons** of any **Subsidiary** in their capacities as such, for any **Wrongful Act** committed during any time in which such entity was not a **Subsidiary**.
- (E) No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims** against the **Insured Entity** for any **Employment Practices Wrongful Act**.

### III. GENERAL CONDITIONS

(A) **Limit of Liability:**

- (1) The **Limit of Liability** is the maximum aggregate limit of liability of the **Underwriter** under this Policy for all **Loss** from all **Claims** for which this Policy provides coverage, regardless of the time of payment by the **Underwriter**, and regardless of whether such **Claims** are made during the **Policy Period** or during any Discovery Period (as described in GENERAL CONDITION (G) below).
- (2) **Defense Expenses** are part of and not in addition to the **Limit of Liability**, and payment of **Defense Expenses** by the **Underwriter** will reduce, and may exhaust, the **Limit of Liability**.
- (3) The **Underwriter** will pay **Loss**, including **Defense Expenses**, in the order in which such **Loss** is incurred. If **Loss** payable under INSURING AGREEMENTS (A) and (B) is incurred in connection with the same **Claim**, the **Underwriter** will first pay the **Loss** under INSURING AGREEMENT (A). The **Named Insured** may elect to decline or defer payment of **Loss** under INSURING AGREEMENT (B) by written notice to the **Underwriter** signed by the **Named Insured's** Chief Executive Officer. Nothing in this paragraph will modify GENERAL CONDITION (D) below.

(B) Notice of **Claims** and **Potential Claims**; **Related Claims**:

- (1) As a condition precedent to any rights in respect of any **Claim**, the **Insured Entity** or the **Insured Persons** must give the **Underwriter** written notice of such **Claim**, with full details, as soon as practicable after it is first made, but in no event later than thirty (30) days after the end of the **Policy Period** or the Discovery Period, if applicable.

- (2) If, during the **Policy Period**, the **Insured Entity** or the **Insured Persons** first become aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and the **Insured Entity** or the **Insured Persons**:
- (a) as soon as practicable after such **Wrongful Act** first occurs, give(s) the **Underwriter** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the date such **Wrongful Act** occurred, the identities of the persons and entities involved, the consequences which have resulted or may result from such **Wrongful Act**, the damages which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured Entity** or the **Insured Persons** first became aware of such **Wrongful Act**; and
  - (b) request(s) coverage under this Policy at the time of any resulting **Claim** for such **Wrongful Act**;

then the **Underwriter** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**. Notice of any such subsequently resulting **Claim** must be given to the **Underwriter** as soon as practicable after it is first made. This GENERAL CONDITION (B)(2) does not apply and may not be invoked during the Discovery Period.

- (3) All notices under GENERAL CONDITIONS (B)(1) and (2) above must be sent by certified mail or prepaid express courier to the address set forth in ITEM 5 of the Declarations.
  - (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with GENERAL CONDITION (B)(2) above, whichever is earlier.
- (C) Defense and Settlement of **Claims**; Payment and Allocation of **Loss**:
- (1) The **Underwriter** will have no duty under this Policy to defend any **Claim** but, at its option, may associate in the defense or settlement of a **Claim**. The **Insureds** will defend and contest any **Claim** made against them. In conducting a defense, the **Insureds** will retain counsel approved by the **Underwriter**, such approval not to be unreasonably withheld. No **Defense Expenses** may be incurred, and no settlement or offer of settlement of any **Claim** may be made, without the **Underwriter's** prior written consent, such consent not to be unreasonably withheld. No coverage is available under this Policy for any **Defense Expenses** incurred, or any settlements or settlement offers made, without the **Underwriter's** prior written consent.
  - (2) The **Underwriter** will have no obligation to pay **Loss**, including **Defense Expenses**, after the **Limit of Liability** has been exhausted by the payment of **Loss**, including **Defense Expenses**, regardless of any declination or deferral of payment under GENERAL CONDITION (A)(3) above. If the **Limit of Liability** is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium for this Policy will be fully earned.
  - (3) The **Underwriter** will pay on a current basis **Defense Expenses** for which this Policy provides coverage. Otherwise, the **Underwriter** will pay **Loss** only on the final disposition of a **Claim**.
  - (4) As a condition of any payment of **Defense Expenses** under GENERAL CONDITION (C)(3) above, the **Underwriter** may require a written undertaking on terms and conditions satisfactory to the **Underwriter** guaranteeing the repayment of any **Defense Expenses** paid to or on behalf of any **Insured** if it is finally determined that **Loss** incurred by such **Insured** is not be covered by this Policy.

- (5) If both **Loss** covered by this Policy and **Loss** not covered by this Policy are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of “**Insured**” set forth in DEFINITION (F) below, the **Insured Entity**, the **Insured Persons** and the **Underwriter** agree to use their best efforts to determine a fair and proper allocation of all such amounts. The **Underwriter’s** obligation to pay **Loss** under this Policy will apply only to those sums allocated to the **Insureds**. In making such determination, the parties will take into account the relative legal and financial exposures of, and the relative benefits obtained in connection with the defense and/or settlement of the **Claim** by, the **Insured Persons**, the **Insured Entity** and others. Any allocation or advancement of **Defense Expenses** will not apply to or create a presumption with respect to the allocation of other **Loss** incurred in connection with the **Claim**. In the event that the **Underwriter** and the **Insureds** do not reach an agreement with respect to an allocation, then the **Underwriter** will make a preliminary payment of the amount of **Loss**, including **Defense Expenses**, which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.
- (6) Any dispute between the **Underwriter** and the **Insureds** regarding allocation will be submitted to arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (the “**Rules**”). Notwithstanding any provisions of the Rules to the contrary, the arbitration will be conducted, and the decision in the arbitration will be rendered, by a single arbitrator.
- (D) **Presumption of Indemnification; Applicable Retention:**
- (1) The certificate of incorporation, charter, articles of association or other organizational documents of the **Named Insured**, each **Subsidiary** and each **Outside Entity**, including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (2) Regardless of whether **Loss** in connection with any **Claim** against the **Insured Persons** (including any **Claim** against the **Insured Persons** for **Wrongful Acts** in their **Outside Capacities**) is payable under INSURING AGREEMENT (A) or (B), the retention set forth in ITEM 4 b. of the Declarations will apply to any **Loss** as to which indemnification by the **Insured Entity** or any **Outside Entity** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Insured Entity** or such **Outside Entity** solely by reason of its financial insolvency.
- (3) If different retentions are applicable to different parts of any **Loss**, the applicable retentions will be applied separately to each part of such **Loss**, and the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 4 of the Declarations.
- (E) **Change in Control; Mergers and Acquisitions:**
- (1) If, during the **Policy Period**, any of the following events occur:
- (a) the acquisition of the **Named Insured**, or all or substantially all of its assets, by another entity or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity;
- (b) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Named Insured**; or
- (c) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Named Insured**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled, regardless of GENERAL CONDITION (F)(2), and the entire premium for this Policy will be deemed fully earned.

(2) If, during the **Policy Period**, the **Insured Entity**:

- (a) acquires any assets, acquires a **Subsidiary** or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired exceed fifteen percent (15%) of the total assets of the **Insured Entity**, as reflected in the **Insured Entity's** most recent audited consolidated financial statements; or
- (b) assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed fifteen percent (15%) of the total liabilities of the **Insured Entity**, as reflected in the **Insured Entity's** most recent audited consolidated financial statements;

(in any such case, a "Transaction"), the acquired entity will be included within the term "**Subsidiary**," and **Claims** relating to the acquired assets or assumed liabilities will be covered under this Policy, subject to its terms and conditions, for a period of thirty (30) days after the date of such Transaction. The acquired entity will not be included within the term "**Subsidiary**," and **Claims** relating to the acquired assets or assumed liabilities will not be covered under this Policy, after the expiration of thirty (30) days after the date of such Transaction unless the **Underwriter** has received written notice containing full details of such Transaction and the **Underwriter**, in its sole discretion, has agreed to provide coverage upon such terms, conditions and limitations of coverage and such additional premium as it may require. No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from any **Claim** against any entity, or the **Insured Persons** of any entity, included within the term "**Subsidiary**" by reason of this GENERAL CONDITION (E)(2) for any **Wrongful Act** committed or allegedly committed before the date of such Transaction, or for any **Wrongful Act** involving the acquired assets or assumed liabilities committed or allegedly committed before the date of such Transaction.

(F) Cancellation; No Obligation to Renew:

- (1) The **Underwriter** may not cancel this Policy except for failure to pay a premium when due, in which case ten (10) days' written notice will be given.
- (2) Except as set forth in GENERAL CONDITIONS (C)(2), (E) and (J), the **Named Insured** may cancel this Policy by mailing the **Underwriter** written notice stating when, not later than the Expiration Date set forth in ITEM 2 of the Declarations, such cancellation will be effective. Earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (3) The **Underwriter** will not be required to renew this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other terms and conditions shall not constitute, nor be construed as, a refusal by the **Underwriter** to renew this Policy.

(G) Discovery Period:

- (1) If the **Underwriter** or the **Named Insured** declines to renew this Policy for any reason, the **Named Insured** shall have the right to purchase a twelve (12) month extension of the coverage granted by this Policy (a "Discovery Period"), but only with respect to any **Wrongful Act** committed before the effective date of such non-renewal or the date of any conversion of coverage under GENERAL CONDITION (E)(1), whichever is earlier. In order to purchase a Discovery Period, the **Named Insured**, within thirty

(30) days after the effective date of the non-renewal, must (i) provide written notice by certified mail or prepaid express courier to the **Underwriter** requesting the Discovery Period, and (ii) pay the additional premium set forth in ITEM 7 of the Declarations. The additional premium will be deemed fully earned upon inception of the Discovery Period.

- (2) If a Discovery Period is purchased in accordance with GENERAL CONDITION (G)(1) above, any **Claim** made during such Discovery Period will be deemed to have been made during the **Policy Period**. The **Underwriter's Limit of Liability** in respect of **Claims** made during the Discovery Period will be part of, and not in addition to, the **Underwriter's Limit of Liability** for all **Claims** made during the **Policy Period**.

(H) Other Insurance; Other Indemnification:

- (1) All **Loss** payable under this Policy will be specifically excess of, and will not contribute with, other insurance including, but not limited to, any insurance under which there is a duty to defend, unless such other insurance is specifically in excess of this Policy. This Policy will not be subject to the terms of any other insurance.
- (2) All coverage for **Loss** from **Claims** against **Insured Persons** for **Wrongful Acts** in their **Outside Capacities** will be specifically excess of, and will not contribute with, any other insurance available to such **Insured Persons** by reason of their service with any **Outside Entity**, and any indemnification by any person or entity other than the **Insured Entity**, including any **Outside Entity**, available to such **Insured Persons** in connection with their service with such **Outside Entity**.

(I) Spouses of **Insured Persons**:

- (1) The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to **Loss** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse of an **Insured Person**, but only if:
- (a) the **Claim** against such spouse results from a **Wrongful Act** actually or allegedly committed by the **Insured Person** to whom the spouse is married;
  - (b) such **Insured Person** and his or her spouse are represented by the same counsel in connection with such **Claim**; and
  - (c) the **Claim** against the spouse seeks damages from marital community property.
- (2) No spouse of an **Insured Person** will, by reason of this GENERAL CONDITION (I), have any greater right to coverage under this Policy than the **Insured Person** to whom such spouse is married.
- (3) The **Underwriter** will not be liable under this GENERAL CONDITION (I) to make any payment of **Loss** in connection with any **Claim** against a spouse of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse.

(J) Exhaustion:

If the **Underwriter's Limit of Liability** is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the **Underwriter** under this Policy will be completely fulfilled and exhausted, and the **Underwriter** will have no further obligations of any kind or nature whatsoever under this Policy.

(K) Cooperation; Subrogation:

The **Insureds** will provide the **Underwriter** with all information, assistance and cooperation that the **Underwriter** reasonably requests, and will do nothing that may prejudice the **Underwriter's** position or potential or actual rights of recovery. The **Underwriter** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will execute all documents and do everything necessary to secure such rights enabling the **Underwriter** to bring suit in their name. The obligations of the **Insureds** under this GENERAL CONDITION (K) will survive the termination, for any reason, or exhaustion of this Policy.

(L) Representation:

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, except that:

- (1) material facts or information known to the person(s) who signed the **Application** will be imputed to all **Insureds**; and
- (2) material facts or information known to any **Executive Officer(s)** will be imputed to the **Insured Entity**.

In the event that any of the particulars or statements in the **Application** is untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

(M) Limitation on Action against the **Underwriter**:

- (1) No action may be taken against the **Underwriter** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insureds** to pay has been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the **Underwriter**.
- (2) No person or entity will have any right under this Policy to join the **Underwriter** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Underwriter** be impleaded by an **Insured** or his or her legal representative in any such **Claim**.

(N) Bankruptcy of any **Insured**:

The **Underwriter** will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any **Insured**.

(O) Authorization and Notices:

The **Named Insured** will act on behalf of all **Insureds** with respect to the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the **Underwriter**; receiving and accepting any endorsements issued to form a part of this Policy; and exercising or declining to exercise any Discovery Period.

(P) Changes:

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriter** will not effect a waiver or change in any provision of this Policy or estop the **Underwriter** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(Q) Assignment:

No assignment of interest under this Policy will bind the **Underwriter** without its consent.

(R) Entire Agreement:

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Underwriter** or any of its agents relating to this insurance.

(S) Headings:

The headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

#### IV. DEFINITIONS

(A) “**Application**” means the application submitted to the **Underwriter** or any of its agents for this Policy, all prior applications submitted to the **Underwriter** or any of its agents for any prior policies issued by the **Underwriter** to the **Named Insured**, and any and all materials and information submitted to or obtained by the **Underwriter** in connection with such applications, including all statements made by the **Insureds** or their agents or brokers, and the **Insured Entity’s** annual reports, quarterly reports, interim financial statements, proxy statements (or other notices to shareholders), articles of incorporation, bylaws and any indemnification contracts, all of which are deemed to be on file with the **Underwriter** and are deemed to be attached to, and form part of, this Policy, as if physically attached.

(B) “**Claim**” means:

- (1) any written demand for monetary, non-monetary or injunctive relief;
- (2) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment or similar pleading;
- (3) any criminal proceeding which is commenced by the return of an indictment or similar document;
- (4) any administrative or regulatory proceeding which is commenced by the filing or issuance of a notice of charges, formal investigative order, or similar document; provided that such administrative or regulatory proceeding, or any such investigation, will be a **Claim** only if and only during the time that an **Insured Person** is identified by the administrative or regulatory agency, or by the investigating authority, as a person against whom a proceeding described in DEFINITION (B)(2) or (3) above may be commenced; or
- (5) any arbitration proceeding.

A **Claim** will be deemed to have been first made when the **Claim** is commenced as set forth above and an **Insured** receives notice of the commencement, or when the **Underwriter** first receives notice under GENERAL CONDITION (B)(2) of a **Wrongful Act** out of which such **Claim** subsequently arises, whichever occurs first.

- (C) “**Defense Expenses**” means reasonable and necessary legal fees and expenses incurred in the defense or appeal of a **Claim**. **Defense Expenses** will include the cost of any bond or appeal bond required in any civil suit; provided that, the **Underwriter** will not be obligated to apply for or furnish any such bond. **Defense Expenses** will not include (i) the **Insured Entity’s** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees, or (ii) any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- (D) “**Employment Practices Wrongful Act**” means any actual or alleged:
- (1) wrongful discharge or termination of employment, including constructive discharge;
  - (2) employment-related misrepresentation;
  - (3) sexual or other workplace harassment;
  - (4) wrongful failure to employ or promote;
  - (5) wrongful deprivation of career opportunity, employment or promotion;
  - (6) wrongful discipline or evaluation;
  - (7) failure to adopt or provide adequate employment or workplace policies and procedures;
  - (8) wrongful retaliation; or
  - (9) violation of any federal, state or local law concerning discrimination in employment, including without limitation 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, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1966, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Fifth and Fourteenth Amendments to the United States Constitution, and any other federal, state or local law relating or applying to employment or discrimination in employment; or any rule or regulation promulgated under any of the foregoing.
- (E) “**Executive Officer**” means any past, present or future Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President or General Counsel, or any equivalent position, of the **Insured Entity**.
- (F) “**Insured**” means the **Insured Persons** and the **Insured Entity**.
- (G) “**Insured Entity**” means the **Named Insured** and any **Subsidiary**.
- (H) “**Insured Percentage**” means the percentage set forth in ITEM 4d. of the Declarations. The **Insured Percentage** is the percentage of **Loss** from **Securities Claims** against the **Insured Entity** that the **Underwriter** will pay under INSURING AGREEMENT (C) of this Policy.

- (I) “**Insured Person**” means:
- (1) any past, present or future duly appointed or elected director or officer, or member of the Board of Managers, of the **Insured Entity**, and
  - (2) any past, present or future employee of the **Insured Entity**, but only if and to the extent that a **Securities Claim** is made against any such employee.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

- (J) “**Limit of Liability**” means the amount set forth in ITEM 3 of the Declarations.
- (K) “**Loss**” means **Defense Expenses** and any damages, settlements, judgments or other amounts (including punitive or exemplary damages, where insurable under applicable law):
- (1) that an **Insured Person** is obligated to pay as a result of any **Claim**; or
  - (2) that the **Insured Entity** pays as indemnification of **Insured Persons** or is obligated to pay as a result of any **Securities Claim**;

provided that, **Loss** will not include (i) wages, (ii) fines, taxes or penalties, (iii) the multiplied portion of any multiplied damage award, (iv) matters which are uninsurable under the law pursuant to which this Policy is construed, or (v) costs incurred for or in connection with the implementation of any non-monetary or injunctive relief; or (vi) any reimbursement required pursuant to Section 304 of the Public Company Accounting Reform and Investor Protection Act of 2002 (the “Sarbanes-Oxley Act”), Section 16(b) of the Securities Exchange Act of 1934, or any other restitution or disgorgement.

- (L) “**Named Insured**” means the entity named in ITEM 1 of the Declarations.
- (M) “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent or governor of an **Outside Entity**, but only during such time that such service is at the specific written request of the **Insured Entity**.
- (N) “**Outside Entity**” means a corporation or organization other than the **Insured Entity** which is exempt from taxation under Section 501(c) of the Internal Revenue Code, as amended.
- (O) “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations, or from the Inception Date to any earlier cancellation or termination date.
- (P) “**Pollutant**” means any:
- (1) smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants; and
  - (2) mold, mildew, spores, mycotoxins, fungi, organic pathogens or other micro organisms of any type, nature or description whatsoever.

- (Q) “**Related Claims**” means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.
- (R) “**Retention**” means the amounts indicated in ITEM 4 of the Declarations for each Insuring Agreement, and is the sum which an **Insured** must pay with regard to a covered **Claim** before the **Underwriter** has an obligation to pay **Loss**.
- (S) “**Securities Claim**” means a **Claim** for any **Securities Wrongful Act**; provided that a **Securities Claim** will include an administrative or regulatory proceeding commenced against, or an investigation of, the **Insured Entity** only if and only during the time that such proceeding is also commenced and continuously maintained against an **Insured Person**.
- (T) “**Securities Laws**” means the Securities Act of 1933, the Securities Exchange Act of 1934, any state “blue sky” law, or any other federal, state or local securities law, or any rule or regulation promulgated under any of the foregoing.
- (U) “**Securities Wrongful Act**” means any actual or alleged:
- (1) violation of **Securities Laws**; or
  - (2) act, error, omission, misstatement, misleading statement or breach of duty by an **Insured** in connection with the purchase or sale, or offer to purchase or sell, securities issued at any time by the **Insured Entity**;
- (V) “**Subsidiary**” means any entity during any time in which the **Named Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity’s directors or members of the Board of Managers.
- (W) “**Underwriter**” means the insurance company indicated on the Declarations page.
- (X) “**Wrongful Act**” means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as such;
  - (2) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her **Outside Capacity**;
  - (3) any **Securities Wrongful Act**; or
  - (4) any **Employment Practices Wrongful Act**.

**In witness whereof**, the **Underwriter** has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Underwriter**.