

## DIRECTORS & OFFICERS AND ENTITY LIABILITY COVERAGE SECTION (NOT-FOR-PROFIT)

In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions Section, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the "insureds" agree as follows:

### A. Insuring Clauses

#### Individual Non-Indemnified Liability Coverage Insuring Clause 1

1. The Company shall pay, on behalf of each of the "insured persons", "loss" for which the "insured person" is not indemnified by the "organization" and which the "insured person" becomes legally obligated to pay on account of any "claim" first made against the "insured person", individually or otherwise, during the "policy period" or, if exercised, during the Extended Reporting Period, for a "wrongful act" committed, attempted, or allegedly committed or attempted by such "insured person" during the "policy period", but only if such "claim" is reported to the Company in writing in the manner and within the time provided in the General Terms and Conditions Section of this policy. However, the Company will have no obligation to pay any "claim" because of a "wrongful act" to which this insurance does not apply.

#### Individual Indemnified Liability Coverage Insuring Clause 2

2. The Company shall pay, on behalf of the "organization", "loss" for which the "organization" grants indemnification to an "insured person", as permitted or required by law, and which the "insured person" becomes legally obligated to pay on account of any "claim" first made against the "insured person", individually or otherwise, during the "period" or, if exercised, during the Extended Reporting Period, for a "wrongful act" committed, attempted, or allegedly committed or attempted by such "insured person" during the "policy period", but only if such "claim" is reported to the Company in writing in the manner and within the time provided in the General Terms and Conditions Section of this Policy. However, the Company will have no obligation to pay any "claim" because of a "wrongful act" to which this insurance does not apply.

### Entity Liability Coverage Insuring Clause 3

3. The Company shall pay, on behalf of the "organization", "loss" which the "organization" becomes legally obligated to pay on account of any "claim" first made against the "organization" during the "policy period" or, if exercised, during the Extended Reporting Period, for a "wrongful act" committed, attempted, or allegedly committed or attempted by the "organization" or the "insured persons" during the "policy period", but only if such "claim" is reported to the Company in writing in the manner and within the time provided in the General Terms and Conditions Section of this Policy. However, the Company will have no obligation to pay any "claim" because of a "wrongful act" to which this insurance does not apply.

However, no coverage shall apply to any "claim" based upon or arising out of any "wrongful act" or circumstance likely to give rise to a "claim" of which any "insured" had knowledge of, or otherwise had a reasonable basis to anticipate might result in a "claim" prior to the earlier of: the inception date of this Policy; or the inception date of the first Policy of this type we have issued to the "organization", provided that we have written continuous coverage for the "organization" from such date to the inception of this Policy.

### B. Definitions

When used in this Coverage Section:

#### 1. "Claim" means:

(a) when used in reference to the coverage provided by Insuring Clause 1 or 2:

(i) a written demand for monetary damages or non-monetary relief;

(ii) a civil proceeding commenced by the service of a complaint or similar pleading;

(iii) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document,

against an "insured person" for a "wrongful act", including any appeal therefrom; or

- (iv) a written request to toll or waive a statute of limitation applicable to an alleged "wrongful act" by an "insured person".
  - (b) when used in reference to the coverage provided by Insuring Clause 3:
    - (i) a written demand for monetary damages or non-monetary relief;
    - (ii) a civil proceeding commenced by the service of a complaint or similar pleading;
    - (iii) a formal civil administrative or civil regulatory proceeding commenced by the filing of a notice of charges or similar document, or by the entry of a formal order of investigation or similar document, but only while such proceeding is also pending against an "insured person",
      - against an "organization" for a "wrongful act", including any appeal therefrom, or
      - (iv) a written request to toll or waive a statute of limitation applicable to an alleged "wrongful act" by an "organization".
2. "Defense Costs" means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers, trustees or any duly constituted committee member or "employees" of the "organization") incurred in defending any "claim" and the premium for appeal, attachment or similar bonds.
 

The salaries and expenses of the Company employees are not included in "defense costs".
  3. "Employee" means any natural person whose labor or service is engaged by and directed by the "organization", including any part-time, seasonal, leased or temporary employees or volunteers. "Employee" shall not include any independent contractor.
  4. "Excess Benefit Transaction" means an "excess benefit transaction" as that term is defined in Section 4958(c) of the Internal Revenue Code, 26 U.S.C. § 4958(c).
  5. "Excess Benefit Transaction Excise Tax" means any excise tax imposed by the Internal Revenue Service, pursuant to Section 4958(a)(2) of the Internal Revenue Code, 26 U.S.C. § 4958(a)(2), on an "insured person" who is an "organization" "manager" as a result of such "insured person's" participation in an "excess benefit transaction".
  6. "Executive" means any natural person who was, now is or shall become:
    - (a) a duly elected or appointed director, officer, trustee, "manager", in-house general counsel, or duly constituted committee member of any "organization" chartered in the United States of America; or
    - (b) a holder of a position equivalent to any position described in (a) above in any "organization" that is chartered in any jurisdiction other than the United States of America.
  7. "Insured" means the "organization" and any "insured person".
  8. "Insured Person" means any natural person who was, now is or shall become an "executive" or "employee" of any "organization".
  9. "Loss" means: the amount that any "insured" becomes legally obligated to pay on account of any covered "claim", including: damages (including punitive or exemplary damages or multiple portions thereof, if and to the extent that such punitive or exemplary damages are insurable under the law), settlements, pre-judgment and post judgment interest and "defense costs". "Loss" also includes "Excess Benefit Transaction Excise Taxes" in an amount not to exceed the sublimit set forth in the Declarations for "Excess Benefit Transaction Excise Tax", but only if and to the extent that indemnification by the "organization" for "Excess Benefit Transaction Excise Taxes" is not expressly prohibited in the bylaws, certificate of incorporation or other organizational documents of the "organization".
 

However, "loss" does not mean fines, penalties imposed by law, sanctions, taxes and any other amounts for matters deemed uninsurable by law, except as provided above with respect to "Excess Benefit Transaction Excise Taxes" and punitive, exemplary damages or the multiple portion of any multiplied damages.
  10. "Publisher Wrongful Act" means any:
    - (a) infringement of copyright or trademark or unauthorized use of title; or
    - (b) plagiarism or misappropriation of ideas.
  11. "Securities Laws" means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, any state blue sky securities law, or any other federal, state or local securities law or any amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer to sell or purchase, or the sale or purchase, of securities.

12. "Wrongful Act" means: any act, error, omission, misstatement, misleading statement, neglect, or breach of duty, committed, attempted, or allegedly committed or attempted by:

(a) the "organization"; or

(b) an "insured person" arising solely from his or her "insured capacity" with the "organization".

### C. Exclusions

#### Applicable To All Insuring Clauses

1. The Company shall not be liable for "loss" on account of any "claim":

(a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or "wrongful act" that, before the inception date set forth in Item 2 of the Declarations of the General Terms and Conditions, was the subject of any notice given under any Policy or Coverage Section of which this Coverage Section is a direct or indirect renewal or replacement;

(b) based upon, arising from, or in consequence of any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any "insured", on or prior to the Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

(c) brought or maintained by or on behalf of any "insured" in any capacity; provided that this Exclusion 1(c) shall not apply to:

(i) a "claim" brought or maintained derivatively on behalf of the "organization" by one or more securityholders of the "organization" or persons who are not "insured persons", provided such "claim" is brought and maintained without any active assistance or participation of, or solicitation by, any "executive";

(ii) a "claim" brought or maintained by an "insured person" for contribution or indemnity, if such "claim" directly results from another "claim" covered under this Coverage Section;

(iii) a "claim" brought or maintained by "employees" who are not past or present "executives" of an "organization" if such "claim" is brought and maintained without any active assistance or participation of, or solicitation by, any such "executives";

(d) based upon, arising from, or in consequence of damages from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any "pollutants" into or upon the land, atmosphere, watercourse or any body of water or for any loss, cost or expense arising out of any environmental liability statutes or regulations, governmental or any other request, demand or order, including but not limited to testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing any "pollutants".

(e) for any actual or alleged bodily injury, mental anguish, emotional distress, sickness, disease, including the transmission of any communicable disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;

(f) for an actual failure of goods, products, or services to conform with advertised quality or performance; or wrong description of the price of goods, products or services;

(g) for an actual or alleged violation of the responsibilities, obligations or duties imposed on fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) - or any amendments thereof or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory law or common law.

(h) for "wrongful acts" of an "insured person" in his or her capacity as a director, officer, manager, trustee, regent, governor or employee of any entity other than the "organization", even if the "insured person's" service in such capacity is with the knowledge and consent or at the request of the "organization".

(i) made against a "subsidiary" or "affiliate" or an "insured person" of such "subsidiary" or "affiliate" for any "wrongful act" committed, attempted, or allegedly committed or attempted during any time when such entity was not a "subsidiary" or "affiliate";

(j) made against any "insured" based upon, arising from, or in consequence of:

(i) the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such "insured", as evidenced by a final and non-appealable judgment or adjudication, or, in a criminal proceeding, as evidenced by any plea of guilty, nolo contendere or no contest, or any similar plea; or

(ii) such "insured" having gained in fact any profit, remuneration or advantage to which such "insured" was not legally entitled;

(k) based upon, arising from, or in consequence of the actual or alleged violation of any "securities laws"; provided that this Exclusion 1.(k) shall not apply to the extent that such "claim" is based upon, arises from or is in consequence of the "organization's" offer or sale of debt securities of the "organization" in a transaction that is (or in a series of transactions that are) exempt from registration under the Securities Act of 1933, as amended, and under the rules and regulations promulgated thereunder;

(l) any employment-related "wrongful act";

(m) based upon, arising from, or in consequence of any actual or alleged discrimination against or sexual harassment of any person or entity that is not an "insured"; or

(n) based upon, arising from or in consequence of any lockout, strike, picket line, hiring of replacement workers, collective bargaining, mediation, arbitration or other similar actions in connection with labor disputes or labor negotiations.

## **2. Exclusions Applicable to Insuring Clause 3 (in addition to the exclusions above in Exclusions, C.1.)**

(a) The Company shall not be liable for "loss", other than "defense costs", on account of any "claim" based upon, arising from, or in consequence of any actual or alleged liability of an "organization" under any written or oral contract or agreement, provided that this Exclusion 2(a) shall not apply to the extent that the "organization" would have been liable in the absence of such contract or agreement.

(b) The Company shall not be liable for "loss" on account of any "claim" based upon, arising from, or in consequence of any actual or alleged infringement of patent or misappropriation of intellectual property, ideas or trade secrets, provided that this Exclusion 2(b) shall not apply to any "publisher wrongful act".

## **D. Severability of Exclusions**

1. No fact pertaining to or knowledge possessed by any "insured person" shall be imputed to any other "insured person" for the purpose of applying Exclusion C.1.(j) of this Coverage Section.

2. Only facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house general counsel, president, chief executive officer, executive director, trustee, duly constituted committee member or chairperson of an "organization" shall be imputed to such "organization" for the purpose of applying Exclusion C.1.(j) of this Coverage Section.

## **E. Limit of Liability and Retention**

1. The Company's maximum aggregate liability for all "loss" on account of all "claims" first made during each "policy year", whether covered under one or more Insuring Clauses, shall be the Limit of Liability for each "policy year" set forth in Item 2(A) of the Declarations for this Coverage Section.

2. Solely in the event that the Defense Outside the Limits of Liability Option is purchased as set forth in Item 5 of the Declarations of this Coverage Section, "defense costs" shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of "defense costs" by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of "loss" other than "defense costs", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as set forth in Item 5 of the Declarations of this Coverage Section, "defense costs" are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of "defense costs" by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of "defense costs" or other "loss", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

3. The Company's liability under Insuring Clause 2 or 3 shall apply only to that part of covered "loss" (as determined by any applicable provision in Subsection I., Allocation, of this Coverage Section) on account of each "claim" which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be depleted only by "loss" otherwise covered under this Coverage Section, and shall be borne by the "insureds" uninsured and at their own risk.

4. If different parts of a single "claim" are subject to different Retentions, the applicable Retentions will be applied separately to each part of such "claim", but the sum of such Retentions shall not exceed the largest applicable Retention.

5. All "related claims" shall be treated as a single "claim" first made on the date the earliest of such "related claims" was first made, or on the date the earliest of such "related claims" is treated as having been made in accordance with Subsection F. of the General Terms and Conditions, regardless of whether such date is before or during the "policy period".
6. The Limit of Liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate Limit of Liability for all "loss" on account of all "claims" first made during the immediately preceding "policy year".

**F. Coordination with Employment Practices Liability Coverage Section**

Any "loss" otherwise covered by both (i) this Coverage Section and (ii) any Employment Practices Liability Coverage Section or policy issued by the Company or by any affiliate of the Company (an Employment Practices Liability Coverage) first shall be covered as provided in, and shall be subject to the Limit of Liability, Retention and coinsurance percentage applicable to such Employment Practices Liability Coverage. Any remaining "loss" otherwise covered by this Coverage Section which is not paid under such Employment Practices Liability Coverage shall be covered as provided in, and shall be subject to the Limit of Liability, Retention applicable to this Coverage Section; provided the Retention applicable to such "loss" under this Coverage Section shall be reduced by the amount of "loss" otherwise covered by this Coverage Section which is paid by the "insureds" as the Retention under such Employment Practices Liability Coverage.

**G. Presumptive Indemnification**

If the "organization" fails or refuses, other than for reason of "financial impairment", to indemnify an "insured person" for "loss", or to advance "defense costs" on behalf of an "insured person", to the fullest extent permitted by statutory or common law, then, notwithstanding any other conditions, provisions or terms of this Coverage Section to the contrary, any payment by the Company of such "defense costs" or other "loss" shall be subject to the applicable Insuring Clause 2 Retention set forth in the Declarations for this Coverage Section.

**H. Defense and Settlement**

1. The Company shall have the right and duty to defend any "claim" covered by this Coverage Section, even if any of the allegations in such "claim" are groundless, false or fraudulent. Defense counsel shall be selected by the Company. The Company's duty to defend any "claim" shall cease upon exhaustion of the applicable Limit of Liability.

2. The Company may make any investigation it deems necessary and may, with the consent of the "insured", make any settlement of any "claim" it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as set forth in Item 5 of the Declarations of this Coverage Section, if an "insured" in any "claim" withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a Proposed Settlement), the "insureds" will thereafter be responsible for defending such "claim" at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for "loss" with respect to any such "claim" will not exceed the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as set forth in Item 5 of the Declarations of this Coverage Section, in the event an "insured" in any "claim" withholds consent to a Proposed Settlement, the Company's liability with respect to such "claim" shall not exceed:

- (a) the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement; plus
- (b) seventy percent (70%) of any "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above, incurred in connection with such "claim"; subject in all events to the applicable Retention and Limits of Liability for such "claim". The remaining thirty percent (30%) of "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above shall be borne by the "insureds" uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection I. Allocation.

3. The "insureds" agree not to settle or offer to settle any "claim", incur any "defense costs" or otherwise assume any contractual obligation or admit any liability with respect to any "claim" without the Company's prior written consent. The Company shall not be liable for any element of "loss" incurred, for any obligation assumed, or for any admission made, by any "insured" without the Company's prior written consent.

4. The Company will have no obligation to pay "loss", including "defense costs", or to defend or continue to defend any "claim" after the maximum Limit of Liability applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any "policy year" is exhausted, the Policy premium applicable to such "policy year" will be fully earned.
5. If the Combined Maximum Aggregate Limit of Liability for all Liability Coverage Sections is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions Section, then the Company will have no obligation to pay "loss", including "defense costs", or to defend or continue to defend any "claim" after the Company's Combined Maximum Aggregate Limit of Liability applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any "policy year" is exhausted, the Policy premium applicable to such "policy year" will be fully earned.
6. The "insureds" agree to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agree that in the event of a "claim" the "insureds" will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

#### **I. Allocation**

1. If both "loss" covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the "insureds" on account of any "claim" because such "claim" against the "insureds" includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such "claim" shall apply as follows:
  - (a) "Defense Costs": One hundred percent (100%) of reasonable and necessary "defense costs" incurred by the "insured" on account of such "claim" will be considered covered "loss"; and
  - (b) Loss other than "defense costs": All remaining loss incurred by the "insured" on account of such "claim" shall be allocated by the Company between covered "loss" and non-covered loss based on the relative legal and financial exposures of the "insureds" to covered and non-covered matters and, in the event of a settlement in such "claim", also based on the relative benefits to the "insureds" from such settlement.

2. If the "insureds" and the Company cannot agree on an allocation of loss:
  - (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
  - (b) the Company, if requested by the "insureds", shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the "insureds", one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

#### **J. Other Insurance**

If any "loss" under this Coverage Section is insured under any other valid and collectible insurance policy(ies) (including General Liability Insurance), then this Coverage Section shall cover such "loss", subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such "loss" is in excess of the applicable Retention (or deductible) and Limit of Liability under such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Coverage Section. Any payment by "insureds" of a Retention or deductible under such other insurance shall reduce, by the amount of such payment which would otherwise have been covered under this Coverage Section, the applicable Retention under this Coverage Section.

#### **K. Payment of Loss**

1. In the event payment of "loss" is due under this Coverage Section but the amount of such "loss" in the aggregate exceeds the remaining available Limit of Liability for this Coverage Section, the Company shall:
  - (a) first pay such "loss" for which coverage is provided under Insuring Clause 1 of this Coverage Section; then
  - (b) to the extent of any remaining amount of the Limit of Liability available after payment under (a) above, pay such "loss" for which coverage is provided under any other Insuring Clause of this Coverage Section.

Except as otherwise provided in this Subsection, the Company may pay covered "loss" as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.

#### **L. Certified Acts of Terrorism**

It is hereby understood and agreed that this Coverage Section includes coverage on account of any "claim" for "wrongful acts" applicable to this Coverage Section on account of any "Certified Act of Terrorism".

**"Certified Act of Terrorism"** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The federal Terrorism Risk Insurance Act sets forth the following criteria for a Certified Act of Terrorism:

1. The act resulted in insured losses in excess of \$5 million in the aggregate attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the Company has met the Company's deductible under the Terrorism Risk Insurance Act, the Company shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such cases insured losses up to that amount are subject to pro rata allocation in accordance with the procedures established by the Secretary of Treasury.

The terms and limitations of any terrorism coverage provided herewith, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Section or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War and Military Action Exclusion.