



Management Liability Insurance for Private Companies

DIRECTORS AND OFFICERS LIABILITY INSURANCE COVERAGE

THIS IS A CLAIMS-MADE COVERAGE SECTION 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. PLEASE READ AND REVIEW THE COVERAGE SECTION AND 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 Coverage Section and the Policy, the Insurer and the Insured agree as follows:

I. INSURING AGREEMENTS

(A) DIRECTORS AND OFFICERS LIABILITY

The **Insurer** will pay on behalf of the **Insured Persons Loss** from any **Claim** first made against them during the **Policy Period** or any applicable Extended Reporting Period for a **Wrongful Act** committed any time after the incorporation or formation of the **Named Insured**, unless the **Company** is required or permitted to pay such **Loss** to or on behalf of the **Insured Persons** as indemnification.

(B) COMPANY REIMBURSEMENT

The **Insurer** will pay on behalf of the **Company Loss** from any **Claim** first made against the **Insured Persons** during the **Policy Period** or any applicable Extended Reporting Period for a **Wrongful Act** committed any time after the incorporation or formation of the **Named Insured**, if the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification.

(C) COMPANY LIABILITY (OPTIONAL)

The **Insurer** will pay on behalf of the **Company Loss** from any **Claim** first made against the **Company** during the **Policy Period** or any applicable Extended Reporting Period for a **Wrongful Act** committed any time after the incorporation or formation of the **Named Insured**.

As part of and subject to the Limit of Liability set forth in ITEM 8(a) of the Declarations, or if applicable ITEM 3 of the Declarations, the **Insurer** will have the right and duty to defend any **Claim** which is covered in whole or in part as described in INSURING AGREEMENTS (A), (B) and, if purchased, (C), even if such **Claim** is groundless, false or fraudulent.

In connection with the defense of any **Claim**, as long as there are allegations asserted which are within the coverage afforded by this Coverage Section, the **Insurer** will not allocate any portion of **Defense Expenses** to the **Insured** even if there are allegations which are outside of the coverage afforded by this Coverage Section.

II. DEFINITIONS

- (A) “**Application**” means the application submitted to the **Insurer**, any and all materials and information submitted to the **Insurer** in connection with such application, and all publicly available material that is created by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of the **Policy**, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this **Policy**, as if physically attached.
- (B) “**Claim**” means:
- (1) any written demand for monetary, non-monetary, or injunctive relief;
 - (2) any written request to toll or waive any statute of limitations;
 - (3) 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 proceeding;
 - (4) any criminal proceeding which is commenced by the return of an indictment or similar document;
 - (5) any administrative or regulatory proceeding or investigation, including a proceeding relating to allegations of wrongful dismissal, discharge, or termination of employment brought by or before the Equal Employment Opportunity Commission or any similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or
 - (6) any arbitration proceeding.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

- (C) “**Company**” means the **Named Insured** and any **Subsidiary**, including any such entity in its capacity as a debtor in possession under the United States bankruptcy law or equivalent status under the law of any other country.
- (D) “**Contaminant-Toxin**” means any of the following:
- (1) smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
 - (2) mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);
 - (3) lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
 - (4) nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.
- (E) “**Defense Expenses**” means reasonable legal fees and expenses incurred by or on behalf of the **Insured** in the defense or appeal of a **Claim**; provided that **Defense Expenses** will not include the **Company’s** overhead expenses or any salaries, wages, fees, or benefits of its **Insured Persons**. **Defense Expenses** shall include the cost of any bond or appeal bond required in any civil suit; provided that the **Insurer** shall not be obligated to apply for or furnish any such bond.
- (F) “**Domestic Partner**” shall have the meaning prescribed under applicable state law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two (2) years or more; and
- (2) are not blood relatives and are not married or in a domestic partnership with someone else; and
- (3) are mentally competent, at least 18 years of age and registered as domestic partners in a local registry, if one exists.

(G) “**Employee**” means any natural person whose labor or service is engaged by and directed by the **Company** while acting in the scope of such employment for the **Company**, including any:

- (1) full-time, part-time, seasonal, or temporary employee;
- (2) volunteer; or
- (3) leased employee or independent contractors, but only if the **Company** provides indemnification to such person:
 - (a) pursuant to a written agreement executed prior to the Inception Date of the **Policy** or the date such person first rendered such labor or services to the **Company**, whichever is later; and
 - (b) to the same extent and in the same manner as the **Company** provides indemnification to its other employees.

(H) “**Employment Practices Wrongful Act**” means any of the following when alleged against an **Insured** by any past or present **Employee** of the **Company** or any applicant for employment with the **Company** in connection with that person’s actual or proposed employment relationship with the **Company**:

- (1) harassment (including sexual harassment whether “quid pro quo,” hostile work environment, or otherwise);
- (2) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state, or local laws;
- (3) breach of any manual of employment policies or procedures issued by the **Company**;
- (4) retaliatory action in response to that **Employee**’s:
 - (a) disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
 - (b) actual or attempted exercise of any right that **Employee** has under law;
 - (c) filing of any **Claim** under the Federal False Claims Act or any other federal, state, local, or foreign “whistle-blower” law; or
- (5) misrepresentation, libel, slander, humiliation, defamation, or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion or evaluation or wrongful discipline.

(I) “**Executive Officer**” means:

- (1) in the case of a corporation any Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President, or General Counsel;
- (2) in the case of a sole proprietorship, the sole proprietor;
- (3) in the case of a partnership, a Managing Partner, Senior Partner, or Administrative Partner;
- (4) in the case of a limited liability company any member, manager, or officer;

or any equivalent position of the **Company**.

(J) “**Insured**” means the **Company** or any **Insured Person**.

(K) “**Insured Person**” means:

- (1) if any **Company** is a corporation, any past, present, or future director, officer, or **Employee** of such **Company**;
- (2) if any **Company** is a sole proprietorship, any past, present, or future owner, officer, or **Employee** of such **Company**;
- (3) if any **Company** is a partnership, any past, present, or future partner or **Employee** of such **Company**;
or
- (4) if any **Company** is a limited liability company, any past, present, or future member, manager, officer, or **Employee** of such **Company**.

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**.

The coverage afforded under this Coverage Section will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to **Loss** and **Defense Expenses** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or **Domestic Partner** of an **Insured Person**, but only if: (a) the **Claim** against such spouse or **Domestic Partner** results from a **Wrongful Act** actually or allegedly committed by the **Insured Person**, to whom the spouse is married or with whom the **Domestic Partner** is residing; and (b) such **Insured Person** and his or her spouse or **Domestic Partner** are represented by the same counsel in connection with such **Claim**.

(L) “**Insurer**” means the insurer identified on the Declarations page.

(M) “**Loss**” means **Defense Expenses** and damages, pre-judgment interest, post-judgment interest, front pay and back pay, judgments, settlements, punitive or exemplary damages where insurable under applicable law, or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** will not include fines, taxes, penalties, or the multiplied portion of multiplied damages, or **Stock benefits** or the value thereof; provided that **Loss** will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act (“Specified Multiplied Damages”) that an **Insured** is obligated to pay as a result of a **Claim** relating to an **Employment Practices Wrongful Act** which results in the wrongful dismissal, discharge, or termination of employment, but only if such Specified Multiplied Damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages, exemplary damages or Specified Multiplied Damages under this **Policy**, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (1) is the location of the court which awarded or imposed such punitive or exemplary damages; or
- (2) is where the **Named Insured** is incorporated or otherwise organized or has a place of business; or
- (3) is where the **Insurer** is incorporated or has its principal place of business.

(N) “**Named Insured**” means the entity named in ITEM 1 of the Declarations.

(O) “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent, or governor of an **Outside Entity**, but only during the time that such service is at the specific written request of the **Company**.

(P) “**Outside Entity**” means a corporation or organization other than the **Company** which:

- (1) is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as the same may be amended from time to time; or
 - (2) is exempt from taxation under any other section of the Internal Revenue Code and is added by written endorsement to this **Policy**
- (Q) “**Policy**” means the Declarations, the **Application**, all purchased Coverage Sections and all endorsements.
- (R) “**Policy Period**” means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (S) “**Related Claims**” means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, 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, whether related logically, causally, or in any other way.
- (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) “**Stock Benefits**” means stock, restricted stock, stock options, performance shares, stock appreciation rights, or any other equity-based grant, but does not include stock acquired through employee stock ownership or purchase plans.
- (V) “**Subsidiary**” means any entity during any time which the **Named Insured** and/or one or more of its **Subsidiaries**:
- (1) owns more than fifty percent (50%) of its outstanding voting shares, partnership interest or member units;
 - (2) controls, directly or indirectly, the right to elect or appoint more than fifty percent (50%) of such entity’s directors or trustees; or
 - (3) has majority control over the management and operations of the entity through a written agreement;
- provided such entity was created or acquired by the **Named Insured** and/or one or more of its **Subsidiaries** on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to CONDITION (H), during the **Policy Period**.
- (W) “**Third Party Discrimination Wrongful Act**” means any of the following, when alleged against an **Insured** by any natural person who is a customer, client or business invitee of the **Company**:
- (1) harassment (including sexual harassment);
 - (2) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws; or
 - (3) humiliation, invasion of privacy or infliction of emotional distress.
- (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 matter asserted against an **Insured Person** solely by reason of his or her status as such;
- (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her **Outside Capacity**; or
- (4) if coverage under INSURING AGREEMENTS (C) is purchased, any actual or alleged error, omission, misstatement, misleading statement, or breach of duty by the **Company**.

III. EXCLUSIONS

- (A) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Expenses**, from any **Claim**:
- (1) against any **Insured** brought about or contributed to 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 by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

The applicability of EXCLUSIONS A(1) and A(2) may be determined by an admission, final adjudication or a finding in the proceeding constituting the **Claim** or in a proceeding separate from or collateral to the **Claim**. If any **Insured** in fact engaged in the conduct specified in EXCLUSIONS (A)(1) or (A)(2), or if such conduct is imputed to the **Company**, such **Insured** and the **Company** will reimburse the **Insurer** for any **Defense Expenses** advanced to or on behalf of such **Insured**; or

- (3) seeking relief or redress in any form other than damages, including but not limited to costs associated with compliance with the Americans with Disabilities Act or similar provisions of any federal, state, or local statutory or common law; or
- (4) for any actual or alleged violation of any provision of the Fair Labor Standards Act (other than the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law and any amendments thereto, or any other similar provisions of any federal, state, or local statutory or common law or any rules or regulations promulgated under any of the foregoing, including but not limited to any actual or alleged improper payroll practices, wage and hour policies, or payment of overtime or vacation pay.

- (B) No coverage will be available under this Coverage Section for **Loss**, including **Defense Expenses**, from any **Claim**:
- (1) by or on behalf of, or in the name or right of, the **Company** or any **Insured Person**, in any capacity, except that this EXCLUSIONS (B)(1) will not apply to:
 - (a) any derivative action by a security holder of the **Company** on behalf of, or in the name or right of, the **Company**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation, or intervention of, the **Company** or any **Insured Person**;
 - (b) any **Claim** in the form of a cross-claim, 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 Coverage Section;

- (c) any **Claim** brought on behalf of the **Company** in bankruptcy by the examiner, trustee, receiver, liquidator or rehabilitator of the **Company**;
- (d) any **Claim** for an **Employment Practices Wrongful Act** which results in the wrongful dismissal, discharge, or termination of employment, whether actual or constructive, of an **Employee**;
- (e) any **Claim** brought by the following **Insured Persons**, provided that their relationship with the **Company**, at the time the **Claim** is brought, was terminated more than 2 years prior to the making of the **Claim**, or the first **Claim** in a series of **Related Claims**:
 - (i) if the **Company** is a corporation, a director or officer;
 - (ii) if the **Company** is a sole proprietorship, an officer;

provided, however, that this shall not include a former Chief Executive Officer, Chief Financial Officer or other senior executive officer or controlling shareholder of a corporation, a former owner of a sole proprietorship, or a former partner of a partnership, or any equivalent senior position in any other type of business entity.

- (2) for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder and any amendments thereto, or of any similar provisions of federal, state, or local law or regulation or any other actual or alleged **Wrongful Act** in the administration of employee benefits;
- (3) against any **Subsidiary**, assets, or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary**, assets, or other entity in his or her capacity as such for any **Wrongful Act** committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such asset or entity;
- (4) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, damage or destruction of any tangible property including loss of use thereof, libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery, or loss of consortium; provided, that this EXCLUSIONS (B)(4) shall not apply to mental anguish, emotional distress, invasion of privacy, libel, slander or oral or written publication of defamatory or disparaging material actually or allegedly resulting from a **Claim** for an **Employment Practices Wrongful Act** which results in the wrongful dismissal, discharge, or termination of employment, whether actual or constructive, of an **Employee**;
- (5) for any actual or alleged malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy, or dangerous condition in such product or design or manufacture or for the cost of recall, repair, or replacement of such product;
- (6) against an **Insured** arising out of any actual or alleged liability under any express contract or agreement. For the purposes of this EXCLUSIONS (B)(6), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making;
- (7) seeking salary, wages, or other employment-related benefits which any **Insured** is obligated to pay to

any **Employee** under a written contract either to commence employment or to make any payment in the event of termination of employment;

(8) 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**.

(C) No coverage will be available under this Coverage Section for **Loss**, including **Defense Expenses**, from any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Contaminant-Toxin**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Contaminant-Toxin**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;

provided however, that this EXCLUSIONS (C)(1) shall not apply to any **Claim**, whether direct or in the form of a derivative action, by any security holder of the **Company** acting independently and without the cooperation, solicitation, intervention or assistance of any **Insured**.

(2) any fact, circumstance, situation, transaction, event, or **Wrongful Act**:

(a) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding or arbitration proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations; or

(b) which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance;

If, however, this Coverage Section is a renewal of one or more policy or coverage sections previously issued by the **Insurer** to the **Company**, and the coverage provided by the **Insurer** to the **Company** was in effect, without interruption, for the entire time between the inception date of the first such other policy or coverage section and the Inception Date of this **Policy**, the reference in this EXCLUSIONS (C)(2) to the Inception Date will be deemed to refer instead to the inception date of the first policy or coverage section under which the **Insurer** began to provide the **Company** with the continuous and uninterrupted coverage of which this Coverage Section is a renewal;

(3) any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations;

(4) any actual or alleged violation of any **Securities Laws**, or any actual or alleged violation of any provision of the common law imposing liability in connection with the offer, sale, or purchase of securities; provided, that this EXCLUSIONS (C)(4) shall not apply to any **Claim** arising out of the offering, sale, or purchase of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933;

(5) any actual or alleged (i) violation of any law or statute protecting any patent, copyright, trademark, trade name, service mark, trade dress, or similar interest including any actual or alleged violation of any rule or regulation promulgated thereunder or of any provision of the common law imposing liability in connection therewith, or (ii) misappropriation of any trade secret or confidential information;

- (6) any actual or alleged **Employment Practices Wrongful Act** or **Third Party Discrimination Wrongful Act**; provided that this EXCLUSIONS (C)(6) shall not apply to any **Claim** against an **Insured Person** for an **Employment Practices Wrongful Act** which results in the wrongful dismissal, discharge, or termination of employment, whether actual or constructive of an **Employee**.

No **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any exclusion set forth in EXCLUSIONS (A), (B) and (C) above.

IV. CONDITIONS

(A) **Limit of Liability:**

- (1) Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of claimants who make a **Claim** against the **Insured**, the amount stated in ITEM 8(a) or if applicable ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss**, including **Defense Expenses**, resulting from all **Claims** for which this Coverage Section provides coverage, regardless of whether such **Claims** are made during the **Policy Period** or the Extended Reporting Period, and regardless of the time of payment by the **Insurer**.
- (2) If any **Claim** made against the **Insured** gives rise to coverage both under this Coverage Section and under any other policy or policies of directors and officers liability or other similar insurance issued by the **Insurer**, or any affiliate of the **Insurer**, to any **Outside Entity**, the **Insurer's** and, if applicable, such affiliate's maximum aggregate Limit of Liability under all such policies for all **Loss**, including **Defense Expenses**, in respect of such **Claim** will not exceed the largest single available Limit of Liability under any such policy, including this Coverage Section.
- (3) **Defense Expenses** are part of and not in addition to the **Insurer's** Limit of Liability, and payment of **Defense Expenses** by the **Insurer** will reduce its Limit of Liability.
- (4) If the Policy Shared Aggregate Limit is indicated as purchased in ITEM 3 of the Declarations, the maximum aggregate Limit of Liability available under this **Policy** for **Claims** under this Coverage Section and any other Coverage Section(s) purchased shall be the amount indicated in ITEM 3 of the Declarations regardless of the number of **Claims**, the number of Coverage Sections providing coverage, the number of persons or entities included within the definition of **Insured**, or the number of claimants who make a **Claim** against the **Insured**, and regardless of whether such **Claims** are made during the **Policy Period** or any Extended Reporting Period.

(B) **Application of Retention; Presumption of Indemnification:**

- (1) The obligation of the **Insurer** to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention set forth in ITEM 8(b) of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to do so, in which event the **Insured** agrees to repay the **Insurer** any amounts so paid.
- (2) 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.

- (3) The retentions set forth in ITEM 8(b) of the Declarations will apply to any **Loss** as to which indemnification by the **Company** or any **Outside Entity** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** or such **Outside Entity** solely by reason of its financial insolvency.
- (4) If different retentions are applicable to different parts of any **Claim**, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 8(b) of the Declarations.

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

- (1) No **Insured** may incur any **Defense Expenses** or admit liability for, or settle, or offer to settle, any **Claim** without the **Insurer's** written consent. The **Insurer** will have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the **Insurer** deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, then, subject to the **Insurer's** maximum aggregate Limit of Liability set forth in ITEM 8(a) of the Declarations, or if applicable ITEM 3 of the Declarations, the **Insurer's** liability for such **Claim** will not exceed:
 - (a) the amount for which such **Claim** could have been settled by the **Insurer** plus **Defense Expenses** up to the date the **Insured** refused to settle such **Claim**; plus
 - (b) eighty percent (80%) of any **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above, incurred in connection with such **Claim**. The remaining **Loss** and/or **Defense Expenses** will be carried by the **Insured** at its own risk and will be uninsured.
- (2) The **Insurer** will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim**, after the **Insurer's** maximum aggregate Limit of Liability, as set forth in ITEM 8(a) of the Declarations, or if applicable ITEM 3 of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the **Insurer's** maximum aggregate Limit of Liability, as set forth in ITEM 8(a) of the Declarations, or if applicable ITEM 3 of the Declarations, is exhausted by the payment of **Loss**, including **Defense Expenses**, the entire premium will be deemed fully earned.

(D) **Other Insurance; Other Indemnification:**

- (1) All **Loss** payable under this Coverage Section will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be 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 valid insurance (whether collectible or not) available to such **Insured Persons** by reason of their service in **Outside Capacities**, and any indemnification by any person or entity other than the **Company**, including any **Outside Entity**, available to such **Insured Persons** in connection with their service in **Outside Capacities**.
- (3) Notwithstanding CONDITIONS (D)(1) and (D)(2) above, with respect to any **Claim** under this Coverage Section for which coverage is available under any insurance policy(ies) which applies to

claims for bodily injury and/or property damage, the **Insurer** will have no duty to defend such **Claim**, or to pay **Defense Expenses** incurred by or on behalf of any **Insured** in connection with such **Claim**, or to contribute to any defense provided to any **Insured** under such other insurance policy(ies), or to reimburse any other insurer, in whole or in part, for **Defense Expenses** incurred in connection with such **Claim**.

(E) **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insured** will provide the **Insurer** with all information, assistance, and cooperation that the **Insurer** reasonably requests, and will do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. At the **Insurer's** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the **Insurer** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The obligations of the **Insured** under this CONDITIONS (E) will survive the expiration or cancellation of the **Policy**.

(F) **Extended Reporting Period:**

If either the **Insurer** or the **Named Insured** cancels, refuses or declines to renew this Coverage Section for any reason and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase the Extended Reporting Period set forth in ITEM 7 of the Declarations by paying the additional premium set forth in ITEM 7 of the Declarations, then the coverage otherwise afforded by this Coverage Section will be extended to apply to **Loss** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITIONS (I), whichever is earlier. The Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be purchased if all premiums and retentions due under the **Policy** have been paid. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.

(G) **Notice; Timing, and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than seventy-five (75) days after the expiration date of the **Policy Period**.
- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Coverage Section:
 - (a) gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and
 - (b) requests coverage under this Coverage Section for any subsequently resulting **Claim** for such **Wrongful Act**;

then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

- (3) All notices under CONDITIONS (G)(1) and (2) must be sent in writing or electronically, as 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 CONDITIONS (G)(2), whichever is earlier.

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(H) **Adjustments:**

If, during the **Policy Period**, the **Company** acquires any assets, acquires or creates a **Subsidiary**, or acquires any entity by merger (each a “New Entity”) and, at the time of the transaction, the assets of the New Entity exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the **Company’s** most recent audited consolidated financial statements (a “Transaction”), then for a period of ninety (90) days after the effective date of the Transaction, the New Entity will be included within the definition of **Insured**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of the Transaction. Upon the expiration of the ninety (90)-day period, there shall be no coverage under this Coverage Section for **Wrongful Acts** committed or allegedly committed by the New Entity or its **Insured Persons**, unless the **Company** has provided the **Insurer** with written notice of the Transaction, containing full details thereof, and the **Company** and the **Insurer** have agreed to add coverage for the New Entity and its **Insured Persons** upon such terms, conditions, and limitations of coverage and such additional premium as the **Insurer**, in its sole discretion, may require.

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

If, during the **Policy Period**, any of the following events occurs:

- (1) the acquisition of the **Named Insured**, or of 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;
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Named Insured**, provided that this CONDITIONS (I) shall not apply where the the appointment of any such official is a result of the **Company** declaring bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code;
- (3) 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 or trustees of the **Named Insured**;
- (4) any person or entity acquires majority control over the management and operation of the **Named Insured** through a written agreement; or
- (5) the **Named Insured’s** filing for an initial public offering;

then coverage under this Coverage Section 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 Coverage Section may not be canceled, regardless of CONDITION (J)(2), and the entire premium for the **Policy** will be deemed fully earned.

(J) **Cancellation; No Obligation to Renew:**

- (1) The **Insurer** may not cancel this **Policy** except for failure to pay a premium when due. The **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Named Insured** may cancel this Coverage Section by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in ITEM 6 of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time cancellation by the **Named Insured** is effective or as soon as

practicable thereafter.

- (3) The **Insurer** will not be required to renew this Coverage Section upon its expiration. If the **Insurer** elects not to renew this Coverage Section, the **Insurer** will deliver or mail by first class, registered, or certified mail to the **Named Insured** at its last known address written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal.

(K) **Representations; Severability:**

The **Insured** represents that the particulars and statements contained in the **Application** are true, accurate, and complete, and agrees 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**.

In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this **Policy** will be void:

- (1) with respect to any **Insured Person** who knew of such untruth, misrepresentation or omission; and
- (2) with respect to the **Company**, if, and only if, an **Executive Officer** knew of such untruth, misrepresentation or omission.

(L) **No Action against the Insurer:**

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

(M) **Insolvency of Insured:**

The **Insurer** will not be relieved of any of its obligations under this Coverage Section by the bankruptcy or insolvency of any **Insured**.

(N) **Territory:**

This Coverage Section applies to **Wrongful Acts** committed by any **Insured**, or to any **Claim** brought against the **Insured**, anywhere in the world.

(O) **Authorization and Notices:**

The **Insureds** agree that the **Named Insured** will act on their behalf with respect to receiving any notices and return premiums from the **Insurer**.

(P) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or change in any part of this **Policy** or estop the **Insurer** 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 **Insurer** without its consent.

(R) **Entire Agreement:**

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

(S) **Headings:**

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

In witness whereof, the **Insurer** 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 **Insurer**.