

# Private Company Directors, Officers and Entity Liability, Employment Liability, and Fiduciary Liability Insurance Policy

## CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE BASIS. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER PURSUANT TO THE TERMS OF THIS POLICY.

ALL LOSS, INCLUSIVE OF DEFENSE COSTS AND ALL COVERAGES SUBJECT TO A SUB-LIMIT, ARE INCLUDED WITHIN THE LIMIT OF LIABILITY, SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS, AND SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

PLEASE READ THE POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this policy the **Insurer** and **Insureds** agree as follows:

## GENERAL TERMS AND CONDITIONS

### I. TERMS AND CONDITIONS

The General Terms and Conditions set forth herein shall apply to all liability **Coverage Parts**. Terms and Conditions set forth in each **Coverage Part** shall only apply to that particular **Coverage Part**.

### II. DEFINITIONS

Whenever printed in boldface type, and whether in the singular or plural form in this policy, the following terms shall have the meanings indicated below.

- A. “**Application**” means each and every signed application for this policy, or for any policy for which this policy is a renewal, replacement or for which it succeeds in time, together with any and all attachments to such applications and any warranties executed by an **Insured** within the last five (5) years and submitted with such applications and any documents submitted with or incorporated into such applications. “**Application**” shall also mean all public documents filed by any **Insured** with any federal, state, local or foreign regulatory body during the 12 months preceding the **Policy Period**.
- B. “**Cleanup Costs**” means any expenses, including but not limited to legal and professional fees and expenses, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- C. “**Company**” means the **Parent Organization**, any **Subsidiary**, and in the event a bankruptcy proceeding is instituted by or against the **Company**, the debtor-in-possession (or equivalent status outside the United States) or the bankruptcy estate of the **Company**, if any.

- D.** “**Coverage Part Limit of Liability**” means the applicable Limit of Liability, if any, as respects each Coverage Part, as stated in Item 4. of the Declarations.
- E.** “**Coverage Part**” means each **Coverage Part** purchased by the Insured as set forth in Item 4. of the Declarations.
- F.** “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, (including but not limited to any amendments pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1996 (COBRA); Health Insurance Portability and Accountability Act (HIPAA); the Newborns’ and Mothers’ Health Protection Act of 1996; the Mental Health Parity Act of 1996; the Women’s Health and Cancer Rights Act of 1998; the Pension Protection Act of 2006; the Patient Protection and Affordable Care Act (PPACA); and the Health Care and Education Reconciliation Act of 2010; English Pension Scheme Act 1933, including any amendments thereto and regulations thereunder; or any similar state, local or foreign law or regulation.
- G.** “**Executive**” means any past, present or future duly elected or appointed director, officer, or General Counsel of the **Company**, or any past, present or future duly elected or appointed manager, member of the board of managers, or equivalent executive position of a limited liability company. In the event the **Company** operates in a **Foreign Jurisdiction**, then the term **Executive** also means those titles, positions or capacities in such **Foreign Jurisdiction** that are equivalent to the position of an **Executive** in an entity incorporated within the United States of America.
- H.** “**Foreign Jurisdiction**” means any jurisdiction outside the United States of America, its territories or possessions.
- I.** “**Insolvency**” means the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official or any foreign equivalent, to take control of, supervise, manage or liquidate the **Company**; or the **Company** becoming a debtor in possession; or the inability of the **Company** financially (including but not limited to lack of sufficient cash flow or assets) to advance **Defense Costs** or indemnify an **Insured Person** for **Loss**, as shown in a written opinion by a third party auditor selected by the **Company**
- J.** “**Insurer**” means the entity issuing this policy as listed on the Declarations Page.
- K.** “**Outside Entity**” means any not-for-profit organization; any for profit entity (other than a **Subsidiary**) in which the **Company** has an equity ownership greater than 20% and such for profit entity maintains in effect valid and collectible managerial liability insurance for its directors, officers, management committee members and members of any Board of Managers with an aggregate limit of liability of \$5,000,000 or more; and, any other entity, partnership, joint venture or organization listed by endorsement to this policy.
- L.** “**Outside Entity Position**” means the position of an **Insured Person** with an **Outside Entity**, but only if service in such position is at the direction or request of the **Company**. In the event of any dispute as to whether the **Insured Person** was acting at the “request or direction” of the **Company**, this policy shall abide by the determination of the **Company**.
- M.** “**Parent Organization**” means the entity designated in Item 1. of the Declarations.
- N.** “**Policy Aggregate Limit of Liability**” means the Aggregate Limit of Liability stated in Item 6a. of the Declarations.
- O.** “**Policy Period**” means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this policy.
- P.** “**Pollutants**” means any seepage, pollution or contamination, including but not limited to any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot fumes, acids, alkalis, chemicals, waste, and materials to be recycled, reconditioned or reclaimed.

- Q.** “**Prior or Pending Litigation Date**” means the applicable date set forth in Item 4. of the Declarations or in any endorsement made part of this policy.
- R.** “**Related Wrongful Acts**” means **Wrongful Acts** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as, or related to or continuous or that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision or that arise from a common nucleus of facts that were alleged in another **Claim** made against any **Insured**. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or causes of action.
- S.** “**Subsidiary**” means:
- (1) a 501(c)(3) Organization that is sponsored exclusively by a **Company**;
  - (2) a corporation, limited liability company, limited partnership or joint venture of which the **Parent Organization** (i) owns, on or before the inception date of the policy, more than 50 percent of the issued and outstanding voting securities or membership interests either directly or indirectly through one or more of its **Subsidiaries**; or, (ii) has the right, pursuant to written contract or by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors of a corporation, the management committee of a joint venture or partnership, or the management board of an LLC.
  - (3) automatically an entity that becomes a **Subsidiary** or a **Subsidiary** which is acquired or created during the **Policy Period**, whose assets total less than 30 percent of the total consolidated assets of the **Parent Organization** as of the inception date of the policy;
  - (4) an entity that becomes a **Subsidiary** or a **Subsidiary** that is acquired or created during the **Policy Period** (other than a **Subsidiary** described in paragraph (3) above) but only upon the condition that within 90 days of the creation or acquisition of such entity, the **Parent Organization** provides the **Insurer** with full particulars of the new **Subsidiary** and agrees to any additional premium and/or amendment of the provisions of this policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Parent Organization** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** or **Insured Person** acting in their capacity in connection with a **Subsidiary**, shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

### III. LIMIT OF LIABILITY AND RETENTIONS

- A.** The **Policy Aggregate Limit of Liability** is the maximum aggregate limit of the **Insurer's** liability for all **Loss**, inclusive of **Defense Costs**, under all **Coverage Parts** combined arising out of all **Claims** first made against an **Insured** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment, the number of **Claims**, or the number of claimants. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**. In the event the **Policy Aggregate Limit of Liability** is exhausted by payment of **Loss**, or tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.
- B.** Any **Coverage Part Limit of Liability** and any Sub-Limit of Liability stated herein or by endorsement hereto is the maximum aggregate limit of the **Insurer's** liability for all **Loss** subject to such stated **Coverage Part Limit of Liability** or Sub-Limit of Liability, inclusive of all **Defense Costs**, arising out of all **Claims** first made against an **Insured** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment or the number of **Claims**. Any **Coverage Part Limit of Liability** or Sub-Limit of Liability applicable to the Extended

Reporting Period shall be part of, and not in addition to, the **Coverage Part Limit of Liability** or Sub-Limit of Liability stated herein. In the event any applicable **Coverage Part Limit of Liability** or Sub-Limit of Liability is exhausted by payment of **Loss**, or has been tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** with respect to any **Claim** subject to such **Coverage Part Limit of Liability** or Sub-Limit of Liability shall be deemed to be completely fulfilled and extinguished. Each and every **Coverage Part Limit of Liability** and Sub-Limit of Liability stated herein or in any endorsement made part of this policy, shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

- C. **Defense Costs** are not payable by the **Insurer** in addition to the **Aggregate Policy Limit of Liability** or any applicable **Coverage Part Limit of Liability** or Sub-Limit of Liability. **Defense Costs** are part of **Loss** and as such are subject to the applicable **Limit of Liability for Loss**.
- D. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount stated in Item 4. of the Declarations. Such Retention amount shall be borne by the **Insured** with regard to all **Loss**.
- E. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**. In the event a **Claim** triggers more than one Retention, then, as to such **Claim**, the highest of such Retentions shall be deemed the Retention applicable to **Loss** arising from such **Claim** unless this policy expressly provides otherwise.

#### IV. NOTICE

- A. As a condition precedent to rights under this policy, an **Insured** shall provide the **Insurer** written notice of any **Claim** first made against an **Insured** during the **Policy Period** as soon as practicable after the **Company's** Chief Executive Officer, Chief Financial Officer, Risk Manager or General Counsel (or equivalent position) becomes aware of the **Claim**, but in no event later than 90 days after the expiration of the **Policy Period** or **Extended Reporting Period** (if applicable).
- B. If during the **Policy Period** any **Insured** becomes aware of any act, error or omission, fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer** of the circumstance and the reasons for anticipating such a **Claim**, with full details as to dates, persons and entities involved, then any **Claim** subsequently made arising out of such act, error or omission, fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.
- C. All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more series of any repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:
  - (1) when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** was first made or received, or
  - (2) when notice pursuant to section IV. B. of an act, error or omission, fact, circumstance or situation giving rise to such **Claim** is given.

#### V. TERMINATION, CANCELLATION AND NON-RENEWAL

- A. This policy shall terminate at the earliest of the following times:
  - (1) upon expiration of the **Policy Period**;
  - (2) upon receipt by the **Insurer** of written notice of cancellation from the **Parent Organization**;
  - (3) upon written notice by the **Insurer** of cancellation for non-payment of premium; or
  - (4) at such other time as may be agreed between the **Parent Organization** and the **Insurer**.
- B. This policy, or any individual **Coverage Part**, may be cancelled by the **Parent Organization** at any time by mailing written notice to the **Insurer** as to which **Coverage Part** is to be cancelled or that the entire policy is to be canceled and the date and time such cancellation shall be effective, or by

surrender of this policy to the **Insurer** or its authorized agent. The mailing of such notice as described herein shall be sufficient proof of notice.

- C. This policy may be cancelled by or on behalf of the **Insurer** only in the event of non-payment of premium by the **Parent Organization**.
- D. In the event of non-payment of premium by the **Parent Organization**, the **Insurer** may cancel this policy by delivering to the **Parent Organization** or by mailing to the **Parent Organization**, by registered, certified, or other first class mail, at the last known principal address of the **Parent Organization**, and to the **Parent Organization's** insurance agent or broker, written notice stating when the cancellation shall be effective. The **Insurer** shall provide at least 10 days written notice to the **Parent Organization** prior to cancellation for non-payment of any premium. The mailing of such notice as described herein shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender of this policy by the **Parent Organization** to the **Insurer** or its authorized agent.
- E. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect. If the **Parent Organization** shall cancel the policy, the **Insurer** shall retain the pro rata proportion of the premium.
- F. If the **Insurer** decides not to renew this policy, the **Insurer** shall provide written notice to the **Parent Organization** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.

## VI. CHANGE IN CONTROL

If during the **Policy Period**:

- A. the **Parent Organization** shall consolidate or merge with or into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert such that the **Parent Organization** is not the surviving entity, or
- B. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities or membership interests representing more than 50 percent of the voting power for the election of directors of the **Parent Organization**, or acquires the voting rights of such an amount of such securities or membership interests;

(either of the above events hereinafter referred to as the "Transaction")

then, this policy shall continue in full force and effect as to any **Wrongful Acts** occurring prior to the Transaction, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Acts** occurring after the Transaction. This policy may not be cancelled following a Transaction and the entire premium for this policy shall be deemed fully earned as of the Transaction. The **Parent Organization** shall give the **Insurer** written notice of the Transaction as soon as practicable but not later than 30 days after the Transaction.

## VII. APPLICATION, SEVERABILITY and NON-RESCINDABILITY

- A. The **Insurer** has relied upon the accuracy and completeness of the statements, warranties, and representations contained in the **Application**. All such statements, warranties and representations are the basis for this policy and are incorporated in this policy, and all information forming part of the **Application** shall be deemed to be attached hereto as if physically attached.
- B. The **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the **Application**, no knowledge or information possessed by the **Company** or by any **Insured Person** shall be imputed to any other **Insured Person**.
- C. The **Insureds** agree that in the event the statements, warranties, and representations contained in the **Application** are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this policy, then this policy shall not afford coverage with respect to:

- (1) **Loss** of any **Insured Person** who knew, as of the policy inception date, the facts that were not accurately and completely disclosed; and
  - (2) **Loss** of the **Company** if any **Insured Person** who is or was a Chief Executive Officer or Chief Financial Officer of the **Company** knew, as of the policy inception date, the facts that were not accurately and completely disclosed.
- C. The foregoing shall not apply to any **Insured Person** who did not know as of the policy inception date that such inaccurate or incomplete disclosure had been provided to the **Insurer** or included in the **Application**.
- D. The Insurer shall not be entitled to under any circumstances to rescind this policy.

### VIII. EXTENDED REPORTING PERIOD

- A. If the **Parent Organization** shall cancel or if the **Insurer** or the **Parent Organization** refuses to renew this policy or any **Coverage Part**, then, with respect to the policy or the **Coverage Part** which was canceled or non-renewed, the **Parent Organization** shall have the right, upon payment of an additional premium as described below, to an extension of coverage granted by this policy or the **Coverage Part**, for a period of one to six years following the effective date of such cancellation or nonrenewal. As used herein, this extension of coverage shall be referred to as the "Extended Reporting Period". Such "Extended Reporting Period" shall only apply to **Claims** first made against any **Insured** during the Extended Reporting Period, but only with respect to any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy.
- B. The additional premium for a one-year Extended Reporting Period shall be one hundred percent (100%) of the "full annual premium." The additional premium for a two to six-year Extended Reporting Period shall be the amount as determined by the **Insurer**. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium of this policy must have been paid. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 90 days of the effective date of cancellation or nonrenewal.
- C. In the event of a Transaction pursuant to Section VI of these General Terms and Conditions, the **Parent Organization** shall have the right to request an offer from the **Insurer** for an Extended Reporting Period with respect to **Wrongful Acts** occurring prior to the effective time of the Transaction, and the **Insurer** shall offer such Extended Reporting Period pursuant to such terms, conditions, exclusions, and additional premium as the **Insurer** may reasonably decide. In the event such, Section VIII.B. above shall not apply.
- D. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.

### IX. ACTION AGAINST THE INSURER

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy. No person or organization shall have any right under this policy to join the **Insurer** as party to any action against an **Insured** or the **Company** to determine an **Insured's** liability, nor shall the **Insurer** be impleaded by the **Company** or any **Insured Person** or their legal representatives.

### X. SUBROGATION

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured's** rights of recovery thereof, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights including, but not limited to, the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured**. In no event,

however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this policy unless a final and non-appealable adjudication in the underlying action adverse to such **Insured Person** establishes such **Insured Person** committed a deliberate criminal or deliberate fraudulent act or gained remuneration, profit or advantage to which such **Insured Person** was not legally entitled.

The **Insurer** assumes no duty to recover any amounts paid under this policy; however, any amounts as may be recovered pursuant to the exercise of the **Insurer's** rights of subrogation shall be applied as follows: (1) to the repayment of expenses incurred in exercising any rights of subrogation, (2) to **Loss** in excess of the Limits of Liability hereunder paid by the **Insured**, and (3) to **Loss** paid by the **Insurer**.

### XI. OTHER INSURANCE

Insurance provided by this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly stated to be excess over the applicable Limit of Liability provided under this policy. This policy shall be specifically excess to any other insurance which provides for a duty to defend a **Claim** for which this policy also provides coverage. Notwithstanding the foregoing, such insurance as is provided by this policy shall apply as primary to any personal umbrella excess liability insurance purchased by an **Insured Person**.

### XII. BANKRUPTCY

Bankruptcy or **Insolvency** of any **Insured** shall not relieve the **Insurer** of its obligations under this policy. In the event a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the U.S. Bankruptcy Code or any similar state, local or foreign law, and there is a **Loss** for a covered **Claim** for which payment is due under this policy, the **Insured** shall make a request to waive and release any automatic stay or injunction that may apply to this policy or its proceeds in such proceeding, to the extent permitted under the applicable law; and shall agree not to oppose or object to any application or effort by the **Insurer** or any other **Insured** to obtain relief from any such stay or injunction.

### XIII. CONFORMANCE TO LAW

In the event that there is an inconsistency between any (a) state amendatory endorsement attached to this policy, or any other wording attached to this policy to comply with applicable law; and (b) any other term, condition or limitation of this policy; then, to the extent permitted by law, the **Insurer** will resolve the inconsistency by applying the terms, conditions, or limitations that are more favorable to the **Insured**.

### XIV. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

### XV. ENTIRE AGREEMENT

By acceptance of this policy, the Insureds and the Insurer agree that this policy (including the Application) and any written endorsements attached hereto constitute the entire agreement between the parties.

### XVI. NOTICES AND AUTHORITY

It is agreed that the **Parent Organization** shall act on behalf of the **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining to exercise any right to an Extended Reporting Period; *provided, however*, that the foregoing shall not limit the ability of the **Company** or an **Insured** to provide notice of a **Claim**, or circumstance as detailed in Section IV., or to elect the Extended Reporting Period pursuant to Section VIII.

### XVII. CURRENCY

All **Loss**, premium, Limits of Liability, retention and any other amounts under this policy are expressed and payable in currency of the United States of America. If any settlement, judgment, **Defense Costs** or other **Loss** under the policy is incurred, stated, determined or adjudicated in a currency other than United States

dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the obligation of the **Insurer** to pay such **Loss** is established.

**XVIII. COVERAGE TERRITORY**

Coverage provided by this policy shall apply to **Wrongful Acts** occurring or **Claims** made worldwide.

**XIX. HEADINGS**

The descriptions in the headings of this policy 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 signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



*President*



*Secretary*