



Executive First Side A DIC Directors & Officers Liability Policy

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Policy, the **Company**, **Insured Persons** and **Insurer** agree:

Section I Side A Excess and DIC Insuring Agreement

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Policy, but only to the extent such **Loss**:

1. is not paid or indemnified by the **Company** or **Outside Entity**; and
2. also is not paid by the insurer(s) of the **Underlying Insurance** as a result of:
 - a. the limit(s) of liability of the **Underlying Insurance** being exhausted by reason of the insurer(s) of the **Underlying Insurance**, the **Company**, the **Insured Persons** or another source paying losses covered thereunder; or
 - b. a **DIC Event**.

This Policy shall follow the terms and conditions of the **Followed Policy** except as provided in **Sections II-XVI** of this Policy and in any endorsements attached to this Policy. If any **Underlying Insurance** grants coverage subject to a liability sublimit, this Policy shall not afford such coverage. The Policy, however, shall recognize any reduction or exhaustion of the limit(s) of liability of the **Underlying Insurance** by any payment under such coverage. In no event shall this Policy cover any claim against the **Company** or any amount the **Company** or **Outside Entity** indemnifies, advances or pays on behalf of an **Insured Person**.

Section II Definitions

- A. Unless defined otherwise below, terms appearing in **bold** typeface in this Policy shall have the same meaning as defined in the **Followed Policy**.
- B. In the event that any term defined below is less favorable to the **Insured Person** than the same or equivalent definition in the **Followed Policy**, the term defined below shall be deleted in its entirety and replaced with the same or equivalent definition from the **Followed Policy**:
 1. **"Company"** shall mean the **Parent Company** and any **Subsidiary**, including in the event of a bankruptcy, the **Parent Company** and any **Subsidiary** as a debtor in possession as such term is used in Chapter 11 of the United States Bankruptcy Code or the equivalent in any **Foreign Jurisdiction**.
 2. **"Defense Costs"** shall mean that part of **Loss** consisting of:
 - a. reasonable fees, costs and expenses incurred by the **Insureds** in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond, but does not include the obligation to apply for or furnish such bonds;
 - b. reasonable costs and expenses incurred by an **Insured Person** responding to a **Claim** based upon or otherwise involving Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Act of 2010 or any rules, regulations or policies pursuant to such sections; and
 - c. reasonable fees, costs and expenses incurred by the **Insureds** at the **Insurer's** request to assist the **Insurer** in investigating a **Claim**.

3. **“Loss”** shall mean those amounts any **Insured Person** is legally obligated to pay as a result of a **Claim**, including, but not limited to:
- a. compensatory, punitive, exemplary and multiple damages;
 - b. settlements and judgments, including costs and fees awarded pursuant to a covered judgment and pre-judgment and post-judgment interest on that portion of a covered judgment;
 - c. **Defense Costs**;
 - d. civil fines or penalties assessed against an **Insured Person** for an unintentional and non-willful violation of any federal, state, local or foreign law, including without limitation any such fines or penalties described in Section 308 of the Sarbanes-Oxley Act of 2002 or assessed pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(B); and
 - e. taxes imposed on a **Company** for which the **Insured Persons** are legally obligated to pay solely by reason of the **Company’s** insolvency, or imposed on an **Insured Person** solely by reason of such **Insured Person’s** receipt of payment of **Loss** hereunder.

Loss (other than **Defense Costs**) shall not include any of the following:

- i. fines or penalties, except as provided at subsection **d.** above;
- ii. taxes, except as provided at subsection **e.** above;
- iii. any amount for which the **Insured Person** is legally absolved from payment;
- iv. any amount not insurable under the law pursuant to which this Policy shall be construed; or
- v. costs incurred by an **Insured Person** to comply with any order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief.

The insurability of matters otherwise included within this definition shall be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Parent Company**, the **Insured Persons**, the **Insurer** or such **Claim** is located. The **Insurer** shall not assert that **Loss** due to the **Insured Person’s** actual or alleged violation of Sections 11, 12 or 15 of the Securities Act of 1933, as amended is uninsurable.

4. **“Outside Entity”** shall mean any not-for-profit, or for-profit entity, provided such entity is not otherwise a **Company**.
5. **“Related Wrongful Acts”** shall mean all **Wrongful Acts** that are logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
6. **“Wrongful Act”** shall mean:
- a. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by any **Insured Persons** in their capacity as such; or
 - b. any matter claimed against any **Insured Persons** solely by reason of their serving in such capacity.

C. In no event shall any term defined below be deleted and replaced with the same or equivalent definition from the **Followed Policy**:

- 1.. **“DIC Event”** shall mean, with respect to any **Loss** otherwise covered under this Policy:
- a. the insurer(s) of the **Underlying Insurance**:
 - (i) refuses to indemnify or advance such **Loss** as required under the terms of the **Underlying Insurance**; or

- (ii) fails to indemnify or advance such **Loss** within sixty (60) days after the **Insured Persons'** written request for such payment; or
 - (iii) is financially unable to indemnify or advance such **Loss**; or
 - (iv) rescinds or voids the **Underlying Insurance** or refuses to indemnify or advance such **Loss** while attempting to rescind or void the **Underlying Insurance**; or
 - b. according to the terms and conditions of the **Underlying Insurance**, the insurer(s) of the **Underlying Insurance** are not liable for such **Loss**; or
 - c. a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the U.S. Bankruptcy Code, as amended, or any similar federal, state, foreign or common law and as a result of such proceeding the insurer(s) of the **Underlying Insurance** fails or refuses to indemnify or advance such **Loss** because the proceeds of such **Underlying Insurance** are or allegedly are subject to an injunction, automatic stay or similar legal restriction prohibiting payment of such proceeds.
2. **"Followed Policy"** shall mean the policy identified in **Item 5.A.** of the Declarations.
 3. **"Foreign Jurisdiction"** shall mean any jurisdiction, other than the United States or any of its territories or possessions.
 4. **"Foreign Policy"** shall mean the standard directors and officers liability policy (including all mandatory endorsements, if any) approved by the **Insurer** for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this Policy. The term **"Foreign Policy"** shall not include any partnership, pension trust or professional liability policy or similar coverage.
 5. **"Insurer"** shall mean the insurance company identified at **Item 2.** of the Declarations.
 - 6.. **"Parent Company"** shall mean the entity or organization identified in **Item 1.** of the Declarations.
 7. **"Policy Period"** shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in **Item 3.** of the Declarations (subject to its earlier cancellation in accordance with **Section X Cancellation or Non-Renewal**) and, if applicable, the extended reporting period, discovery period or equivalent period as described in the **Followed Policy.**
 8. **"Underlying Insurance"** shall mean the directors and officers liability insurance policies scheduled in **Item 5.B.** of the Declarations.

Section III Exclusions

- A. This Policy shall not follow any exclusions section or clause of the **Followed Policy** or any **Underlying Policy**, provided, however, in the event the exclusion in paragraph **B.** below is less favorable to the **Insured Person** than the same or equivalent exclusion in the **Followed Policy**, the exclusion in paragraph **B.** below shall be deleted in its entirety and replaced with the same or equivalent exclusion from the **Followed Policy.**
- B. The **Insurer** shall not be liable to make any payment for **Loss** in connection with that portion of any **Claim** made against any **Insured Person** based upon, arising out of, or relating to:
 1. such **Insured Person** gaining any profit, financial advantage or remuneration that he or she was not legally entitled to receive; or
 2. any deliberately fraudulent act or deliberately fraudulent omission or any intentional violation of any statute, rule or law by such **Insured Person**;

provided, however, that this exclusion shall only apply if a final and non-appealable adjudication adverse to such **Insured Person** in an underlying proceeding establishes that such conduct occurred, and provided further that paragraph **B.1.** of this exclusion shall not apply to:

- a. any **Claim** alleging violation of Sections 11, 12 or 15 of the Securities Act of 1933, as amended; or
- b. **Defense Costs.**

Provided further that with respect to paragraph **B.2.** of this exclusion, in the event an act, omission or violation is treated as a criminal violation in a **Foreign Jurisdiction**, but not in the United States, the imposition upon an **Insured Person** of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, in and of itself, be deemed conclusive proof that a deliberately fraudulent act, a deliberately fraudulent omission or any intentional violation of any statute, rule or law by such **Insured Person** has occurred.

For purposes of determining the applicability of this Exclusion, the **Wrongful Acts** and knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**.

Section IV Limit of Liability

- A. Defense Costs** shall be part of, and not in addition to, the Limit of Liability stated in **Item 4.** of the Declarations. Such **Defense Costs** shall reduce the Limit of Liability.
- B.** The maximum liability of the **Insurer** for all **Loss** arising from all **Claims** combined shall be the amount stated in **Item 4.** of the Declarations.
- C.** If the Limit of Liability stated in **Item 4.A.** of the Declarations is exhausted by payment of **Loss** with respect to a **Claim(s)**, the **Insurer** agrees to reinstate the limit of liability in the amount stated in **Item 4.B.** of the Declarations ("First Reinstatement") but solely with respect to a new **Claim** which is not a Related Claim (as described in **Section V Related Claims**) to the **Claim(s)** which exhausted the Limit of Liability. The First Reinstatement shall be excess of all insurance policies that are specifically excess of this Policy and all **Underlying Insurance** providing a similar reinstated limit of liability.
- D.** If the Limit of Liability stated in **Item 4.A.** of the Declaration and the First Reinstatement stated in **Item 4.B.** are exhausted by payment of **Loss** with respect to **Claims**, the **Insurer** agrees to reinstate the limit of liability in the amount stated in **Item 4.C.** of the Declarations ("Second Reinstatement") but solely with respect to a new **Claim** which is not a Related Claim (as described in **Section V Related Claims**) to (i) the **Claim(s)** which exhausted the Limit of Liability and (ii) the **Claim(s)** which exhausted the First Reinstatement. The Second Reinstatement shall be excess of all insurance policies that are specifically excess of this Policy and all **Underlying Insurance** providing a similar reinstated limit of liability.

Section V Related Claims

More than one **Claim** involving the same **Wrongful Act, Related Wrongful Acts**, or arising from the same or related facts or circumstances or series of causally or logically related facts or circumstances, shall be considered a single **Claim**.

All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act, Related Wrongful Act**, or fact or circumstance, was reported under this Policy or any other policy providing similar coverage, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim**.

Section VI Defense and Settlement

A. Defense of Claims

1. The **Insured Persons**, and not the **Insurer**, shall have the duty to defend all **Claims**.
2. The **Insured Persons** shall not incur **Defense Costs** in connection with any **Claim** reasonably likely to involve this Policy without the prior written consent of the **Insurer**,

which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for any **Defense Costs** incurred without such consent, provided, however, that written consent given to the **Company** or **Insured Persons** by an insurer of the **Underlying Insurance** shall satisfy such consent requirement.

3. If the **Company** or **Outside Entity** refuses or fails to indemnify or advance **Defense Costs** within sixty days after the **Insured Persons'** written request for such indemnification or advancement, the Insurer shall advance such **Defense Costs** subject to the terms and conditions of this Policy.
4. The **Insurer** shall advance such **Defense Costs** on a current basis but no later than sixty (60) days after the **Insurer** receives itemized invoices for such **Defense Costs**; provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insured Persons**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.

B. Settlement of Claims

The **Insured Persons** shall not admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for **Loss** incurred as a result of any such admission, offer or agreement to which the **Insurer** did not so consent.

C. Insurer's Right to Associate

The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured Persons** in the investigation, defense or settlement of any **Claim** that may implicate coverage under this Policy. The **Insured Persons** and **Company** shall cooperate with the **Insurer** and provide the **Insurer** with the information it may reasonably require in the investigation, defense or settlement of any **Claim**. The failure of one **Insured Person** or **Company** to comply with this provision shall not impair the rights of any other **Insured Person** under this Policy.

Section VII Notice

A. Claims and Potential Claims

The **Insured Persons** and/or the **Company** shall give the **Insurer** notice in writing of any **Claim** in the same manner as set forth in the **Followed Policy**. Notice of any circumstance that may give rise to a **Claim** may be provided to the **Insurer** in the same manner and to the extent permitted by the **Followed Policy**. Any notice sent pursuant to this paragraph shall be directed to the **Insurer** as set forth in **Section VII Notice, D.**, below.

B. Late Notice – Prejudice Required

If the **Insured Persons** and the **Company** fail to provide notice to the **Insurer** as specified above, the **Insurer** shall not be entitled to deny coverage based solely upon late notice unless the **Insurer** can demonstrate its interests were materially prejudiced by reason of such late notice.

C. Underlying Insurance Changes

The **Insured Persons** and/or the **Company** shall give written notice to the **Insurer** as soon as practicable days after the in-house general counsel or risk manager of the **Parent Company** first learns of any: (i) material change in the terms or conditions of any **Underlying Insurance** or (ii) nonrenewal or cancellation of any **Underlying Insurance**, occurring during the **Policy Period** or the Discovery Period (if purchased).

- D. All notices under any provision of this Policy shall be in writing and given by email, prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the

Insured Persons or the **Company** may be given to the **Parent Company** at the address shown in **Item 1.** of the Declarations. Notice to the **Insurer** shall be given to the respective address shown in **Item 6.** of the Declarations. If notice is given as described above, it shall be deemed to be received and effective upon the date of transmittal, subject to proof of transmittal.

Section VIII Indemnification, Other Insurance and No Subrogation

A. Indemnification of Insured Persons

1. If the **Insurer** pays under this Policy any **Loss** for which the **Company** is legally permitted and financially able to indemnify or advance, then the **Company** shall reimburse the **Insurer** for such amounts, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the **Insurer**.
2. If **Loss** is covered under this Policy by reason of **Section I Side A Excess and DIC Insuring Agreement, 2. b. (DIC Event)**, any payment by the **Insurer** of such **Loss** under this Policy shall be without prejudice to the **Insurer's** excess position over, or subrogation rights against, the **Underlying Insurance**.

B. Other Insurance

1. All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any **Underlying Insurance**, any insurance under which there is a duty to defend or any employment practices liability insurance, unless such other insurance is specifically excess of this Policy; provided this Policy shall apply on a primary basis with respect to any personal umbrella excess liability insurance policy purchased by an **Insured Person**. Except as stated otherwise in this Policy, including in **Section I Side A Excess and DIC Insuring Agreement** above, this Policy will not be subject to the terms of any other insurance policy.
2. In the event a **Claim** is made against any **Insured Persons** in their capacity as such for an **Outside Entity**, coverage otherwise afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance maintained by the **Outside Entity** which covers its directors, officers, trustees or other equivalent executives.

C. No Subrogation

Without prejudice to any other rights of subrogation provided in the **Followed Policy**, the **Insurer** shall not exercise any available right of subrogation against an **Insured Person** under this Policy.

Section IX Order of Payments

The **Insurer** shall be entitled to pay **Loss** as it becomes due and payable under this Policy without consideration of other future payment obligations.

Section X Cancellation or Non-Renewal

This policy shall follow, and specifically incorporates herein by reference, the conditions in the **Followed Policy** with respect to cancellation and nonrenewal, and shall comply with all of the requirements of any applicable state laws and regulations regarding cancellation and nonrenewal.

Section XI Non-Rescission

- A.** The **Application** shall be construed as a separate **Application** for each **Insured Person**. With respect to any statements or other information provided in the **Application**, the knowledge possessed by any one **Insured Person** shall not be imputed to any other **Insured Person**.
- B.** The **Insurer** shall not be entitled under any circumstances to rescind or void this Policy in whole or in part for any reason.

Section XII Territory and Loss in Foreign Jurisdictions

A. Worldwide Territory

Coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

B. Liberalization Clause for Claims in Foreign Jurisdictions

If permitted by applicable law, when determining coverage under this Policy for **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply to such **Claim** the terms and conditions of this Policy, as amended to include the terms and conditions of the **Foreign Policy** in such **Foreign Jurisdiction** that are more favorable to **Insured Persons** in the **Foreign Jurisdiction**. However, this paragraph shall not apply to: (i) any provision of any **Foreign Policy** addressing limits of liability, retentions, other insurance, non-renewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, or any claims made provisions, (ii) any provision in this Policy that excludes or limits coverage for specific events or litigation, and (iii) any provision of any **Foreign Policy** that affords coverage for any claim against the **Company** or any amount the **Company** or another entity indemnifies, advances or pays on behalf of an **Insured Person**.

C. Loss in a Foreign Jurisdiction

Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the **Insurer**.

Section XIII Compliance with Applicable Trade and Economic Sanction Laws

This Policy does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall only be made in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

Section XIV Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Section XV Entire Agreement

By acceptance of this Policy, the **Company**, all **Insured Persons** and the **Insurer** agree that this Policy (including the Declarations and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms,

conditions and limitations of this Policy can be waived or changed only by written endorsement hereto.

Section XVI Authorization

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insured Persons** with respect to the giving and receiving of any notice provide for in this Policy (except the giving of notice to apply for any Discovery Period), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insured Persons** agree that the **Parent Company** shall act on their behalf.

SPECIMEN