



# Preserver Directors and Officers Liability Insurance Policy

**THIS IS A CLAIMS MADE INDEMNITY 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 THE ENTIRE 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 **Company** agree as follows:

## **I. INSURING AGREEMENT**

The **Underwriter** will pay, on behalf of the **Insured Persons**, **Loss** from **Claims** first made during the **Policy Period** against the **Insured Persons**, except to the extent that such **Loss** is paid by any other insurance or as indemnification from any source.

## **II. EXCLUSIONS**

- (A) No coverage will be available under this Policy for **Loss**, other than **Defense Expenses**, from **Claims**:
- (1) brought about or contributed to in fact by any dishonest or fraudulent act or omission, any criminal act or omission or any willful violation of any statute, rule or law by an **Insured Person**; or
  - (2) brought about or contributed to in fact by an **Insured Person** gaining any personal profit, remuneration or advantage to which he or she was not legally entitled.

In determining the application of EXCLUSIONS (A)(1) and (A)(2), no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**, and the existence of allegations in a **Claim** which, if proven, would be subject to EXCLUSIONS (A)(1) and/or (A)(2) will not affect the right of an **Insured Person** to the current payment of **Defense Expenses**. If, however, any **Insured Person** in fact engaged in the conduct specified in EXCLUSIONS (A)(1) and/or (A)(2), such **Insured Person** will reimburse the **Underwriter** for any **Defense Expenses** advanced to or on behalf of such **Insured Person** in connection with such **Claim**.

- (B) No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims**:

- (1) for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof. This EXCLUSION (B)(1) will not apply:
  - (a) to any **Claim** in the form of a derivative action by any security holder of the **Company** acting independently and without the solicitation or assistance of the **Company** or any **Insured Person**, or
  - (b) to the extent such **Claim** is for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934 or any state securities statute; or
- (2) by, on behalf of, for the benefit of, or in the name or right of, the **Company**; provided that, this EXCLUSION (B)(2) will not apply to any **Claim** (a) whether direct or in the form of a derivative action, brought by a security holder of the **Company** acting independently and without the solicitation or assistance of the **Company** or any **Insured Person**, or (b) brought by a Bankruptcy Trustee or Examiner, or by a Receiver, Conservator, Liquidator, Rehabilitator, Creditors Committee or similar authority of or for the **Company**;
- (3) based on, arising out of, directly or indirectly resulting from, or in any way involving (a) any prior or pending litigation or administrative or regulatory proceeding brought on or before the Prior or Pending Litigation Date set forth in ITEM 7 of the Declarations, or (b) any fact, circumstance, situation, transaction, event, or **Wrongful Act** which, before the Inception Date set forth 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;
- (4) based on, arising out of, directly or indirectly resulting from, or in any way involving 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.

### **III. CONDITIONS**

#### **(A) Notice:**

- (1) As a condition precedent to the right of the **Insured Persons** to payment under this Policy, the **Insured Persons** or the **Company** must give the **Underwriter** written notice, by certified mail or prepaid express courier, of any **Claim** as soon as practicable after it is first made.
- (2) If an **Insured Person** or the **Company** becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** against any **Insured Person** and, during the **Policy Period**, gives 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 Person** or the **Company** first became aware of such **Wrongful Act**, then any **Claim** subsequently made against an **Insured Person** arising out of such **Wrongful Act** will be deemed to have been made during the **Policy Period**, if

written notice of such **Claim** is given to the **Underwriter**, by certified mail or prepaid express courier, as soon as practicable after the **Claim** is made.

(B) **Interrelationship of Claims:**

All **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related **Wrongful Acts**, facts, circumstances or situations, or the same or related series of **Wrongful Acts**, facts, circumstances or situations, will be deemed to be a single **Claim** made at the time the earliest such **Claim** was first made, or at the time notice was first given under CONDITION (A)(2), whichever occurred first.

(C) **Defense and Settlement of Claims:**

- (1) It is the duty of the **Insured Persons** and not the duty of the **Underwriter** to defend **Claims**. No **Defense Expenses** may be incurred and no settlement of, or offer to settle, any **Claim** may be made, however, without the **Underwriter's** consent, such consent not to be unreasonably withheld.
- (2) The **Underwriter**, at its option, may associate in the defense or settlement of any **Claim**,

(D) **Advancement of Defense Expenses; Payment of Loss:**

- (1) Upon written request, the **Underwriter** will pay on a current basis any **Defense Expenses** for which this Policy provides coverage.
- (2) Except for such **Defense Expenses**, the **Underwriter** will pay or reimburse **Loss** only upon the final disposition of any **Claim**.

(E) **Limit of Liability:**

The amount stated in ITEM 3 of the Declarations 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 or deemed made during the **Policy Period** or are made during any Discovery Period. **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.

(F) **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 CONDITION (F), 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 CONDITION (F) to make any payment of **Loss** in connection with any **Claim** against the spouse of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse.

(G) **Nature of Coverage; Other Insurance and Indemnification:**

The coverage under this Policy is excess over, and will not contribute with, all other insurance, including the **Scheduled Insurance**, and all indemnification from any source paid to, or on behalf of, an **Insured Person**. In addition, if **Loss** is not paid under any other insurance, including the **Scheduled Insurance**, and if such **Loss** is not indemnified, this Policy will respond on behalf of the **Insured Persons** as if it were primary insurance, subject to all of its terms, conditions and limitations and without prejudice to the **Underwriter's** excess position. By so responding, the **Underwriter** does not waive, compromise or release its right to recover **Loss** paid under this Policy from the issuers of any other insurance, including any **Scheduled Insurance**, under which coverage is or may be owed to an **Insured Person**, or from any person or entity from which an **Insured Person** is or may be entitled to indemnification. To that end, the **Insured Persons** and the **Company** agree with the **Underwriter** that:

- (1) the **Insured Persons** and the **Company** will not terminate, cancel, non-renew or reduce any **Scheduled Insurance**; provided that, the payment of loss under such insurance will not constitute a termination or reduction of coverage within the meaning of this CONDITION (G)(1);
- (2) the **Insured Persons** and the **Company** will not terminate, cancel, non-renew or reduce any indemnification available to the **Insured Persons**; provided that, the payment of any amount as indemnification under any indemnification agreement will not constitute a termination or reduction of any indemnification within the meaning of this CONDITION (G)(2);
- (3) this Policy provides excess coverage over, and will not contribute with, all other insurance, including the **Scheduled Insurance**, under which an **Insured Person** is entitled to coverage, whether any such insurance is stated to be primary, contributing, excess, contingent or otherwise, and that this Policy will not be subject to the terms of any other such insurance;
- (4) this Policy provides excess coverage over, and will not contribute with, all indemnification to which an **Insured Person** is entitled from any source, including, but not limited to, the **Company**; and
- (5) the certificate of incorporation, charter, articles of association or other organizational documents, including bylaws and resolutions, of the **Company** or any other entity will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

(H) **Cooperation, Assignment and Subrogation:**

- (1) In the event of a Claim, or after giving the Underwriter notice under CONDITION (A)(2) above, the Insured Persons and the Company will provide the Underwriter with all information, assistance and cooperation as the Underwriter may reasonably request. The Insured Persons and the Company will give notice and request coverage for such Claim or notice under all insurance policies that may provide coverage, including, but not limited to, the Scheduled Insurance. The Insured Persons further agree that, if a Claim is made, they promptly will seek indemnification in respect of such Claim from the Company and from any other person or entity from which the Insured Persons are or may be entitled to indemnification.
- (2) The **Insured Persons** and the **Company** will do nothing that may prejudice the **Underwriter's** position or the **Underwriter's** potential or actual rights of recovery in the event of a **Claim**.
- (3) In the event of payment under this Policy, the **Underwriter** will be subrogated to, and entitled to an assignment of, all rights of recovery belonging to the **Insured Persons** on whose behalf payment is made. Such rights include the **Insured Persons'** rights of recovery (a) under any other insurance, including, but not limited to, the **Scheduled Insurance**, and (b) against any person or entity, including, but not limited to, the **Company** for nonpayment of indemnification. At the option of the **Underwriter**, the **Insured Persons** will pursue all such rights of recovery in their own name or assign such rights to the **Underwriter**. If the **Underwriter** requests the **Insured Persons** to pursue such rights in their own name, the **Underwriters** will be responsible for the costs of pursuing those rights. The **Insured Persons** will execute all papers and do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Underwriter** effectively to pursue and enforce such rights and to bring suit in the name of the **Insured Persons** should the **Underwriter** elect to obtain an assignment.
- (4) Should any recovery be obtained by way of or through the rights set forth in this CONDITION (H), the amounts so recovered will be used first to reimburse the cost of obtaining such recovery and then to reimburse the **Underwriter** for any payments made under this Policy. In the event of a recovery in excess of the amounts set forth in the previous sentence, such excess recovery will be paid to the **Insured Persons** or the **Company**, as the case may be, in reimbursement of any amounts paid by the **Insured Persons** or the **Company** in respect of the **Claim** at issue.

(I) **Cancellation:**

- (1) The **Underwriter** may cancel this Policy only for failure to pay a premium when due, and then only by mailing or delivering to the **Parent Corporation** written notice stating when, not less than ten (10) days thereafter, such cancellation will be effective.
- (2) Except as provided in CONDITION (K) below, the **Parent Corporation** 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.

(J) **Discovery Period:**

- (1) If this Policy is cancelled by the **Parent Corporation** or is not renewed for any reason, the **Company** and the **Insured Persons** will have the right to purchase an 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 cancellation or non-renewal or the date of any conversion of coverage under CONDITION (K) below, whichever is earlier. A Discovery Period may be purchased extending coverage for either one (1) year or two (2) years after the effective date of cancellation or non-renewal. The premium for a Discovery Period of one (1) year will be one hundred fifty percent (150%) of the premium set forth in ITEM 6 of the Declarations, and the premium for a Discovery Period of two (2) years will be two hundred fifty percent (250%) of the premium set forth in ITEM 6 of the Declarations. The election of, and the payment of the premium for, a Discovery Period must be made within thirty (30) days of the effective date of cancellation or non-renewal.
- (2) If a Discovery Period is purchased in accordance with CONDITION (J)(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**.

(K) **Conversion of Coverage Under Certain Circumstances:**

Immediately upon the occurrence of any of the following events:

- (1) the acquisition of the **Parent Corporation** or of all or substantially all of its assets by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity, or
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**, or
- (3) any transaction or event as a result of which any person, entity or affiliated group of persons or entities acquires record or beneficial ownership or control of fifty percent (50%) or more of the outstanding securities representing the right to vote for the election of the directors of the **Parent Corporation**,

coverage under this Policy will continue 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 cancelled, and the entire premium for this Policy will be deemed fully earned. The occurrence of any of the foregoing events will not affect the right of the **Company** or the **Insured Persons** to purchase a Discovery Period under CONDITION (J), above.

(L) **Exhaustion:**

If the **Underwriter's** Limit of Liability is exhausted by the payment of **Loss**, including **Defense Expenses**, 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.

(M) **Entire Agreement:**

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

(N) **Representations; Severability:**

The **Insured Persons** and the **Company** 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 and are material to the **Underwriter's** acceptance of this risk. 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 Person** who knew of such untruth. No knowledge or information possessed by any **Insured Person**, however, will be imputed to any other **Insured Person** for the purpose of determining the applicability of this provision.

(O) **No 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 **Insured Persons** to pay has been finally determined either by judgment against the **Insured Persons** after actual trial, or by written agreement of the **Insured Persons**, 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 Person**, nor may the **Underwriter** be impleaded by an **Insured Person** or his or her legal representative in any such **Claim**.

(P) **Bankruptcy of any Insured Person**

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

(Q) **Authorization and Notices:**

Unless otherwise expressly agreed in writing, the **Parent Corporation** will act on behalf of the **Company** and the **Insured Persons** with respect to giving and receiving notices under this Policy; payment of premiums to, and receiving 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.

(R) **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 to this Policy.

(S) **Assignment:**

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

(T) **Headings:**

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

**VI. 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 on or after the **Application Date** for any prior policies issued by the **Underwriter** to the **Parent Corporation**, and any and all materials and information submitted to or obtained by the **Underwriter** in connection with such applications, including all applications submitted to the insurers of the **Scheduled Insurance** on or after the **Application Date**, all statements made by the **Company**, the **Insured Persons** or their agents or brokers, and the **Company’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) “**Application Date**” means the date of the earliest application submitted to the **Underwriter** for the first policy of this type issued to the **Parent Corporation** by the **Underwriter**.

(C) “**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; 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 CONDITION (A)(2) of a **Wrongful Act** out of which such **Claim** subsequently arises, whichever occurs first.

- (D) “**Company**” means the **Parent Corporation** and/or any **Subsidiary**, including any **Subsidiary** created or acquired during the **Policy Period**.
- (E) “**Defense Expenses**” means reasonable and necessary legal fees and expenses incurred by an **Insured Person** in defense of a **Claim**. **Defense Expenses** will include the cost of any bond or appeal bond required in any defended suit, provided that the **Underwriter** will not be obligated to apply for or furnish any such bond. **Defense Expenses** will not include (1) the **Company’s** overhead expenses or any salaries, wages, fees or benefits of any **Insured Person** or employee of the **Company**, or (2) any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured Person**.
- (F) “**Insured**” means an **Insured Person** but not the **Company**.
- (G) “**Insured Person**” means any past, present or future duly elected or appointed director or officer of the **Company**. In the event of the death, incapacity or bankruptcy of an **Insured Person**, a **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** by such **Insured Person** will be considered a **Claim** against the **Insured Person**.
- (H) “**Loss**” means any amount, including **Defense Expenses**, which an **Insured Person** is obligated to pay as a result of a **Claim**, including, but not limited to, punitive, exemplary or multiple damages where insurable under applicable law; provided that, **Loss** shall not include matters which are uninsurable under applicable law or taxes, fines or penalties, regardless of the nature of the conduct or action that is the basis for the imposition of any such taxes, fines or penalties. For the purpose of this Policy, an award of punitive or exemplary damages or a multiple of compensatory damages will not be considered a fine or penalty.
- (I) “**Parent Corporation**” means the entity named in ITEM 1 of the Declarations.
- (J) “**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 date.
- (K) “**Scheduled Insurance**” means the insurance policies identified in ITEM 4 of the Declarations.
- (L) “**Subsidiary**” means any corporation during any time in which the **Parent Corporation** 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 corporation’s directors.
- (M) “**Underwriter**” means the insurance company indicated on the Declarations page.
- (N) “**Wrongful Act**” means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as a director or officer of the **Company**, except that, with respect to a **Subsidiary**, **Wrongful Act** does not include any actual or alleged act, error, omission, misstatement, misleading

statement or breach of duty by an **Insured Person** during any time in which such entity was not a **Subsidiary**.

**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**

SPECIMEN