

CORPORATE COUNSEL PREMIER[®]

PROFESSIONAL LIABILITY INSURANCE FOR CORPORATE COUNSELS

In consideration of the payment of the premium, and in reliance upon the **application** and the statements therein, which form a part of this policy, **we** agree as follows:

1. INSURING AGREEMENTS

Solely with respect to **claims** for **wrongful acts** first made against an **insured person** during the **policy period** or any **extended reporting period**, if applicable, and reported to **us** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy affords the following coverage:

COVERAGE A: CORPORATE COUNSEL PROFESSIONAL LIABILITY

We shall pay amounts, in excess of the applicable Retention, an **insured person** is legally obligated to pay as **damages**, except when and to the extent that an **organization** has indemnified the **insured person** for **damages**.

COVERAGE B: ORGANIZATION INDEMNIFICATION OF INSURED PERSONS

We shall pay amounts, in excess of the applicable Retention, an **organization** is legally obligated to pay as **damages**, but only to the extent that an **organization** has indemnified an **insured person** for **damages**.

COVERAGE C: DEFENSE OF INSURED PERSONS

- (a) **Our Duty To Defend:** **We** have the right and duty to defend a **claim** brought against an **insured person** alleging **wrongful acts**, even if the **claim** is groundless, false or fraudulent. **We** shall pay for **defense costs** incurred in the defense of a **claim** for **wrongful acts**. **We** shall have no duty to defend a **claim** insured by **directors and officers coverage** or a **securities claim**.
- (b) **Defense costs:** **We** shall indemnify for **defense costs** incurred in: (1) any **securities claim**; or (2) in any **claim** where the coverage afforded by this policy is excess of **directors and officers coverage**, provided that such **defense costs** are incurred with **our** prior written consent.
- (c) **When Our Duty Ends:** **Our** duty to defend and any obligation to indemnify an **insured person** shall end if the **insured person** or, if applicable, an **organization**, fails or refuses to consent to a settlement that **we** recommend and the claimant will accept. The **insured person** must then defend the **claim** at their own expense. As a consequence of such failure or refusal to consent, **our** liability for **damages** and **defense costs** shall not exceed the amount for which **we** could have settled such **claim** had the **insured person** or, if applicable, an **organization**, consented, plus **defense costs** incurred prior the time **we** made such recommendation, plus seventy percent (70%) of **defense costs** incurred with **our** consent after the date of **your** refusal.

Provided, however, this Sub-paragraph (c) shall not apply to the settlement of the following proceedings that are brought in connection with a **securities claim** when such settlement would require an **insured person** to enter into a plea of guilty:

- (1) criminal proceeding commenced by return of indictment, return of information, notice of charges or similar document;
- (2) a civil, administrative or regulatory investigation of an **insured person** by the Securities and Exchange Commission (SEC), Department of Justice or a similar state or foreign government

authority, commenced by the service of a subpoena on such **insured person**.

2. DEFINITIONS

- (a) **“Administrative proceeding claim”** means a judicial, administrative, bar association or other proceeding against a **corporate counsel**, which is concerning either:
- (1) the eligibility or license of such **corporate counsel** to practice law; or
 - (2) compliance with the Sarbanes-Oxley Act of 2002 and any rule or regulations promulgated thereunder or pursuant thereto.
- (b) **“Application”** means as of the inception of the **policy period**:
- (1) each and every signed application, any attachments to such applications, any separate written warranty or representation, or other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **insurer** or any of its affiliates of which this policy is a renewal, replacement or which it succeeds in time (other than public filings by or on behalf of an **organization** made with the SEC; and
 - (2) each and every public filing by or on behalf of an **organization** made with the SEC including, but not limited to, the **organization’s** Annual Report(s), 10Ks, 10Qs, 8Ks and proxy statements, any financial information in such filings, and any certifications relating to the accuracy of the foregoing, provided that such public filing was filed during the period of time:
 - (i) beginning at the start of the twelve (12) month period immediately preceding the first submission to the **insurer** in connection with the underwriting of this policy; and
 - (ii) ending at the inception of the **policy period**.
- (c) **“Bodily injury”** means physical injury, sickness, disease, pain or death, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or emotional distress.
- (d) **“Claim”** means:
- (1) a written demand for monetary, non-monetary or injunctive relief;
 - (2) a written request to toll or waive a statute of limitations relating to a potential **claim** against an **insured person**;
 - (3) a **suit**;
 - (4) an **administrative proceeding claim**; or
 - (5) a **securities claim**.
- (e) **“Corporate counsel”** means any attorney at law admitted to the bar in or otherwise licensed to practice of law in any of the United States of America or its territories, Canada or any other foreign jurisdiction, but solely while an **employee** of an **organization**.
- Notwithstanding the foregoing, **corporate counsel** shall not mean a **secondment attorney**.
- (f) **“Damages”** means any amount that an **insured person** shall be legally required to pay because of judgments, arbitration awards or settlements negotiated by **us** or by an **insured person** in accordance with Coverage C.
- “Damages”** also means with respect to a covered judgment:
- (1) pre-judgment interest;

- (2) post-judgment interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court that covered part of the judgment within the applicable Limit of Liability; and
- (3) subject to this policy's other terms, conditions, exclusions and other limitations, including but not limited to exclusions relating to profit or advantage, fraud or criminal acts:
 - (i) punitive;
 - (ii) exemplary; and
 - (iii) multiple damages.

The enforceability of this Sub-paragraph (3) of this definition shall be governed by the applicable law that most favors coverage for such punitive, exemplary and multiple damages.

Provided, however, **damages** shall not mean, and this policy shall not cover:

- (1) civil or criminal fines or penalties;
 - (2) taxes;
 - (3) any amounts for which an **insured person** is not financially liable or which are without legal recourse to an **insured person**;
 - (4) the costs and expenses of complying with any injunctive or other form of non-monetary relief; and
 - (5) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (g) "**Defense costs**" means all reasonable and necessary fees charged by attorneys designated pursuant to the terms of this policy and all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if incurred by **us**, or by an **insured person** with **our** prior written consent, including the costs of appeal, attachment or similar bonds arising out of a covered judgment. **We** have no obligation to provide such bonds. "**Defense costs**" shall not include:
- (1) compensation, fees, overhead or benefit expenses associated with an **insured person** or an **executive** or **employee** of any **organization**; or
 - (2) fees, costs or expenses incurred prior to the time that a **claim** is first made against an **insured person**.
- (h) "**Directors and officers coverage**" means any valid and collectible Directors and Officers liability insurance coverage available to an **insured person** (or any excess coverage thereto), including, but not limited to, such coverage as provided under any policy or self insurance program for managerial liability, directors and officers liability, general partner liability, employment practices liability, catastrophe coverage or similar insurance ("D & O Coverage").
- (i) "**Domestic partner**" means any natural person legally recognized as a domestic or civil union partner under: (i) the provisions of any applicable federal, state or local law; or (ii) the provisions of any formal program established by an **organization**.
- (j) "**Employee**" means any past, present or future employee, including any part-time, seasonal and temporary employee of an **organization**.
- (k) "**Executive**" means any:
- (1) past, present or future duly elected or appointed director, officer, partner, trustee or governor of an **organization**, management committee member of a joint venture or member of the management board of a limited liability company (or equivalent position) of an **organization**;

- (2) past, present or future General Counsel or Risk Manager (or equivalent position) of the **named organization**; or
- (3) past, present or future person in a duly elected or appointed position in an entity organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in Sub-paragraph (1) of this definition.

- (l) **"First inception date"** means the date set forth as such in Item 6 of the Declarations.
- (m) **"Foreign Jurisdiction"** means any jurisdiction, other than the United States of America or any of its territories or possessions.
- (n) **"Indemnifiable loss"** means **damages** and **defense costs** for which an **organization** has indemnified or is permitted or required to indemnify an **insured person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **organization**, including the advancement of **defense costs**.

For the purposes of determining whether **damages** and **defense costs** constitute **indemnifiable loss**, unless an **organization** is unable to do so due to **insolvency**, an **organization** shall be conclusively deemed to have indemnified the **insured persons** to the maximum extent that an **organization** is permitted or required to provide such indemnification pursuant to law, common or statutory, or contract, or by the charter or by-laws of an **organization**, which are hereby deemed to incorporate the broadest provisions of the law which determines or defines such rights of indemnity.

- (o) **"Insolvency"** means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an **organization**; (ii) an **organization** becoming a debtor-in-possession pursuant to the United States of America bankruptcy law; or (iii) a bankruptcy petition is filed by or against an **organization**, and as to (i), (ii) or (iii), the equivalent status outside the United States of America.
- (p) **"Insured person"** means any:
 - (1) **corporate counsel**;
 - (2) **employee** of an **organization** who supports a **corporate counsel** in the performance of **legal services**;
 - (3) licensed attorney provided by an employment contractor or agency under a written agreement between an **organization** and the employment contractor or agency to perform **legal services** for or on behalf of an **organization**; and
 - (4) any independent contractor that is an attorney at law admitted to the bar in or otherwise licensed to the practice of law in any of the United States of America or its territories, Canada or any other foreign jurisdiction, who, pursuant to a written agreement with an **organization**, has been retained to provide **legal services** for or on behalf of an **organization**.

Notwithstanding the foregoing, **corporate counsel** shall not mean a **secondment attorney**.

- (q) **"Legal services"** means any professional legal services that are rendered by:
 - (1) a **corporate counsel**, but solely in his or her capacity as an **employee** of an **organization**;
 - (2) a **corporate counsel**, but solely while a full time, permanent **employee** of an **organization** (including **moonlighting services** and *pro bono* services); and
 - (3) any **insured person**, but solely while acting under the supervision of and at the direction of a **corporate counsel**.

Legal services shall also include notarizing, certifying or acknowledging any signature rendered by (1) through (3) above.

- (r) **"Management control"** means: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **organization**, 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 a limited liability company.
- (s) **"Moonlighting services"** means professional legal services, including, but not limited to, notarizing, certifying or acknowledging any signature, that are rendered by a **corporate counsel** outside the scope of their employment with an **organization**; provided that **moonlighting services** shall not include such services performed by a **corporate counsel** in their capacity as owner, principal, partner or employee of an entity that is not an **organization**.
- (t) **"Named organization"** means the entity named as such in Item 1 of the Declarations.
- (u) **"Non-indemnifiable loss"** means **damages** and **defense costs** for which an **organization** has not indemnified an **insured person** either because of **insolvency** or because such **organization** is not permitted or required to indemnify the **insured person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **organization**.
- (v) **"Organization"** means the **named organization** and any **subsidiaries**.
- (w) **"Personal injury peril"** means any:
- (1) false arrest, detention or imprisonment;
 - (2) malicious prosecution;
 - (3) libel or slander or other defamatory or disparaging materials;
 - (4) publication or an utterance in violation of an individual's right to privacy;
 - (5) wrongful entry or eviction, or other invasion of the right to private occupancy; and
 - (6) if arising out of (1) through (5) above, mental anguish, mental injury, shock, humiliation or emotional distress
- (x) **"Policy period"** means the period set forth as such in Item 2 of the Declarations.
- (y) **"Pollutants"** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumers, acid, alkalis, chemicals and **waste**. **"Waste"** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- (z) **"Related wrongful act(s)"** means **wrongful act(s)** which are the same, related or continuous, or **wrongful act(s)** which arise from a common nucleus of facts, regardless of whether a **claim** alleging such **related wrongful act(s)** involve the same or different claimants, **insureds** or legal causes of action. All **related wrongful acts** shall be considered made at the time the first such **wrongful act** occurred.
- (aa) **"Retroactive date"** means the date set forth as such in Item 5 of the Declarations.
- (bb) **"Secondment attorney"** means a non-**employee** attorney employed by an outside law firm and temporarily assigned by agreement between such law firm and an **organization** to perform **legal services** at the direction of an **organization**.
- (cc) **"Securities claim"** means a **claim** made against an **insured person** arising from **legal services** after the **first inception date**:

- (1) alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities (including, but not limited to, the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an **organization**; or
 - (ii) brought by a security holder, purchaser or seller of securities of an **organization** with respect to such security holder's, purchaser's or seller's interest in securities of such **organization**; or
- (2) brought derivatively on behalf of an **organization** by a security holder of such **organization**.

"Securities claim" also means the following in connection with (1) or (2) above:

- (1) a criminal proceeding which is commenced by indictment, information, notice of charges or similar document; or
- (2) a civil, administrative or regulatory investigation of an **insured person** by the Securities and Exchange Commission, Department of Justice or a similar state or foreign government authority, commenced by the service of a subpoena upon such **insured person**.

(dd) **"Subsidiary"** means:

- (1) if "Blanket" has been checked in Item 1(c) of the Declarations, (i) any for-profit entity of which the **named organization** has **management control** ("**controlled entity**") on or before the inception of the **policy period** either directly or indirectly through one or more other **controlled entities**; and (ii) any not-for-profit entity under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by an **organization**; or
- (2) if "Blanket" has not been checked, then only those entities listed as such by endorsement to this policy.

(ee) **"Suit"** means:

- (1) a civil proceeding for monetary, non-monetary or injunctive relief that is commenced by service of a complaint or similar pleading; or
- (2) a binding arbitration proceeding in which **damages** are alleged and to which an **insured** must submit or does submit with **our** prior consent.

(ff) **"Transaction"** means the occurrence of any of the following events:

- (1) the **named organization** shall consolidate with, merge into, or sell all or substantially all of its assets to any person or entity or group of persons or entities acting in concert;
- (2) any person or entity or group of persons or entities acting in concert shall acquire **management control** of the **named organization**; or
- (3) the **directors and officers coverage** shall be cancelled or nonrenewed and such cancellation or non-renewal results in a lapse of coverage.

(gg) **"We," "us," "insurer" or "our"** mean the insurer named in Item 9 of the Declarations.

(hh) **"Wrongful act"** means any actual or alleged:

- (1) negligent act, error, omission, breach of duty, misstatement or misleading statement; or
 - (2) **personal injury peril**
- committed or omitted by an **insured person** in the performance of **legal services**.

3. SPOUSAL AND LEGAL REPRESENTATIVE EXTENSION

Subject otherwise to the terms hereof, this policy shall cover **damages** or **defense costs** arising from any **claim** made against (i) the estates, heirs, or legal representatives of a deceased **insured person**, the legal representatives of such **insured person** in the event of incompetency, insolvency or bankruptcy, who was an **insured person** at the time the **wrongful acts** upon which such **claims** are based were committed or omitted; or (ii) the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **domestic partner** of an **insured person** for all **claims** arising solely out of his or her status as the spouse or **domestic partner** of an **insured person**, including a **claim** that seeks damages recoverable from marital community property, property jointly held by the **insured person** and the spouse or **domestic partner** or property transferred from the **insured person** to the spouse or **domestic partner**; provided, however, that this extension shall not afford coverage for any **claim** for any actual or alleged **wrongful act** of the spouse or **domestic partner**, but shall apply only to **claims** arising out of any actual or alleged **wrongful acts** of an **insured person**, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

This policy does not cover any **claim**:

(a) alleging, arising out of or resulting from, directly or indirectly, any:

- (1) with respect to all **claims** other than **securities claims**, any: (i) dishonest, fraudulent, criminal or malicious act (other than malicious prosecution) or omission; (ii) intentional or knowing violation of the law; (iii) profit, remuneration or pecuniary advantage to which an **insured person** was not legally entitled; or (iv) commingling, misappropriation, or improper use of funds; however, **we** will defend a **claim** (other than a **securities claim**) against an **insured person** alleging any of the foregoing conduct until there is a final judgment against, final adjudication against, adverse finding of fact against in a binding arbitration proceeding or plea of guilty or no contest by an **insured person** as to such conduct, at which time the **insured person** shall reimburse **us** for **defense costs**; or
- (2) with respect to **securities claims**, any: (i) deliberate criminal or deliberate fraudulent act; or (ii) profit, remuneration or pecuniary advantage to which an **insured person** was not legally entitled; provided, however, **we** will defend a **securities claim** against an **insured person** alleging any of the foregoing conduct until there is a final judgment against, final adjudication against, adverse finding of fact against or plea of guilty or no contest by an **insured person** as to such conduct, at which time the **insured person** shall reimburse **us** for **defense costs**;

for the purpose of determining the applicability of this exclusion: (i) the facts pertaining to and knowledge possessed by any **insured person** shall not be imputed to any other **insured person**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future Chairman of the Board, President, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or General Counsel (or equivalent positions) of an **organization** shall be imputed to an **organization**.

- (b) alleging, arising out of or resulting from, directly or indirectly the employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim); provided, this exclusion shall not apply to the **legal services** provided by an **insured person** in connection with the employment of any individual or any employment practice, whether such **legal services** are provided to a third party or to the **organization**;
- (c) alleging, arising out of or resulting from, directly or indirectly, any **wrongful act** committed or omitted before the **retroactive date** or any **related wrongful act** thereto;
- (d) alleging, arising out of or resulting from, directly or indirectly, any **related wrongful acts** alleged or

contained in any **claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time, whether or not such policy affords coverage for such **related wrongful acts**;

- (e) alleging, arising out of or resulting from, directly or indirectly, any **claim**, arbitration, mediation, litigation, administrative proceeding (including disciplinary and licensing), bankruptcy or regulatory proceeding or investigation, pending as of or commenced prior to the **first inception date**, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **claim**, arbitration, mediation, litigation or administrative, bankruptcy or regulatory proceeding or investigation;
- (f) alleging, arising out of or resulting from, directly or indirectly, any **bodily injury** or damage to, loss of use, or destruction of any tangible property;
- (g) that is brought directly or indirectly, by or on behalf of the **organization**; provided, however, this exclusion shall not apply to **defense costs** incurred in connection with such **claims**;
- (h) that is brought by a security holder or member of an **organization**, whether directly or derivatively, unless such security holder or member **claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of an **insured person**, an **organization** or any **executive** of an **organization**; provided, however, this exclusion shall not apply to:
 - (1) any **claim** brought by any past **executive** of an **organization** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for an **organization** for at least four (4) years prior to such **claim** being first made against any person; or
 - (2) any **claim** brought by an **executive** of an **organization** formed and operating in a **foreign jurisdiction** against such **organization** or any **executive** thereof, provided that such **claim** is brought and maintained outside the United States of America, Canada or any other common law country (including any territories thereof);
- (i) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974; provided, however, this exclusion shall not apply to **claims** arising out of a **corporate counsel** providing **legal services** to an ERISA fiduciary;
- (j) for violation(s) of any of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law;

It is further understood and agreed that **we** shall not be liable to make any payment for **damages** or **defense costs** in connection with a **claim** made against an **insured** alleging, arising out of, based upon, attributable to or in any way relating to:

- (1) the refusal, failure or inability of any **insured(s)** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (as opposed to tort-based back pay or front pay damages for torts other than conversion);
 - (2) improper payroll deductions taken by any **insured(s)** from any **employee(s)** or purported **employee(s)**; or
 - (3) failure to provide or enforce legally required meal or rest break periods;
- (k) alleging, arising out of or resulting from, directly or indirectly, any (i) presence of **pollutants**, (ii) the

actual or threatened discharge, dispersal, release or escape of **pollutants**, or (iii) direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of **pollutants**; provided, however, this exclusion shall not apply to **claims** alleging any of the foregoing where the underlying **legal services** performed by an **insured person** giving rise to such **claim** were not the direct immediate cause of the foregoing;

- (l) alleging, arising out of or resulting from, directly or indirectly, any misappropriation of a trade secret;
- (m) alleging, arising out of or resulting from any services performed by any contract, seasonal, part-time or leased lawyer other than **legal services** provided for an **organization** at the direction of **corporate counsel**;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, any **insured person** notarizing, certifying or acknowledging any signature not made in the presence of such **insured person** at the time of such notarization, certification or acknowledgment;
- (o) for the return or restitution of fees, expenses or costs, or other disgorgement;
- (p) alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in or assets of any entity is inadequate; provided, however, that this exclusion shall not apply to **defense costs** or to any **non-indemnifiable loss** in connection therewith; or
- (q) for compensation, salary, wages, fees, benefits, overhead, charges or expenses of any (i) **insured person**; (ii) **employee**; (iii) **executive** of an **organization**; or (iv) **organization**.

5. LIMIT OF LIABILITY (FOR ALL DAMAGES AND DEFENSE COSTS)

- (a) The aggregate Limit of Liability set forth in the Declarations is the most **we** will pay for **damages** and **defense costs** under this policy regardless of the number of persons, occurrences, **claims** or entities covered by this policy, or claimants or **claims** brought against any **insured person**.
- (b) **Our** total liability for all **damages** and **defense costs** arising from each **claim** made against an **insured person** and reported to **us** pursuant to the terms of this policy, alleging a **wrongful act**, or any **related wrongful acts** to such first **wrongful act**, shall not exceed the per **claim** Limit of Liability set forth in the Declarations. The per **claim** Limit of Liability is part of and not in addition to the aggregate Limit of Liability for all **claims** as stated in the Declarations.
- (c) The Limit of Liability for any **extended reporting period** shall be part of and not in addition to the Limit of Liability for the **policy period**.
- (d) Each and every **claim** that is deemed made during the **policy period**, or an **extended reporting period** pursuant to Paragraph 7(b)(2), shall also be subject to the Limit of Liability for the **policy period**.
- (e) **Damages** and **defense costs** arising out of the same **wrongful act** or **related wrongful acts** thereto shall be deemed to arise from the first such **wrongful act**.

6. RETENTION

- (a) The **insurer** shall only be liable for the amount of **damages** and **defense costs** arising from each **claim** that exceeds the applicable Retention amount stated in Items 4(a) and 4(b) of the Declarations. The Retention amounts must be borne by an **insured person** or an **organization** and remain uninsured. The Retention amount stated in:
 - (1) Item 4(a) applies to **non-indemnifiable loss**; and
 - (2) Item 4(b) applies to all other **damages** and **defense costs**.
- (b) In the event a **claim** triggers more than one Retention amount, the highest applicable Retention amount shall be deemed the Retention amount applicable to the **claim**. A single Retention amount

shall apply to all **damages** and **defense costs** arising from all **claims** alleging the same **wrongful act**, or any **related wrongful acts** to such first **wrongful act**. In our sole and absolute discretion, we may advance all or part of the applicable Retention amount in which case the **insured person** and an **organization** agree to repay us immediately after we notify the **insured person** and an **organization** of that payment.

- (c) Notwithstanding anything in the policy to the contrary, there shall be no Retention for **securities claims** that, pursuant to Clause 15. **OTHER INSURANCE**, this policy applies only as excess.

7. NOTICE AND AUTHORITY

- (a) With respect to **claims** or circumstances, notice and all other information and documentation required to be provided under this policy shall be directed to us at the address indicated in Item 8 of the Declarations. To be effective, such notice must reference this policy. If mailed, the date of mailing shall constitute the date that such notice or information was given and proof of mailing shall be sufficient proof of notice.
- (b) For all coverage under this policy:
- (1) before coverage will apply, notice in writing of a **claim** made against an **insured person** must be given to us as soon as practicable after notice of such **claim** is reported to either the **insured person** against whom such **claim** is made or your offices of the General Counsel or Risk Manager, but in all events no later than:
 - (i) the end of the **policy period** or any applicable **extended reporting period**; or
 - (ii) sixty (60) days after the end of the policy period, but only if such **claim** is made within the final sixty (60) days of the **policy period** and reported no later than sixty (60) days after the **claim** was first made;
 - (2) if notice pursuant to Sub-paragraph 7(b)(1) above has been given to us, then any **claim** which is subsequently made against an **insured person** and reported to us alleging, arising out of, based upon or attributable to the facts alleged in the **claim** for which such notice has been given, or alleging any **related wrongful act** shall be considered related to the first **claim** and made at the time such notice was given; and
 - (3) if during the **policy period** or during an applicable **extended reporting period** an **insured person** shall become aware of any circumstances which may reasonably be expected to give rise to a **claim** being made against an **insured person** for a **wrongful act** that occurs prior to the end of the **policy period**, and, during the **policy period** or any applicable **extended reporting period** written notice is given to us of (i) such circumstances, (ii) the **wrongful act** allegations that are anticipated, and (iii) the reasons for anticipating such a **claim**, with full particulars as to dates, persons and entities involved, then any **claim** that is subsequently made against an **insured person** arising out of such **wrongful act**, or the same **wrongful act** or **related wrongful acts** thereto, shall be treated as a **claim** made against such **insured person** and reported to us at the time such notice of such circumstances was given.

8. WHAT YOU MUST DO IN THE EVENT OF A CLAIM

- (a) In addition to providing notice as required in this policy, each and every **insured person** and **organization** must also:
- (1) send us copies of all demands, suit papers, other legal documents and invoices for **defense costs** received by such **insured person**, as soon as practicable;
 - (2) immediately record the specifics of any **claim** and the date such **insured person** first received such **claim**;

- (3) upon **our** request, furnish to **us** any and all documentation within the possession of the **insured person**; and
- (4) give to **us**, and to any counsel **we** select to represent an **insured person** in connection with a **claim**, full cooperation and such information as **we** or the counsel may require, including, but not limited to, assisting **us** or the counsel in: (i) any investigation of a **claim**, or other matter relating to the coverage afforded under this policy (including submission to an examination by **us** or **our** designee, under oath if required by **us**); (ii) making settlements; (iii) enforcing any legal rights any **insured person** or **we** may have against any person or entity who may be liable to an **insured person**; (iv) attending depositions, hearings and trials; (v) securing and giving evidence, and obtaining the attendance of witnesses; and (vi) any inspection or survey conducted by **us**.
- (b) No **insured person** or **organization** shall admit any liability, settle any **claim**, assume any financial obligation or pay any money in connection with any **claim** without **our** prior written consent. If any **insured person** or **organization** does, it will be at their own expense and such amounts shall not be applied to the applicable Retention.
- (c) **We** shall have the right to associate fully and effectively with each and every **insured person** and, with respect to Coverage B, an **organization**, in the defense of any **claim** or any matter that involves, or appears reasonably likely to involve, the **insurer**, including, but not limited to, negotiating a settlement.
- (d) The following shall only apply to a **securities claim** and related **claims** for which there is no other **directors and officers coverage**:

Affixed as Appendix A hereto and made a part of this policy is a list of Panel Counsel law firms ("**panel counsel firms**"). The list provides the **insured person** with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of a **claim** made against an **insured person**.

For defense of **claim(s)**, the **insured person(s)** shall select a **panel counsel firm** to defend such **claim(s)** made against the **insured person** in the jurisdiction in which the **claim** is brought. In the event the **claim** is brought in a jurisdiction not included on the list, the **insured person(s)** shall select a **panel counsel firm** in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **claim** is brought or where the corporate headquarters of the **named organization** is located. In such instance the **insured persons** and the **insurer** shall jointly select a non-**panel counsel firm** in the jurisdiction in which the **claim** is brought to function as "local counsel" on the **claim** to assist the **panel counsel firm** which will function as "lead counsel" in conducting the defense of the **claim**.

With **our** express prior written consent, an **insured person** may select a **panel counsel firm** different from that selected by another **insured person** defendant if such selection is required due to an actual conflict of interest.

- (e) In all events, no **insured person** shall intentionally take any action, or fail to take any required action, which prejudices **our** rights.

9. EXTENDED REPORTING PERIOD

- (a) *Automatic Extended Reporting Period*: If the **named organization** or **we** shall refuse to renew this policy, the **named organization** shall have the right following the effective date of such nonrenewal to a period of sixty (60) days (the "**automatic extended reporting period**") in which to give written notice to **us** of **claims** first made against an **insured person** during the **automatic extended reporting period** for any **wrongful act** committed or omitted prior to the end of the **policy period** and otherwise covered by this policy. The **automatic extended reporting period** shall not apply where an **extended reporting period** has been purchased or to **claims** that are covered under any subsequent insurance an **insured person** purchases or that is purchased for their benefit, or that would be covered, but for the

exhaustion of the amount of insurance applicable to such **claims** or that is within any applicable Retention amount.

- (b) *Optional Extended Reporting Period:* Except as indicated below, if the **named organization** shall cancel or **we** or the **named organization** refuse to renew this policy, the **named organization** shall have the right to a period of up to three years following the effective date of such cancellation or nonrenewal (an "**extended reporting period**"), upon payment of an additional premium amount of up to
- (1) seventy-five percent (75%) of the full annual premium, for a period of one (1) year;
 - (2) one hundred and fifty percent (150%) of the full annual premium, for a period of two (2) years; or
 - (3) two hundred percent (200%) of the full annual premium, for a period of three (3) years,
- in which to give to **us** written notice pursuant to Clause 7(b)(1) of the policy of **claims** (1) first made against an **insured person** during said **extended reporting period** and (2) solely with respect to a **wrongful act** committed or omitted prior to the end of the **policy period** and otherwise covered by this policy. If the **named organization** exercises its right to purchase an **extended reporting period**, that period incepts at the end of the **policy period** and there shall be no **automatic extended reporting period**.
- (c) *Transaction Triggered Extended Reporting Period:* In the event of a **transaction**, the **named organization** shall have the right to request an offer from **us** of an **extended reporting period** (solely with respect to pre-**transaction wrongful acts**). Upon **our** receipt of such a request, **we** shall offer such **extended reporting period** pursuant to such terms, conditions, exclusions and additional premium as **we** may decide in **our** sole and absolute discretion. In the event of a **transaction**, the right to an **extended reporting period** shall not otherwise exist except as provided in this Paragraph.
- (d) *Common Extended Reporting Period Terms:* An **extended reporting period** is not cancelable. This Clause 9 shall not apply to any cancellation resulting from non-payment of premium. The rights contained in this Clause 9 shall terminate unless written notice of election of an **extended reporting period** together with any additional premium due is received by **us** no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or **transaction**.

10. ORGANIZATIONAL CHANGES

- (a) *Transactions:* If there is a **transaction** during the **policy period**, this policy shall continue in full force and effect as to **wrongful acts** committed or omitted prior to the effective time of the **transaction**, but there shall be no coverage afforded by any provision of this policy for any **wrongful act** after the effective time of the **transaction**, unless (i) within thirty (30) days of such **transaction**, **we** have been provided with full particulars of the **transaction**, the related entities and any other information requested by **us**, and (ii) the **named organization** or its successor, has agreed to any additional premium and amendments to this policy required by **us**.

Coverage for post-**transaction wrongful acts** is conditioned upon the **named organization** or its successor paying when due any additional premium required by **us**. This policy may not be canceled after the effective time of a **transaction** and the entire premium for this policy shall be deemed earned as of such time.

- (b) *Subsidiary Additions:* If "Blanket" has been checked in Item 1(c) of the Declarations, **subsidiary** also includes any for-profit entity of which the **named organization** first had **management control** during the **policy period**, whether directly or indirectly through one or more other **subsidiaries**, and:
- (1) whose revenues do not exceed ten percent (10%) of the aggregate annual revenues of an **organization** (as of the inception date of this policy); or
 - (2) whose revenues exceed ten percent (10%) or more of the aggregate annual revenues of an

organization (as of the inception date of this policy), but such entity shall be a “**subsidiary**” only once the **named insured** shall have provided **us** with full particulars of the new **subsidiary**, including the number of **corporate counsel** of such new **subsidiary**, and agreed to any additional premium and amendments to this policy required by **us** relating to such **subsidiary**. Further, coverage as shall be afforded to any **subsidiary** and any **corporate counsel, executive or employee** thereof is conditioned upon the **named insured** paying when due any additional premium required by **us** relating to such **subsidiary**. Such additional premium may be based on, among other things, the number of **corporate counsel** of such **subsidiary**.

- (c) *Other Organizational Changes:* In all events, coverage as is afforded under this policy with respect to a **claim** made against an **insured person** shall only apply for **wrongful acts** committed or omitted or allegedly committed or omitted by an **insured person** employed by a **subsidiary**, (i) after the effective time the **named organization** obtained **management control** of such **subsidiary**, and (ii) prior to the effective time that the **named organization** no longer has **management control** over such **subsidiary**, and solely while such **insured person** is employed as such by the **named organization** or a **subsidiary**.

11. WHERE COVERAGE APPLIES

We cover **wrongful acts** that occur, **claims** that are brought and **damages** incurred anywhere in the world, unless such coverage is prohibited by law.

12. ACTIONS AGAINST US

- (a) This policy is for the **insureds’** benefit only and is not to be construed as providing any right or benefit to any other person or organization. No suit, action or legal proceeding shall be brought against **us** under this **policy** by any person or organization other than an **insured**.
- (b) An **insured** may sue **us** to recover up to the applicable Limit of Liability under this policy only after liability of the **insured person** has been decided by:
- (1) an arbitration award as a result of arbitration;
 - (2) a trial or appeal, after which a final judgment has been entered; or
 - (3) a written agreement signed by the **insured person, us** and the party making the **claim**.

Any **insured** who has secured such award, judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join **us** as a party to any **claim** against an **insured person** nor shall **we** be impleaded by an **organization** or any **insured person**, their spouse, or any legal representative of the foregoing.

13. ORDER OF PAYMENTS

In the event of **damages** and **defense costs** arising from a covered **claim** for which payment is due under the provisions of this policy, then the **insurer** shall in all events:

- (a) first, pay **damages** and **defense costs** for which coverage is provided under Coverage A of this policy; then
- (b) only after payment of **damages** and **defense costs** has been made pursuant to Sub-paragraph 13(a) above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the Chief Executive Officer (or equivalent position) of the **named organization**, either pay or withhold payment of such other **damages** and **defense costs** for which coverage is provided under Coverage B of this policy; and then
- (c) In the event the **insurer** withholds payment pursuant to Sub-paragraph 13(b) above, then the **insurer** shall at such time and in such manner as shall be set forth in written instructions of the Chief

Executive Officer (or equivalent position) of the **named organization** remit such payment to an **organization** or directly to or on behalf of an **insured person**.

The bankruptcy or insolvency of any **organization** or any **insured person** shall not relieve the **insurer** of any of its obligations to prioritize payment of covered **damages** and **defense costs** under this policy pursuant to this Paragraph 13.

14. SUBROGATION

To the extent **we** pay any **damages** and/or **defense costs**, **we** shall be subrogated to any **insured person's** rights of recovery therefore, including without limitation any right to indemnification or advancement from an **organization**. The **insured person** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable **us** to effectively bring suit in the name of the **insured person**, and shall take no action which impairs **our** rights of subrogation or recovery.

15. OTHER INSURANCE

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance available to any **insured person** unless such other insurance is written only as specific excess insurance over the applicable Limit of Liability provided by this policy. Further, this policy shall apply specifically as excess to any **securities claims** also covered by **directors and officers coverage**.

16. CANCELLATION

- (a) *By Named Organization:* This policy may be canceled by the **named organization** at any time only by mailing written prior notice to **us** or by surrender of this policy to **our** authorized agent or **us**.
- (b) *By Us:* This policy may be canceled by **our** delivering to the **named organization** by registered, certified, other first class mail or other reasonable delivery method, at the address of the **named organization** set forth in the Declarations, written notice stating when, not less than sixty (60) days thereafter (ten (10) days in the event of cancellation for non-payment of premium), the cancellation shall be effective. Proof of mailing or delivery of such notice as aforesaid shall be sufficient proof of notice and this policy shall be deemed canceled at the date and hour specified in such notice.
- (c) *Return of Premium:* **We** shall have the right to the premium amount for the portion of the **policy period** during which the policy was in effect. If this policy shall be canceled by the **named organization**, **we** shall retain the customary short rate proportion of the premium herein.

17. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without **our** prior written consent.

18. ALTERNATIVE DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **damages** and **defense costs**, must first be submitted to the non-binding mediation process as set forth in this Clause.

The non-binding mediation will be administered by any mediation facility to which **we** and the **named organization** mutually agree, in which all implicated **insured persons, organizations** and **we** shall try in good faith to settle the dispute by mediation in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator shall also give due consideration to the general principles of the law of the state where the **named organization** is incorporated in the construction or interpretation of the provisions of this policy. In the event that such non-binding mediation does not

result in a settlement of the subject dispute or difference:

- (a) either party shall have the right to commence a judicial proceeding; or
- (b) either party shall have the right, with all other parties consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three (3) arbitrators as follows: (i) the **insured** shall select one (1) arbitrator; (ii) **we** shall select one (1) arbitrator; and (iii) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then prevailing Commercial Arbitration Rules.

provided, however, that no such judicial or arbitration proceeding shall be commenced until at least 90 days after the date the non-binding mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1(a) of the Declarations as the mailing address for the **named organization**. The **named organization** shall act on behalf of each and every **insured person** in connection with any non-binding mediation under this Clause, the selection of arbitration or judicial proceeding and/or the selection of mediators or arbitrators.

19. BANKRUPTCY

Bankruptcy or insolvency of any **insured person** or an **organization** shall not relieve the **insurer** of any of its obligations hereunder.

It is further understood and agreed that the coverage provided under this policy is intended to protect and benefit the **insured persons**. Further, if a liquidation or reorganization proceeding is commenced by the **named organization** and/or any other **organization** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law (collectively "**bankruptcy law**") then, in regard to a covered **claim** under this policy, the **insureds** hereby:

- (a) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this policy under such **bankruptcy law**; and
- (b) agree not to oppose or object to any efforts by the **insurer** or any **insured** to obtain relief from any stay or injunction applicable to the proceeds of this policy as a result of the commencement of such liquidation or reorganization proceeding.

20. APPLICATION

- (a) *Coverage A Non-Rescindable*: The **insurer** shall not be entitled, under any circumstances, to rescind Coverage A of this policy.
- (b) *Full Application Severability*: With respect to the statements, warranties and representations contained in any **application** for this policy, no knowledge possessed by any **insured person** shall be imputed to any other **insured person** for the purpose of determining the availability of coverage with respect to any **claim** made against such other **insured person**.

21. POLICY CHANGES

This policy contains all the agreements concerning this insurance. This policy can only be changed by a written endorsement **we** issue and make a part of this policy.

22. SPECIAL RIGHTS AND DUTIES OF NAMED ORGANIZATION

The **insured persons** agree that the **named organization** may act on behalf of all **insured persons** as to:

- (a) consenting or refusing to consent to any settlement;

- (b) the exercising or declining of any right to an **extended reporting period**;
- (c) the resolution of any dispute in connection with coverage afforded by this policy;
- (d) payment of premiums and receipt of return premiums, if any; and
- (e) acceptance of any endorsements or other changes to this policy.

23. HEADINGS

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

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SPECIMEN