

## DIRECTORS, OFFICERS AND ENTITY LIABILITY COVERAGE PART

### I. INSURING AGREEMENTS

#### (A) Insured Person Liability

The Insurer shall pay **Loss** on behalf of the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**, except for **Loss** that an **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.

#### (B) Corporate Reimbursement

The Insurer shall pay **Loss** on behalf of an **Insured Entity** that such **Insured Entity** has, to the extent permitted or required by law, indemnified the **Insured Persons** resulting from an **Insured Person Claim** first made against the **Insured Persons** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insured Persons**.

#### (C) Entity Liability (Elective)

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

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

#### (D) Derivative Demands

The Insurer shall pay **Investigation Costs** on behalf of an **Insured Entity** that the **Insured Entity** incurs resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to a Sublimit of Liability of \$250,000. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this Coverage Part. No Deductible shall apply to this Insuring Agreement.

### II. DEFINITIONS

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

#### (A) "Claim" means any:

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

(3) **Derivative Demand.**

(B) **“Derivative Action”** means any civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** made on behalf of, or in the name or the right of, an **Insured Entity** by any security holders of such **Insured Entity**, in their capacity as such, if such proceeding is made without the assistance, participation or solicitation of any **Manager**.

(C) **“Derivative Demand”** means any written demand by any security holders of an **Insured Entity**, in their capacity as such, upon the board of directors or managers of such **Insured Entity** to bring a civil proceeding against a **Manager** for a **Wrongful Act** of such **Manager** if such demand is made without the assistance, participation or solicitation of any **Manager**. A **Derivative Demand** shall be deemed commenced by the receipt of such demand.

(D) **“Entity Claim”** means any:

- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand;
- (2) civil proceeding commenced by the service of a complaint or similar pleading; or
- (3) criminal proceeding commenced by the return of an indictment, against an **Insured Entity**.

**“Entity Claim”** also means a written request to an **Insured Entity** to toll or waive a statute of limitations regarding a potential **Entity Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

(E) **“Insured Person”** means any:

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

(F) **“Insured Person Claim”** means any:

- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand;
- (2) civil proceeding commenced by the service of a complaint or similar pleading;
- (3) criminal proceeding commenced by the return of an indictment; or
- (4) formal administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document,

against an **Insured Person**.

**“Insured Person Claim”** also means a formal civil, criminal, administrative, or regulatory investigation commenced by the service upon or other receipt by an **Insured Person** of a written notice from an investigating authority specifically identifying such **Insured Person** as a target individual against whom formal charges may be commenced.

**“Insured Person Claim”** also means a written request to an **Insured Person** to toll or waive a statute of limitations regarding a potential **Insured Person Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

(G) **“Insureds”** means any:

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

(H) **“Investigation Costs”** means reasonable and necessary expenses incurred in the investigation and evaluation of a **Derivative Demand** by an **Insured Entity**, including its board of directors, board of managers, or any committee thereof, provided that **Investigation Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.

(I) **“Loss”** means the amount that the **Insureds** are legally obligated to pay as a result of a **Claim**, including, without limitation, **Defense Costs**, **Investigation Costs**, damages, settlements, judgments, and pre- and post-judgment interest.

**Loss** shall include punitive and exemplary damages where insurable by law. Regarding the insurability of such damages, the Insurer shall not contend for any reason, unless appropriate to do so as a matter of law or public policy, that such damages are uninsurable. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

**Loss** shall not include:

- (1) taxes, fines or penalties imposed by law, the multiple portion of any multiplied damage award, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed; or
- (2) non-monetary relief.

(J) **“Outside Capacity”** means service by an **Insured Person** as a director, officer, trustee, regent, governor or equivalent executive of an **Outside Entity** with the knowledge and consent of or at the request of an **Insured Entity**.

(K) **“Outside Entity”** means any:

- (1) not-for-profit corporation, community chest, fund or foundation that is not an **Insured Entity** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) entity organized for a religious or charitable purpose under any not-for-profit statute; or
- (3) entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.

(L) **“Wrongful Act”** means any actual or alleged:

- (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty; or

- (2) matter claimed against an **Insured Person** solely by reason of their serving in such capacity, including service in an **Outside Capacity**.

### III. COVERAGE EXTENSION FOR OUTSIDE DIRECTORSHIP LIABILITY

Subject to the terms and conditions of this Policy and Coverage Part, coverage is afforded for **Loss** resulting from any **Insured Person Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity**. Payment by the Insurer or any **Affiliate** under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer's Limit of Liability available under this Policy for such **Claim**.

### IV. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The Insurer shall not pay **Loss** for any **Claim**:

- (A) for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
- (B) based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;
- (C) based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other insurance policy;
- (D) based upon, arising from, or in any way related to any:
- (1) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release or escape; or
  - (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,
- provided that this exclusion shall not apply to any **Derivative Action** otherwise covered under Insuring Agreement (A);
- (E) based upon, arising from, or in any way related to any violation of **ERISA** or any similar law;
- (F) by or on behalf of any **Insureds**, provided that this exclusion shall not apply to any **Claim**:
- (1) that is a **Derivative Action**;
  - (2) that is an **Insured Person Claim** made by any **Employee** who is not a past or present **Manager** if such **Claim** is made without the assistance, participation or solicitation of any **Manager**;
  - (3) that is an **Insured Person Claim** made by a **Manager** for wrongful termination of such **Manager**;
  - (4) by a former **Manager** who has not served in such capacity for at least four years prior to such **Claim** being made, provided that such **Claim** is made without the assistance, participation or solicitation of any current **Manager** or any former

**Manager** who has served in such capacity during the four years prior to such **Claim** being made;

- (5) by an **Insured Person** for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this Coverage Part; or
  - (6) made in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of an **Insured Entity** created in such jurisdiction;
- (G) based upon, arising from, or in any way related to any **Insured Person** serving as a director, officer, trustee, regent, governor or equivalent executive or as an employee of any entity other than an **Insured Entity** even if such service is at the direction or request of the **Insured Entity**, provided that this exclusion shall not apply to a **Claim** for a **Wrongful Act** by an **Insured Person** while serving in an **Outside Capacity**;
- (H) by or on behalf of any **Outside Entity**, or any director, officer, trustee, regent, governor or equivalent executive of any **Outside Entity**, provided that this exclusion shall not apply to any **Claim**:
- (1) that is a derivative action made on behalf of an **Outside Entity** by any persons who are not:
    - (a) **Insured Persons**; or
    - (b) directors, officers, trustees, regents, governors or equivalent executives of the **Outside Entity**,
- and who make such **Claim** without the solicitation, assistance or participation of any such persons; or
- (2) by any:
    - (a) **Insured Persons**; or
    - (b) directors, officers, trustees, regents, governors or equivalent executives of an **Outside Entity**,
- for contribution or indemnification if such **Claim** directly results from a **Claim** that is otherwise covered under this Coverage Part;
- (I) based upon, arising from, or in any way related to any offering of securities of an **Insured Entity** or the purchase or sale of such securities subsequent to such offering; provided that this exclusion shall not apply to any **Claim**:
- (1) for a **Wrongful Act** in an offering of securities of an **Insured Entity** to any accredited investor in a transaction that is exempt from registration under the Securities Act of 1933 ("accredited investor" shall have the meaning specified for such term in Rule 501 of Regulation D of the General Rules and Regulations promulgated under the Securities Act of 1933); or
  - (2) made by any security holders of an **Insured Entity** for the failure of the **Insured Entity** to undertake or complete an initial public offering or sale of securities of such **Insured Entity**;
- (J) based upon, arising from, or in any way related to the rendering of, or failure to render,

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any professional services for others, including, without limitation, services performed by the **Insureds** for or on behalf of a customer or client, provided that this exclusion shall not apply to any **Derivative Action** otherwise covered under Insuring Agreement (A);

- (K) based upon, arising from, or in any way related to the gaining, in fact, of any personal profit, remuneration or advantage to which the **Insureds** are not legally entitled; or
- (L) based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by the **Insureds** if a judgment or other final adjudication establishes such an act, omission or violation.

Regarding exclusions (K) and (L) above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**; and (ii) only a **Wrongful Act** committed by a past, present or future chairman of the board, chief executive officer, chief operating officer or chief financial officer shall be imputed to an **Insured Entity**.

#### V. EXCLUSIONS APPLICABLE TO INSURING AGREEMENT (C)

(A) The Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim**:

- (1) based upon, arising from, or in any way related to any liability under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement;
- (2) based upon, arising from, or in any way related to any employment-related **Wrongful Act**;
- (3) based upon, arising from, or in any way related to any discrimination or sexual harassment;
- (4) based upon, arising from, or in any way related to false arrest or imprisonment, abuse of process, malicious prosecution, defamation (including libel and slander), invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium;
- (5) based upon, arising from, or in any way related to infringement of copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property; or
- (6) based upon, arising from, or in any way related to price fixing, restraint to trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Anti-Trust Act, Clayton Act, or any similar law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities.

(B) Other than **Defense Costs**, the Insurer shall not pay **Loss** under Insuring Agreement (C) for any **Claim** based upon, arising from, or in any way related to the payment by an **Insured Entity** of inadequate consideration in connection with an **Insured Entity's** purchase of securities issued by any **Insured Entity**.

#### VI. ADDITIONAL LIMIT OF LIABILITY FOR CLAIMS AGAINST MANAGERS

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

- (A) such **Claims** are covered under Insuring Agreement (A);
- (B) such additional Limit of Liability shall be excess of all other insurance available to pay **Loss** for such **Claims**, including, without limitation, this Policy and insurance written specifically as excess over this Policy, which such insurance must be exhausted prior to this additional Limit of Liability becoming available to pay **Loss**; and
- (C) such additional Limit of Liability shall be available for the second covered **Claim** made during the **Policy Period** and all subsequent **Claims**. No coverage shall be provided for the first **Claim** made for which coverage is provided under this Policy. The first **Claim** made for which coverage is provided under this Policy shall be determined by the chronological time such **Claim** was made regardless of when coverage is acknowledged by the Insurer for such **Claim**.

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

## VII. SECURITIES OFFERINGS

If any public offering of an **Insured Entity's** securities occurs during the **Policy Period** that is not exempt from registration under the Securities Act of 1933, the Insurer shall furnish the **Insureds** with a quote for insurance coverage of such offering, provided that

- (A) at least 30 days prior to the effective date of such offering, the **Insureds** shall give the Insurer written notice of such offering together with all information requested by the Insurer;
- (B) such quote shall be on such terms and conditions, including any additional premium, as the Insurer, in its absolute discretion, chooses;
- (C) any coverage provided shall be on such forms as are in use by the Insurer for public companies at the time of such offering; and
- (D) if the **Insureds** choose to cancel this Policy to accept a coverage form offered in such quote, unearned premium for this Policy shall be calculated on a pro rata basis.

## VIII. ORDER OF LOSS PAYMENTS

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

**IX. DEDUCTIBLE WAIVER**

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

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

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

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