



Directors & Officers Liability Coverage Part

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Coverage Part and the **General Terms and Conditions for Liability Coverage Parts**, the **Insureds** and **Insurer** agree:

Section I Insuring Agreements

A. Side A Coverage: Non-indemnified Loss of Insured Persons

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 Coverage Part, but only to the extent such **Loss** is not paid or indemnified by the **Insured Entity**.

B. Side B Coverage: Insured Entity Indemnification of Insured Persons Loss

The **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** for which the **Insured Entity** indemnifies the **Insured Persons**, as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Coverage Part.

C. Side C Coverage: Insured Entity Claim

The **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** as a result of a **Claim** first made against the **Insured Entity** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Coverage Part.

Section II Coverage Extensions

A. Insured Entity Sublimit for Derivative Demand Investigation Costs

The **Insurer** shall pay on behalf of the **Insured Entity** all **Derivative Demand Investigation Costs** as a result of any:

1. **Derivative Demand**; or
2. lawsuit by one or more members of the **Insured Entity**, or by an Attorney General, or other representative party brought derivatively on behalf of the **Insured Entity** against any **Insured Person** for a **Wrongful Act** without first making a demand as described in the definition of **Derivative Demand**;

first made or brought during the **Policy Period** and reported to the **Insurer** as required by this Coverage Part. No retention shall apply to this coverage.

The maximum liability of the **Insurer** for all **Derivative Demand Investigation Costs** shall be the amount shown on the Declarations. Such amount is a sublimit that is part of and not in addition to the Aggregate Limit of Liability for this Coverage Part.

B. Side A Additional Limits of Liability for Directors and Officers

Notwithstanding anything to the contrary in this Coverage Part and if **Included** as shown on the Declarations, the Side A Additional Limit of Liability shall be available solely for **Loss** resulting from

any **Claim** made against an **Insured Person** as defined in **Section III Definitions 9.a.** and covered under **Section I Insuring Agreements A.**

Such Side A Additional Limit of Liability shall be in addition to, and not part of, the Aggregate Limit of Liability for this Coverage Part, and shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written to apply in excess of this Coverage Part.

Section III Definitions

For purposes of this Coverage Part:

1. **“Claim”** shall mean:
 - a. a written demand against an **Insured** (other than a **Derivative Demand**):
 - i. for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or
 - ii. to engage in arbitration or mediation,
which shall be deemed first made upon receipt by the **Insured** of such demand;
 - b. a civil or criminal proceeding against an **Insured**, which shall be deemed first made upon:
 - i. the service of a complaint or similar pleading upon the **Insured**, or
 - ii. in the case of a criminal proceeding, an arrest, the return of an indictment or information, or the receipt or filing of notice of charges or similar document;
provided, however, that a **Claim** under this subsection shall not include any investigation or any administrative or regulatory proceeding;
 - c. an administrative or regulatory proceeding (other than an investigation) against an **Insured** which shall be deemed first made upon receipt of a notice of charges, complaint or similar document by the **Insured**;
 - d. an investigation of an **Insured Person** by an **Enforcement Authority** which shall be deemed first made upon service on or receipt by the **Insured Person** of a written document from such **Enforcement Authority** identifying such **Insured Person** as a target of the investigation, including a notice of investigation, target letter or similar document;
 - e. an official request for the **Extradition** of an **Insured Person**, or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**, which shall be deemed first made upon receipt of the request or warrant; or
 - f. solely with respect to **Section II Coverage Extensions A.**, a **Derivative Demand**, which shall be deemed first made upon receipt by the **Insured Entity** of such demand.
2. **“Defense Costs”** shall also mean, solely with respect to **Section II Coverage Extension A.**, **Derivate Demand Investigation Costs.**
3. **“Enforcement Authority”** shall mean any federal, state, local or foreign law enforcement or governmental authority (including the U.S. Department of Justice and any federal or state attorney general).

4. **“Derivative Demand”** shall mean a written demand by one or more members of the **Insured Entity**, or by an Attorney General, or other representative party upon the board of directors of the **Insured Entity** to bring a lawsuit against any **Insured Person** for a **Wrongful Act**.
5. **“Derivative Demand Investigation Costs”** shall mean reasonable fees, costs and expenses incurred solely by the **Insured Entity** (including its board of directors or any committee of its board of directors) in connection with its investigation or evaluation on behalf of the **Insured Entity** of:
 - a. a **Derivative Demand**; or
 - b. a lawsuit by one or more members of the **Insured Entity**, or by an Attorney General, or other representative party brought derivatively on behalf of the **Insured Entity** against any **Insured Person** for a **Wrongful Act** without first making a demand as described in the definition of **Derivative Demand**,but it shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**.
6. **“Extradition”** shall mean any formal process (including without limitation an extradition proceeding pursuant to the U.K. Extradition Act of 2003 or the equivalent in any other jurisdiction) by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
7. **“Insured(s)”** shall mean any **Insured Person** or **Insured Entity**.
8. **“Insured Entity”** shall mean the **Organization**.
9. **“Insured Person(s)”** shall mean any natural person who was, is or shall be:
 - a. a duly elected or appointed director (including shadow directors and *de facto* directors), officer, in-house general counsel, risk manager, controller, trustee, trustee emeritus, regent, governor, department head, member of a committee, faculty member, or staff member of an **Insured Entity**;
 - b. a manager, member of any board of managers or the equivalent executive of an **Insured Entity** that is a limited liability company or a joint venture;
 - c. an official of an **Insured Entity**, including an **Insured Entity** organized or operated in a **Foreign Jurisdiction**, while serving in a functionally equivalent position to those described in subsections a. or b., above;
 - d. an individual described in subsections a., b., or c. above while serving at the specific direction or request of the **Insured Entity** in a position functionally equivalent to those described in subsections a., b., or c. above for an **Outside Entity**; or
 - e. any other employee of the **Insured Entity**.
10. **“Loss”** shall mean those amounts any **Insured** 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;**
and
- d. an excess benefit tax:
 - i. imposed upon an **Insured Person** who is an organization manager (as defined in 26 U.S.C. §4958 (f)(2) ; and
 - ii. equal to 10% of an excess benefit transaction (as described in 26 U.S.C. §4958 (a)(2) and (c)(1).

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

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

Notwithstanding anything to the contrary above, **Loss** shall not include **Defense Costs** incurred by an **Insured Person** who is a disqualified person as defined in 26 U.S.C. §4958 (f)(1) and has been determined to have received an excess benefit.

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 Organization**, the **Insured Persons**, the **Insurer** or the **Claim** is located.

11. "Outside Entity" shall mean any not-for-profit entity classified as such by the Internal Revenue Code of 1986, or any for-profit entity if such for-profit entity is specifically added as an **Outside Entity** by written endorsement to this Coverage Part; provided such not-for-profit entity is not otherwise an **Insured Entity**.

12. "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;
- b. any matter claimed against any **Insured Persons** solely by reason of their serving in such capacity; or
- c. any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty by the **Insured Entity**.

In clarification and not in limitation of the foregoing subparagraphs, **Wrongful Act** shall include any actual or alleged libel, slander, defamation of character, publication in violation of a natural person's right of privacy, wrongful entry, wrongful eviction, invasion of natural person's right of privacy, false arrest or wrongful detention by any **Insured**.

Wrongful Act shall not mean any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** in his or her capacity as a settlor as respects any plans, programs or trusts established or maintained in whole or in part for the benefit of employees of the **Insured Entity**.

Section IV Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. Conduct

based upon, arising out of, or relating to:

1. such **Insured** gaining any profit, financial advantage or remuneration that he, she or it 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**;

provided, however, that this exclusion shall only apply if a final and non-appealable adjudication adverse to such **Insured** in an underlying proceeding establishes that such conduct occurred.

B. Prior Notice

based upon, arising out of or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any directors and officers or employment practices liability policy or similar coverage part, provided the insurer of such policy or coverage part does not reject such notice as invalid.

C. Pending and Prior Litigation

based upon, arising out of or attributable to essentially the same facts, circumstances, situations, transactions or events underlying or alleged in any litigation, any administrative or regulatory proceeding, any investigation or any alternative dispute resolution proceeding that was pending on or prior to the **Pending or Prior Date** shown on the Declarations.

D. Bodily Injury/Property Damage

for any actual or alleged;

1. bodily injury, mental anguish, emotional distress, sickness, disease, or death of any person; or
2. damage to or destruction of any tangible property, including the loss of use thereof.

E. Violation of Law

for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by:

1. the Employee Retirement Income Security Act of 1974, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970 (OSHA), the Fair Labor Standards Act, the Workers' Adjustment and Retraining Notification Act, the National Labor Relations Act, each of the foregoing as amended, or any similar provisions of any federal, state, local or foreign statutory or common law; or

2. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits or similar provisions of any federal, state, local or foreign statutory or common law;

F. Wage and Hour/Misclassification

notwithstanding anything to the contrary in **Section IV Exclusions E. Violation of Law** above, based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any violation of any of the responsibilities, obligations or duties imposed by any federal, state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act), or any amendments thereto or regulations promulgated thereunder, governing wage, hour and payroll policies and practices (except the Equal Pay Act) including, without limitation:

1. the refusal, inability or failure of an **Insured Entity** or **Insured Person** to pay wages or overtime pay, or any amounts representing such wages or pay, for services rendered or time spent in connection with work related activities;
2. improper pay deductions taken by an **Insured Entity** or **Insured Person** from any employee or purported employee;
3. improper classification of any employee or purported employee; or
4. failure to provide or enforce any legally required rest or meal breaks.

G. Pollution

based upon, arising out of or attributable to:

1. any actual or alleged or threatened discharge, release, escape, seepage, migration or dispersal of any **Pollutants** provided, however, this subparagraph **G.1.** shall not apply to **Loss** under **Section I Insuring Agreement A;** or
2. any request, demand, order, direction, or statutory or regulatory requirement that any **Insured** or others test for, monitor, remove, contain, treat, detoxify, neutralize clean up, or in any way respond to or assess the effects of such **Pollutants.**

H. Insured v. Insured

brought or maintained by or on behalf of:

1. an **Insured Person** in any capacity;
2. the **Insured Entity**;
3. an **Outside Entity**;
4. any member of the **Insured Entity** or **Outside Entity**, whether directly or derivatively, unless such member's **Claim** is brought solely without the active assistance or participation of an **Insured Person, Insured Entity** or **Outside Entity** unless such assistance or participation is by an **Insured Person** (a) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (b) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute; or
5. any attorney general or other such representative party, derivatively, unless such attorney general's or representative party's **Claim** is brought solely without the active assistance or participation of an **Insured Person, Insured Entity** or any **Outside Entity**;

provided this exclusion shall not apply to:

- i. any **Claim** that is in the form of a cross-claim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Coverage Part;
- ii. **Defense Costs** covered under **Section I Insuring Agreement A.**;
- iii. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, rehabilitator or creditors' committee (or equivalent in a foreign jurisdiction) of the **Insured Entity** or **Outside Entity**, or any assignee of any of the foregoing;
- iv. any **Claim** brought by any **Insured Person** as described in **Section III Definitions 9. a., b., or c.** who has not served as an **Insured Person** of, or consultant for, the **Insured Entity** for three (3) years prior to the date such **Claim** is brought; or
- v. any **Claim** brought and maintained outside any common law jurisdiction, including the United States of America.

I. Securities Exclusion

based upon, arising out of, or attributable to any:

- a. sale or purchase of any securities by the **Insured Entity**; or any
- b. **Claim** brought by any security holder of an **Insured Entity**, in their capacity as such, whether directly, by class action, or derivatively on behalf of an **Insured Entity**

provided, however, this exclusion shall not apply to the issuance of tax exempt bond debt by the **Insured Entity** or any **Claims** brought by holders of such tax exempt bond debt.

J. Employment Practices/Third Party Harassment and Discrimination

based upon, arising out of, or attributable to any actual or alleged:

- 1. employment-related act, omission, error, misstatement, misleading statement, neglect or breach of duty; or
- 2. harassment of or discrimination against anyone other than an **Insured Person** or applicant for employment with the **Insured Entity** or any **Outside Entity**.

For purposes of determining the applicability of these Exclusions, the **Wrongful Acts** and knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** and, solely with respect to payment of **Loss** under **Section I Insuring Agreement C.**, only the **Wrongful Acts** and knowledge of the Chief Executive Officer and the Chief Financial Officer of the **Insured Entity** shall be imputed to such **Insured Entity** and its **Subsidiaries**.

Section V Additional Exclusions for Claims made against any Insured Entity

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured Entity**:

A. Intellectual Property

based upon, arising out of or attributable to any actual or alleged plagiarism, misappropriation, infringement or violation of any patent, trademark, copyright, trade secret or any other intellectual property rights.

B. Contract

based upon, arising out of or attributable to:

- a. an **Insured's** alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
- b. the liability of others an **Insured** assumes under any oral or written contract or agreement; provided, however, this exclusion shall not apply to an **Insured's** liability that exists in the absence of such contract or agreement.

Section VII Retention

The Retention shown on the Declarations shall apply to **Loss** resulting from each **Claim**, except that no Retention shall apply to Loss under **Section I Insuring Agreement A.** or to **Section II Coverage Extension A.**

Section VIII Notice of Claim

The **Insureds** shall, as a condition precedent to their rights under this Coverage Part with respect to a **Claim**, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Any notice provided pursuant to this section shall be given as soon as practicable after the Chief Executive Officer, Chief Financial Officer, In-House General Counsel, Risk Manager or equivalent position of the **Insured Entity** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

Section IX Outside Entity Other Insurance

In addition to, and not in limitation of **Section X, Indemnification, Other Insurance and Subrogation** of the **General Terms and Conditions**, in the event a **Claim** is made against any **Insured Person** as described in **Section III Definitions 7. a., b., or c.** of this **Coverage Part** in their capacity as such for an **Outside Entity**, coverage otherwise afforded under this Coverage Part 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.