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## DIRECTORS & OFFICERS LIABILITY INSURANCE COVERAGE FORM

THIS COVERAGE FORM PROVIDES LIABILITY COVERAGE ONLY ON A **CLAIMS MADE AND REPORTED BASIS**. TO BE COVERED, A LIABILITY CLAIM MUST BE BOTH FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.

ALL LIABILITY COVERAGES INCLUDE CLAIM EXPENSES WITHIN THEIR LIMITS OF LIABILITY, AND OUR PAYMENTS OF CLAIM EXPENSES REDUCE THE LIMITS OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words “you” and “your” refer to the **Named Insured** shown on the Declarations Page. The words “we,” “us” and “our” refer to the **Company** providing this insurance as shown on the Declarations Page.

Words and phrases that appear in bold have special meaning. Refer to **SECTION II – DEFINITIONS**. Headings are included for convenience only and shall not affect the construction or interpretation of any of the Policy provisions.

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### SECTION I - INSURING AGREEMENT

#### A. Coverages

##### 1. Insured Person Liability

The **Company** will pay on behalf of an **Insured Person**, **Loss** in excess of the applicable Deductible that the **Insured Person** becomes legally obligated to pay arising out of a **Claim** for a **D&O Wrongful Act**, except when and to the extent that the **Insured Entity** has indemnified the **Insured Person** for such **Loss**.

##### 2. Insured Entity Indemnification Reimbursement

The **Company** will pay on behalf of an **Insured Entity**, **Loss** in excess of the applicable Deductible for any **Claim** made against an **Insured Person** for such **Loss** the **Insured Person** is legally obligated to pay arising out of a **Claim** for a **D&O Wrongful Act**, provided the **Insured Entity** has indemnified such **Insured Person** as required or permitted by law.

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### 3. Insured Entity Liability Coverage

The **Company** will pay on behalf of an **Insured Entity, Loss** in excess of the applicable Deductible that the **Insured Entity** becomes legally obligated to pay arising out of a **Claim** for a **D&O Wrongful Act**.

- B. The Insurance provided in this **SECTION I – INSURING AGREEMENT** applies only if the **Claim** is both first made against the **Insured Person** or **Insured Entity** and reported to the **Company** in writing during the **Policy Period** or **Extended Reporting Period**, if any, in accordance with **SECTION V – NOTICE AND CONDITIONS** of this Coverage Part; and
1. The **Claim** arises out of a **D&O Wrongful Act** committed by an **Insured Person** or **Insured Entity**:
    - a. On or after the earlier of **(1)** the applicable Retroactive Date, if any, as shown on the Declarations Page, or **(2)** the Policy Effective Date; and
    - b. Prior to the earlier of **(1)** the effective date of the cancellation of this Policy, or **(2)** the Policy Expiration Date;
  2. No **Insured** reported facts, circumstances, situations, transactions, or events related to the **Claim** under any prior insurance policy; and
  3. Prior to the Effective Date of this Policy, or the beginning of any prior policy of which this Policy is a renewal policy issued by us or an affiliated company, none of your **Executive Officers** were aware of or could have reasonably foreseen that facts, circumstances, situations, transactions, or events related to the incident might have resulted in a **Claim**.

The most we will pay for all **Loss** is limited as described in **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE**.

### C. Duty to Defend

The **Company** shall have the right and the duty to defend any **Claim** to which this insurance applies, including the right but not the obligation to select defense counsel, even if any allegations of the **Claim** are groundless, false, or fraudulent. The **Company's** right and duty to defend any **Claim** shall end when the applicable **Limit of Liability** has been exhausted by payment of **Damages** or **Claim Expenses**, or has been tendered to, or on behalf of, the **Insured**, or to a court of competent jurisdiction, and the **Company** shall thereafter be relieved of any and all liability for the payment of **Damages** or **Claim Expenses**.

In the event it is determined that some or all of the **Claims** are not covered under this Policy, the **Insureds** shall reimburse the **Company** for all payments made for **Damages** or **Claim Expenses** in connection with such uncovered **Claims**. Such amounts shall, upon written demand by the **Company** to the **Named Insured**, be paid within thirty (30) days. If the **Named Insured** fails to pay such amounts for uncovered **Claims**, then all **Insureds** shall be jointly and severally obligated to pay.

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## D. Supplemental Benefits

### 1. Disciplinary Proceedings

If a **Disciplinary Proceeding** is both commenced against an **Insured Person** or **Insured Entity** and reported to the **Company** in writing during the **Policy Period**, the **Company** will reimburse the **Insured Person** or **Insured Entity** reasonable and necessary fees, costs and expenses incurred in the defense of such matters, provided that the **Insured Person** or **Insured Entity** does not admit liability or agree to any stipulation or judgment without our prior written consent. The **Company's** determination as to the reasonableness of fees, costs and expenses will be conclusive. The most the **Company** will reimburse under this paragraph is \$10,000 in the aggregate for all **Disciplinary Proceedings**. Any reimbursements made hereunder will be in addition to the **Limits of Liability** as shown on the Declarations Page and the Deductible shall not apply.

The Supplemental Benefits under this paragraph do not apply to any **Disciplinary Proceeding**:

- a. that arises out of a **Claim** for a **D&O Wrongful Act** that is not covered under this Policy or would be specifically excluded if brought as a **Claim** under this Policy; or
- b. that, prior to the effective date of the first Directors & Officers Professional Liability Insurance Policy issued by the **Company** to the **Named Insured** and continuously renewed and maintained in effect to the effective date of this Policy, the **Insured** knew or should have known would be commenced.

Any request for reimbursement under this paragraph must be made to the **Company** as soon as practicable, but in no event later than the effective date this Policy is cancelled or expires, and such request must be accompanied by specific details of the fees, costs or expenses and sufficient proof of payment.

### 2. Attendance at Trial

If the **Company** requests in writing that an **Insured Person** or **Insured Entity** attend a trial, hearing, or arbitration proceeding pursuant to the resolution of a **Claim**, the **Company** will pay the **Insured Person** or **Insured Entity** up to \$500 per day for loss of earnings for each such day or part thereof the **Insured Person** or **Insured Entity** attends. The most the **Company** will pay under this paragraph is \$5,000 each **Claim** and \$10,000 in the aggregate for all **Claims** made during the **Policy Period** or the **Extended Reporting Period**, if any. Any payment hereunder will be in addition to the **Limits of Liability** as shown on the Declarations Page and the Deductible shall not apply.

### 3. Public Relations and Image Repair

The **Company** will reimburse an **Insured Person** or **Insured Entity** for any reasonable sums necessarily incurred with the **Company's** prior written agreement for the services of a public relations consultancy to avert or mitigate damage to that **Insured Person's** or **Insured Entity's** reputation or brand, as a direct result of any media report that names that **Insured Person** or **Insured Entity** and publicizes an act or event that is the subject of a **Claim** for which you are entitled to indemnity under this policy. The most the **Company** will pay under this paragraph is \$5,000 each **Claim** and \$10,000 in the aggregate for all **Claims** made during the **Policy Period** or

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the **Extended Reporting Period**, if any. Any payment hereunder will be in addition to the **Limits of Liability** as shown on the Declarations Page and the Deductible shall not apply.

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## SECTION II – DEFINITIONS

Whenever specially defined terms are used in the Coverage Part, they will be printed in boldface type and shall have the meanings indicated below.

### A. Automatic Extended Reporting Period

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled or expires and ending at the earliest of the following dates:

1. Sixty (60) days after such cancellation or expiration takes effect;
2. The date any other policy obtained by the **Named Insured** that provides similar coverage takes effect.

### B. Bodily Injury

Physical injury, sickness, disease, or death of any person.

### C. Claim

1. Any written demand for monetary relief or non-monetary relief;
2. Any judicial, civil, administrative, regulatory or arbitration proceeding (other than a labor, grievance, arbitration, or other proceeding pursuant to a collective bargaining agreement), including any appeal therefrom, which subjects an **Insured** to a binding adjudication of liability for monetary relief; or
3. Any written request to toll or waive any statute of limitations applicable to any actual or potential suit or causes of action against an **Insured Entity**.

### D. Claim Expenses

1. Reasonable and necessary fees charged by any lawyer designated by the **Company**;
2. Any third party legal and professional expenses (including disbursements) reasonably incurred in the defense of **Claims** or circumstances which could reasonably be expected to give rise to a **Claim** or in quashing or challenging the scope of any injunction, subpoena, or witness summons;

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3. All reasonable and necessary fees and expenses charged by any lawyers selected by the **Insured** as independent counsel, where a conflict of interest exists, and applicable law permits the **Insured** to select such independent counsel and requires the **Company** to pay for such independent counsel;
  4. All other fees, costs and expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim**, including **Post-Judgment Interest**; and
  5. Premiums on appeal bonds and premiums on bonds to release attachments, but not for bond amounts in excess of the applicable **Limits of Liability** of this Policy. The **Company** shall have no obligation to pay for or furnish any bond.

However, **Claim Expenses** does not include the salary, expenses, or wages of any **Insured** or any director, officer, shareholder, member, partner, associate, or **Employee** of the **Named Insured**.

#### **E. Company**

The entity issuing this Policy as shown on the Declarations Page.

#### **F. Computer System**

Computer, hardware, software, communications system, electronic device (including, but not limited to, any smart phone, laptop, tablet, or wearable device), server, cloud or microcontroller, including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

#### **G. Damages**

Compensatory recovery in the form of monetary awards, judgments, or settlements and **Prejudgment Interest** on any such judgments. **Damages** does not include:

1. Fines or penalties imposed by law, punitive, exemplary damages or multiplied damages, taxes, or sanctions imposed against an **Insured**;
2. Any amount awarded in any **Disciplinary Proceeding**;
3. The return or reduction of fees, costs, expenses, or other consideration charged by an **Insured**, or the cost of correcting, re-performing, or completing such services;
4. **Post-Judgment Interest**;
5. Equitable, injunctive, or other non-monetary relief; or
6. Matters which are uninsurable under applicable laws.

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## H. Disciplinary Proceeding

A proceeding in which a complaint alleging a **D&O Wrongful Act**, a violation of any disciplinary rule or other professional misconduct is brought before a tribunal of competent jurisdiction which shall make a determination subject to appeal or other review or a final and enforceable determination as to whether such alleged professional misconduct is to be the subject of discipline.

## I. D&O Wrongful Act

1. Any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty committed or attempted by an **Insured Person** only **a.** while acting in his or her capacity as a director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**; **b.** while acting in the course and scope of their employment on behalf of the **Insured Entity**; or **c.** while acting within the scope of duties as a volunteer;
2. Any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty committed or attempted by an **Insured Person** while serving as a director, officer, governor, or trustee of any **Outside Entity**, if such service is requested by the **Insured Entity** in writing prior to serving in such **Outside Entity**; or
3. Any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by the **Insured Entity**.

## J. Employee

Any full-time or part-time employee (including any leased or temporary employee or any volunteer), but only while in the course of their performance of work or services on behalf of or at the direction of the **Named Insured**.

## K. ERISA

The Employee Retirement Income Security Act of 1974 (ERISA), as amended, any similar federal, state, local or common law and any rules and regulations promulgated thereunder.

## L. Extended Reporting Period

The additional period of time for reporting **Claims** as set forth in, and pursuant to the terms and conditions of **SECTION VI – EXTENDED REPORTING PERIOD** of this Coverage Part.

## M. Insured

An **Insured Entity** or **Insured Person**.

## N. Insured Entity

The insured organization that is named as such on the Declarations Page. An **Insured Entity** also includes:

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1. Any entity identified as a **Subsidiary** on the **Application**.
  2. Any entity which becomes a **Subsidiary** during the **Policy Period**, but:
    - a. Only as respects **D&O Wrongful Acts** that take place after the date such entity became a **Subsidiary**; and
    - b. Only if the **Company** provides us with full particulars of the new **Subsidiary** and such other information as the **Company** deems necessary within sixty (60) days of it becoming a **Subsidiary** or the end of the **Policy Period**, whichever is earlier.

In the event any of the entities described above ceases to be a **Subsidiary** during the **Policy Period**, coverage for such **Subsidiary** shall continue in full force and effect until the end of the **Policy Period** or its earlier termination, but only as respects to **D&O Wrongful Acts** that take place prior to such date.

#### **O. Insured Person**

1. Any individual who was, now is or shall become a director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**, while acting in his or her capacity as such on behalf of the **Insured Entity**;
2. The lawful spouse or domestic partner of a director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**, but only for actual or alleged **D&O Wrongful Acts** of such executive for which such spouse or domestic partner may be liable as the spouse or domestic partner of such director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**, but only while acting in the course and scope of their employment on behalf of the **Insured Entity**;
3. The legal representative or assigns of any deceased person as described above but only with respect to duties as such; and
4. Any individual who was, now is or shall become an **Employee** of the **Insured Entity**.

#### **P. Limit of Liability**

The maximum amount of the **Company's** liability under this Policy pursuant to the terms and conditions of **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE**. Whenever used in the plural, the reference applies to the **Limit of Liability** for **a.** each **Claim** and **b.** in the aggregate.

#### **Q. Loss**

**Damages and Claim Expenses.**

#### **R. Named Insured**

The individual, corporation, partnership, limited liability company, limited partnership, or other entity designated as such on the Declarations Page.

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## S. Optional Extended Reporting Period

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled or expires and ending at the earliest of the following dates:

1. The expiration date specified in the applicable **Optional Extended Reporting Period** Endorsement; or
2. When the **Limits of Liability** have been exhausted.

## T. Outside Entity

1. Any non-profit entity as defined in section 501(c)(3) of the Internal Revenue Code of 1986 (IRC) (as amended); or
2. Any other entity listed as an **Outside Entity** on the Declarations Page.

## U. Policy Period

The period from the Effective Date of this Policy to the Policy Expiration Date as shown on the Declarations Page or its earlier termination date, if any.

## V. Post-Judgment Interest

Interest added to a verdict, award or judgment based on the amount of time accruing after the verdict, award, or judgment.

## W. Prejudgment Interest

Interest added to a verdict, award or judgment based on the amount of time accruing prior to the verdict, award, or judgment, but only as respects that part of the judgment which does not exceed the **Limit of Liability** thereof.

## X. Property Damage

Any injury to or destruction of any tangible property or loss of use therefrom. Tangible property does not include currency or negotiable instruments.

## Y. Related D&O Wrongful Act

Any **D&O Wrongful Act** based upon or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions, events, whether related logically, causally or in any other way.

## Z. Sexual Misconduct or Sexual Molestation



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Any activity which is sexual in nature (whether permitted or not permitted); and includes, but is not limited to: sexual assault, sexual battery, sexual relations, sexual acts, sexual activity, sexual handling, sexual massage, sexual exploitation, sexual exhibition, sexual stimulation, fondling, intimacy, exposure of sexual organs, lewd or lascivious behavior or indecent exposure, fornication, unauthorized touching, or the photographic, video or other reproduction of sexual activity. **Sexual Misconduct or Sexual Molestation** includes physical abuse.

#### AA. Subsidiary

Any entity identified as a **Subsidiary** on the **Application**, but only if the **Named Insured**:

1. Owns, directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting stock of such entity;
2. Has the right to elect, appoint or designate more than fifty percent (50%) of such entity's board of directors, trustees, or managers; or
3. Has majority control over the management and operations of the entity through a written agreement.

An entity or organization consisting of net assets, provided such entity was created or acquired by the **Named Insured**, either directly or indirectly, before the end of the **Policy Period**.

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## SECTION III - LIMITS OF LIABILITY AND DEDUCTIBLE

#### A. Limits of Liability

##### 1. Directors & Officers Liability Per Claim Limit

Subject to Paragraph **A.2.** of this **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE**, the **Limit of Liability** of the **Company** for **Damages** or **Claim Expenses** for each **Claim** under this Coverage, shall not exceed the amount as shown on the Declarations Page as **Directors & Officers Liability Per Claim Limit**.

##### 2. Directors & Officers Liability Aggregate Limit

Subject to Paragraph **A.4.** of this **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE**, the **Limit of Liability** of the **Company** for **Damages** or **Claim Expenses** for all **Claims** under this Coverage shall not exceed the amount as shown on the Declarations Page as **Limit of Liability – Aggregate**, exclusive of any **Additional Limit for Claim Expenses**, described in Paragraph **A.2.** of this **SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE** if any.

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### 3. Additional Limit for Claim Expenses

If an **Additional Limit for Claim Expenses** is shown on the Declarations Page, the **Insured** is entitled to such additional amount for the payment of **Claim Expenses** for all covered **Claims** up to, but not exceeding, the amount shown on the Declarations Page as the **Additional Limit for Claim Expense**. This limit is in addition to the **Directors & Officers Liability Per Claim Limit** and **Directors & Officers Liability Aggregate Limit** as set forth above; provided, however, if no **Additional Limit for Claim Expenses** is shown on the Declarations Page, then this subparagraph shall not apply and the **Directors & Officers Liability Per Claim Limit** and **Directors & Officers Liability Policy Aggregate Limit** shall apply to all **Loss**.

Any **Claim Expenses** incurred shall apply first to, and shall reduce, the **Additional Limit for Claim Expenses**. If the **Additional Limit for Claim Expenses** is exhausted by the payment of **Claim Expenses**, then **Claim Expenses** shall apply to the remaining applicable Limit of Liability until the exhaustion of such limit.

### 4. Liability Coverages Policy Aggregate Limit

The **Limit of Liability** of the **Company** for **Damages** or **Claim Expenses** for all liability coverages afforded under this Policy shall not exceed the amount as shown on the Declarations Page as the **Liability Coverages Policy Aggregate Limit**.

## B. Multiple Claimants and Related Claims

The **Limits of Liability** as shown on the Declarations Page is the amount the **Company** will pay as **Damages** or **Claim Expenses** regardless of the number of **Claims** made or persons or entities making such **Claims**. All **Claims** based upon or arising out of the same **D&O Wrongful Act** or **Related D&O Wrongful Act** 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 **D&O Wrongful Act** or **Related D&O Wrongful Act** was first made; or
2. When Notice of Circumstances is given in accordance with Paragraph A. of **SECTION V – NOTICE AND CONDITIONS** of a fact, circumstance or situation giving rise to such **Claim**.

## C. Deductible

The Deductible amount as shown on the Declarations Page shall be paid by the **Named Insured** and shall apply to each and every **Claim**. The **Company** shall only be liable for the amount of **Damages** or **Claim Expenses** arising from a **Claim** which is in excess of the Deductible amount as shown on the Declarations Page. Such amounts shall, upon written demand by the **Company** to the **Named Insured**, be paid within thirty (30) days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds**

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shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Company** shall serve to reduce the **Limits of Liability**.

If the **Company** brings suit to collect the Deductible, or any part thereof, and prevails therein, then the **Named Insured** shall also pay the legal fees, costs and expenses incurred by the **Company** in such suit.

#### D. Multiple Insurance Policies

In the event a **Claim** is deemed, either by the **Company** or a court of competent jurisdiction, to be covered under more than one Policy of Insurance or Coverage Form issued by the **Company** or an affiliated company, it is expressly understood and agreed that the maximum aggregate **Limit of Liability** for such **Claim** shall not exceed the highest applicable Directors & Officers Liability Per Claim Limit as shown in each policy's respective Declarations Page, and only the policy with the highest applicable Directors & Officers Liability Per Claim Limit shall apply.

#### E. Exhaustion of Limits of Liability

The **Company** shall not be obligated to pay **Damages** or **Claim Expenses** or defend or continue to defend any **Claim**, or **Claims**, after the applicable **Limit of Liability** as stated on the Declarations Page has been exhausted by payment of **Damages** or **Claim Expenses** or a combination of both.

The **Company** shall not be obligated to pay **Damages** or **Claim Expenses** or defend or continue to defend any **Claim**, or **Claims**, after the applicable Liability Coverages Policy Aggregate Limit as shown on the Declarations Page has been exhausted by payment of **Damages** or **Claim Expenses**.

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## SECTION IV – EXCLUSIONS

This insurance does not apply to any **Claim**, costs, **Damages** or **Claim Expenses** based upon, arising out of, directly or indirectly resulting from, or in any way connected with any of the following, whether actual or alleged:

#### A. Known or Reported D&O Wrongful Act

Any **D&O Wrongful Act** occurring prior to the **Policy Period** if, prior to the Effective Date of the first Directors & Officers Professional Liability Insurance Policy issued by the **Company** to the **Named Insured** which has been continuously renewed and maintained in effect to the Effective Date of this Policy:

1. An **Insured** knew or should have known that such **D&O Wrongful Act** might reasonably be expected to result in a **Claim**; or

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2. An **Insured** gave notice of such **D&O Wrongful Act** to a prior insurer.

**B. Expected or Intended**

Any acts or omissions that any **Insured** expected or intended to cause injury or damage.

**C. Dishonesty or Fraud**

Any dishonest, fraudulent, criminal, or malicious act, error or omission committed by or at the direction of any **Insured** or which is ratified by any **Insured**; provided, however, that:

1. The **Company** shall provide a defense for such **Claim** unless and until the dishonest, fraudulent, criminal, or malicious act, error or omission has been determined by a trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not, or there has been an admission by an **Insured** establishing such dishonest, fraudulent, criminal or malicious act, error or omission; and
2. Such defense will not waive any of the **Company's** other rights under this Policy.

INNOCENT INSURED PROVISION. This exclusion shall not apply to any **Insured** who did not personally participate in, acquiesce in, or ratify the dishonest, fraudulent, criminal, or malicious act, error, or omission; provided, however, that this INNOCENT INSURED PROVISION does not apply to, or inure to the benefit of, the **Named Insured**.

Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured** and the **Company** shall have no duty to defend or indemnify any **Insured** in connection with such proceedings.

**D. Bodily Injury or Property Damage**

Any **Claim** based upon, arising out of or in any way attributable to **Bodily Injury** or **Property Damage**.

**E. Matters Brought by the Insured Entity**

Any matter brought or maintained by, on behalf of, or for the benefit of the **Insured Entity**; provided, however, this Exclusion does not apply to any **Claim** that is brought:

1. Derivatively on behalf of the **Insured Entity**, which is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation of, or intervention by, any **Insured Person**; or
2. By a bankruptcy trustee or bankruptcy appointed representative of the **Insured Entity**.

**F. Breach of Warranty or Guaranty**

Any breach of contract or agreement or the assumption of any liability, including any provision to provide or extend any defense costs, in a contract or agreement; provided, however, this exclusion

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shall not apply to liability of the **Insured Entity** or **Insured Person** that would have attached in the absence of such contract or agreement.

#### **G. Fines and Penalties**

Fines, penalties, taxes, or sanctions in whatever form assessed or matters which may be deemed uninsurable under applicable laws.

#### **H. Insured vs. Insured**

Any **Claim, Loss, Damages**, or injury asserted by or on behalf of the **Named Insured**, any of its successors in interest, any **Insured** under this Policy, or any corporation or other entity in which the **Named Insured** has an ownership interest, against any other current or former **Insured**.

#### **I. Employment Practices**

Any employment-related practices, policies, acts, or omissions committed by an **Insured**, including but not limited to, refusal to hire, termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination.

This exclusion applies regardless of whether the **Insured** may be liable as an employer or in any other capacity or may be obligated to share damages with or repay someone else who must pay damages because of the loss, damage, or injury.

#### **J. Statutory Obligations or Duties**

Any violation of or failure to comply with:

1. Any law concerning workers compensation, unemployment insurance, social security, or any similar laws;
2. The National Labor Relations Act (NLRA);
3. The Occupational Safety and Health Act (OSHA);
4. The Worker Adjustment and Retraining Act (WARN); or
5. The Fair Labor Standards Act (FLSA) or any other similar state or local statute, ordinance, regulation, or common law.
6. Any amendments to or rules, regulations or orders promulgated under these laws, or similar provisions of any federal, state, or local statutory or common law.

#### **K. ERISA**

Any violation of or failure to comply with **ERISA**, including the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and the Health Insurance Portability and Accountability Act (HIPAA).

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#### L. Prior Subsidiaries

Any entity that ceases to be a **Subsidiary** after the Effective Date. However, coverage of the entity will continue as if it was still a **Subsidiary** during the **Policy Period**, but only in respect of an act, error, omission, or event occurring prior to the date that it ceased to be a **Subsidiary**.

#### M. Contractual Liability

Liability assumed by an **Insured** under any contract or agreement, whether oral, written or otherwise, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.

#### N. Interference with Contacts or Trade Infringement

The interference with contracts or prospective business advantage, misappropriation of trade secrets, or the infringement of any patent, copyright, trademark, or any other intellectual property right by an **Insured Entity** or **Insured Person**.

#### O. Personal and Advertising Injury

1. False arrest, detention or imprisonment, wrongful entry, eviction or other invasion of private occupancy, abusive litigation (criminal or civil), abuse of process or malicious prosecution;
2. The publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy or which disparages a person's or organization's goods, products, or services; or
3. Misappropriation of advertising ideas or style of doing business or the unauthorized use of title or slogan or plagiarism.

#### P. Data and Privacy

1. Any loss or theft of, disclosure of, or unauthorized access to or use of, any person's or entity's private or confidential information, no matter the cause;
2. Any unauthorized access to a **Computer System**, no matter the cause;
3. Any use of authorized access to cause intentional harm to a **Computer System**;
4. Any actual or threatened ransomware or denial-of-service attack against a **Computer System**;
5. Any introduction of malicious code into a **Computer System**;
6. Failure to provide an authorized user with access to a **Computer System**;
7. Any release of data or information, or provision of access to data or information, caused by fraud or trickery;

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8. Any violation of law regarding the protection, use, collection, destruction, disclosure of, loss of, access to, or storage of any person's or entity's private or confidential information;
  9. The failure to provide notification required by law in connection with 1. through 8.; or
  10. Any action taken or not taken in controlling, preventing, suppressing, or remediating any of the above.

**Q. RICO**

Any violation by an **Insured** of the Racketeer Influenced and Corrupt Organizations Act, 18 USC Sections 1961 et seq. or any comparable state law, or any amendment to that Act, or any rules or regulations made under it.

**R. Securities Violations**

Any actual or alleged violation of: the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors Act of 1940 or any state Blue-Sky law; the Racketeering Influenced and Corrupt Organizations Act of 1970; the Employee Retirement Income Security Act of 1974; any statute protecting any patent, copyright, trademark, trade name, service mark, trade dress, trade secret, confidential information or similar interest; the Federal Trade Commission Act, the Sherman Anti-Trust Act or the Clayton Act; or Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988 or the Fair Credit Reporting Act, 15 USC Section 1681 et seq.; any amendments to or rules or regulations promulgated under such statutes; or any other similar provisions of any international, federal, state, or local statutory or common law.

Any violation of or failure to comply with the provisions of any federal, state, local or foreign statute rule, regulation or common law regarding the offering of securities in any form or the solicitation of investors or investment funds which are exempt from, or not registered under, the Securities Act of 1933, the Securities Exchange Act of 1934 (SEA), including amendments thereto.

**S. Misappropriation of Assets**

Any actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.

**T. Sexual Misconduct or Sexual Molestation**

Any actual or alleged **Sexual Misconduct or Sexual Molestation**, including but not limited to physical acts or oral statements of a sexually suggestive nature or unwelcome physical contact.

This exclusion applies even if the **Claim** alleges negligence or other wrongdoing in respect of hiring, training, or supervising any person; failing to provide a safe environment; investigating or failing to investigate any incident; or reporting or failing to report any person or matter to the proper authorities.

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## SECTION V - NOTICE AND CONDITIONS

### A. Notice of Circumstances

If during the **Policy Period** the **Insured** first becomes aware of any **D&O Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and if the **Insured** gives written notice to the **Company** during the **Policy Period** of such **D&O Wrongful Act**, with full particulars acceptable to the **Company**, including but not limited to:

1. The specific act, error or omission, misstatement, misleading statement, neglect, or breach of duty;
2. The loss, injury or damage which may result or has resulted from the **D&O Wrongful Act**;
3. The circumstances by which the **Insured** first became aware of the **D&O Wrongful Act**, and the reasons for anticipating a **Claim**;
4. The dates and persons involved; and
5. The identity of likely claimants;

then any such **Claim** that arises out of such reported **D&O Wrongful Act** that is subsequently made against the **Insured** and reported to the **Company** shall be deemed to have been made at the time such written notice was originally given to the **Company**.

### B. Notice of Claim

An **Insured** shall give immediate written notice of any and all **Claims** to the **Company** during the **Policy Period** or **Automatic Extended Reporting Period**.

Any **Claim** first reported to the **Company** beyond the **Policy Period** or **Automatic Extended Reporting Period** shall not be covered under this Policy unless the **Claim** is reported pursuant to an applicable **Optional Extended Reporting Period**, if any. In addition, any **Claim** first made against an **Insured** during the **Policy Period** but first reported to the **Company** under a renewal policy issued by the **Company** shall be deemed first made and reported under such renewal policy and this Policy shall not apply.

### C. Duties in the Event of a Claim

As a condition precedent to an **Insured's** rights under this Policy, an **Insured** shall:

1. Cooperate fully with the **Company** in the investigation, defense, and settlement of any **Claim**, including but not limited to attending hearings, depositions, and trials, preserving, and obtaining evidence, and giving written statements;



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2. Immediately send the **Company** copies of any demand, notices, summonses, and other legal papers received in connection with the **Claim**;
  3. Submit to examination and interrogation under oath;
  4. Authorize the **Company** to obtain records and other information; and
  5. Assist in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**.

Under no circumstances shall an **Insured** assume any obligation or incur any **Claim Expenses**, admit liability for any **Claim**, enter into any settlement agreement, stipulate to any judgment, or agree to any arbitration without the prior written consent of the **Company**. Any settlement, **Damages** or **Claim Expenses** incurred or agreed to prior to the **Company** giving its written consent shall not be covered under this Policy.

#### D. Right to Investigate and Appoint Counsel

The **Company** shall have the right but not the duty to investigate any **Claim** or Notice of Circumstance as it deems necessary, or to undertake any investigation with respect to the **Application** as respects coverage. The **Insured** shall submit for examination under oath, by a representative of the **Company**, if requested, in connection with all matters relating to this Policy.

The **Company** shall also have the right but not the duty to appoint legal counsel on behalf of the **Insured** in connection with the defense or handling of any **Claim** or Notice of Circumstance as it deems necessary.

#### E. Consent to Settle

The **Company** shall not settle any **Claim** without the **Named Insured's** written consent, provided such consent shall not be unreasonable withheld. If however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Company** which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Company's** liability for **Damages** or **Claim Expenses** relating to such **Claim** shall not exceed the total amount of **Damages** and **Claim Expenses** the **Company** would have paid up to the date of the **Named Insured's** refusal.

If, prior to institution of arbitration proceedings or service of suit or within sixty (60) days of the institution of such proceedings or service of suit, the **Company** and the **Named Insured** agree to use a process of non-binding intervention by a neutral third party to resolve any **Claim** reported to the **Company**, and if such **Claim** is resolved through such process, the **Company** will reduce the retention applicable to such **Claim** by fifty percent (50%) or ten thousand dollars (\$10,000.00), whichever is less.

#### F. Rights of Subrogation

In the event of any payment under this Coverage Part, the **Company** shall be subrogated to all of the **Insured's** rights of recovery thereof against any person or entity. The **Insured** must execute and

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deliver instruments and papers and do whatever else is necessary to secure such rights and must do nothing to prejudice such rights.

Any amount recovered pursuant to subrogation shall be applied as follows: first, to the repayment of expenses incurred in connection with the subrogation; second to **Damages or Claim Expenses** paid by an **Insured** in excess of the **Limits of Liability**; third, to **Damages or Claim Expenses** paid by the **Company**; fourth, to **Damages or Claim Expenses** paid by the **Insured** in excess of the Deductible; and last, to the repayment of the Deductible.

#### G. Other Insurance

This insurance shall be primary as respects any other valid and collectible insurance. If there is other valid and collectible insurance that applies to a **Claim**, then the **Insured** shall, as a condition precedent to coverage under this Policy, immediately tender the defense and indemnity of that **Claim** to the insurance carrier providing coverage. This Policy will not be subject to the terms of any other insurance.

#### H. Sale, Merger, Dissolution or Cessation of the Named Insured's Business

If, during the **Policy Period**, any of the following Transactions occur:

1. The **Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Named Insured** is not the surviving entity; or
2. A person, entity or affiliated group of persons or entities obtains **a.** ownership or possession of fifty percent (50%) or more of the issued and outstanding capital stock, equity, member units, or any other applicable form of ownership of the **Named Insured**, or **b.** the right to elect or appoint more than fifty percent (50%) of the **Named Insured's** directors, officers or trustees; or
3. The **Named Insured** ceases to do business for any reason;

then coverage under this Policy shall continue in full force and effect until the end of the **Policy Period**, but only as respects to **D&O Wrongful Acts** which occurred prior to the effective date of the Transaction.

It is further understood and agreed that no coverage will be available for any **Disciplinary Proceeding** that is commenced against any **Insured** after the effective date of the Transaction.

#### I. Acquisition of Subsidiary

If, during the **Policy Period**, any **Insured Entity** acquires or creates a **Subsidiary** for which entity there is no other similar insurance available, then during a period of sixty (60) days after the effective date of the transaction or until the end of the **Policy Period**, whichever is earlier, the new **Subsidiary** will be an **Insured Entity**, but only with respect to a **D&O Wrongful Act** committed by an **Insured** after the effective date of the transaction.

There will be no coverage under this Coverage Part for any **D&O Wrongful Act** committed by the new **Subsidiary**, or for any **Claim** first made after the sixty (60) day period has expired, unless the **Named**

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**Insured** has provided the **Company** with written notice of the transaction, containing full details thereof, and the **Company** has agreed to add coverage for the new entity upon such terms, conditions, and limitations of coverage and such additional premium as the **Company**, in its sole discretion, may require.

#### **J. Action Against the Company**

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a **Suit** asking for damages from an insured; or
2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### **K. Bankruptcy or Insolvency**

Bankruptcy or insolvency of an **Insured Entity** or **Insured Person** or an **Insured Entity's** or **Insured Person's** estate shall not relieve the **Company** of any obligations under this Policy.

#### **L. Change of Control**

If, during the **Policy Period**, any of the following transactions occur:

1. An **Insured Entity** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Insured Entity** is not the surviving entity;
2. A person, entity or affiliated group of persons or entities obtains **a.** ownership or possession of fifty percent (50%) or more of the issued and outstanding capital stock, equity, member units, or any other applicable form of ownership of an **Insured Entity**, or **b.** the right to elect or appoint more than fifty percent (50%) of an **Insured Entity's** directors, officers or trustees;
3. A person, entity or affiliated group of persons or entities acquires fifty percent (50%) or more of the assets of an **Insured Entity**; or,
4. An **Insured Entity** ceases to do business for any reason;

then coverage under this Policy shall continue in full force and effect for such **Insured Entity** until the end of the **Policy Period**, but only as respects to **D&O Wrongful Acts** which occurred prior to the effective date of the transaction.

#### **M. Merger & Acquisition – Surviving Entity**

If, during the **Policy Period**, either of the following transactions occur:

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1. An **Insured Entity** merges into or consolidates with another entity such that the **Insured Entity** is the surviving entity; or
  2. An **Insured Entity** acquires some or all of the assets of another entity such that the total consolidated assets of the **Insured Entity** is increased by more than twenty five percent (25%) after the acquisition;

then coverage will continue in force, but only upon the condition that:

- a. The **Named Insured** provides the **Company** with full particulars of the merger, consolidation or acquisition of assets and such other information as the **Company** deems necessary within forty-five (45) days of the Transaction or the end of the **Policy Period**, whichever is earlier; and
- b. The **Named Insured** agrees to any special terms, conditions, exclusions, or additional premium required by the **Company** relating to the transaction due to the material change in risk.

#### N. Change in Non-Profit Status

If, during the **Policy Period**, an **Insured Entity** that is a non-profit entity forfeits, revokes, rescinds or otherwise loses its non-profit status under any state or federal law, coverage will continue in force, but only upon the condition that:

1. The **Named Insured** provides the **Company** with full particulars of the status change and such other information as the **Company** deems necessary within forty-five (45) days of the transaction or the end of the **Policy Period**, whichever is earlier; and
2. The **Named Insured** agrees to any special terms, conditions, exclusions, or additional premium required by the **Company** relating to the status change due to the material change in risk.

#### O. Territory

This Policy applies to an act or omission taking place anywhere in the world, provided that the **Claim** is made, and suit is brought against the **Insured** within any of the fifty (50) states of United States of America or the District of Columbia.

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## SECTION VI - EXTENDED REPORTING PERIOD

#### A. Automatic Extended Reporting Period

Subject to Paragraphs **D.** and **E.** of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or is not renewed, an **Automatic Extended Reporting Period** applies without additional premium beginning on the date such Policy is cancelled or expires.

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The **Automatic Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Automatic Extended Reporting Period**, but only for **D&O Wrongful Acts** committed wholly prior to the effective date this Coverage Part or the Policy is cancelled or expires, and which otherwise would be covered.

The **Automatic Extended Reporting Period** shall not apply if the **Named Insured** has purchased similar insurance from the **Company** or any other insurer covering such **Claim**.

**B. Optional Extended Reporting Period**

Subject to Paragraphs **D.** and **E.** of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or not renewed, whichever applies, the **Named Insured** may give the **Company** written notice that it desires to purchase an **Optional Extended Reporting Period** for one of the periods shown in the ERP Schedule in Paragraph **C.** below, subject to the following:

1. Written notice of such election must be provided to and received by the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies. Such notice must indicate the total extension period desired and must include payment of premium for such **Optional Extended Reporting Period**. If such notice is not timely given to the **Company**, the **Named Insured** will not be able to elect such right at a later date.
2. The **Optional Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Optional Extended Reporting Period**, but only for **D&O Wrongful Acts** committed wholly prior to the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies, and which otherwise would be covered.
3. The first sixty (60) days of the **Optional Extended Reporting Period**, if purchased, shall run concurrently with the **Automatic Extended Reporting Period**.

**C. Premium Due - Optional Extended Reporting Period**

The premium due for the **Optional Extended Reporting Period** equals the percentage amount shown in the ERP Schedule below in relation to the annualized premium for this Coverage Part or the Policy, whichever applies.

<u>ERP Schedule</u>	
<u>ERP</u>	<u>Additional Premium</u>
12 months	100%
24 months	125%
36 months	150%

The entire premium for the **Optional Extended Reporting Period** must be received by the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies, and will be deemed fully earned (even if cancelled upon request of the **Insured**) at the commencement of the **Optional Extended Reporting Period**.

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The **Optional Extended Reporting Period** will not take effect unless the **Named Insured** has fulfilled all other duties, and complied with all other terms and conditions, of this Policy, and has fully repaid any Deductible owed to the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires.

**D. Elimination of Right to Extended Reporting Period**

There is no right to any **Extended Reporting Period** set forth in this **SECTION VI – EXTENDED REPORTING PERIOD** if:

1. The **Company** cancels or refuses to renew this Coverage Part or the Policy due to the non-payment of premium or to misrepresentations or omissions in any **Application** used by the **Company** as a basis for issuing this Policy; or
2. The **Named Insured** has not complied with the terms and conditions of this Policy, including but not limited to the prior refusal or inability of the **Named Insured** to pay any outstanding Deductible amounts owed under this Policy.

**E. No Additional Limit of Liability for Extended Reporting Period**

The **Extended Reporting Period** does not reinstate or increase the **Limits of Liability**. The Deductible shown on the Declarations Page will apply separately to each **Claim** reported under the **Extended Reporting Period**.

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