



AMERICAN INTERNATIONAL COMPANIES<sup>®</sup>

**AIG PRIVATE COLLECTION<sup>®</sup>**

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY  
COVERAGE SECTION ONE**

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application, including its attachments and the material incorporated therein, which form a part of this policy, the Insurer agrees as follows:

**1. INSURING AGREEMENTS**

**COVERAGE A: INDIVIDUAL INSURED INSURANCE**

This policy shall pay the Loss of each and every Director, Officer, Outside Entity Executive and Employee of the Company arising from a Claim first made against such Individual Insureds during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act in their respective capacities as Directors, Officers, Outside Entity Executives and Employees of the Company, except when and to the extent that the Company has indemnified such Individual Insureds. The Insurer shall, in accordance with Clause 8 of the General Terms and Conditions, advance Defense Costs of such Claim prior to its final disposition.

**COVERAGE B: PRIVATE COMPANY INSURANCE**

This policy shall pay the Loss of the Company arising from a:

- (i) Claim first made against the Company, or
- (ii) Claim first made against an Individual Insured,

during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged Wrongful Act, but, in the case of (ii) above, only when and to the extent that the Company has indemnified the Individual Insured for such Loss pursuant to law, common or statutory, or contract, or the charter or by-laws of the Company duly effective under such law which determines and defines such rights of indemnity. The Insurer shall,

in accordance with Clause 8 of the General Terms and Conditions, advance Defense Costs of such Claim prior to its final disposition.

## 2. DEFINITIONS

(a) "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading; or
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges.

The term "Claim" shall include a Securities Claim.

(b) "Individual Insured(s)" means any:

- (1) Director(s) or Officer(s);
- (2) Employees of the Company; and
- (3) Outside Entity Executive.

(c) "Insured(s)" means:

- (1) an Individual Insured(s); and
- (2) the Company.

(d) "Loss" means damages, judgments, settlements, pre-judgment and post-judgment interest on that part of any judgment paid under this Coverage Section, and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the Insureds are not financially liable or which are without legal recourse to the

Insureds; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

- (e) "Securities Claim" means a Claim made against any Insured:
- (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 the Company; or
    - (ii) brought by a security holder of the Company with respect to such security holder's interest in securities of the Company;
  - (2) brought derivatively on the behalf of the Company by a security holder of the Company.
- (f) "Wrongful Act" means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
- (1) with respect to Individual Insureds, by such Individual Insureds in his or her capacity as such, or any matter claimed against such Individual Insured solely by reason of his or her status as Directors, Officers, Outside Entity Executives or Employees of the Company;
  - (2) with respect to Coverage B(i), by the Company.

### **3. EXCLUSIONS**

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

- (a) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act;
- (b) arising out of, based upon or attributable to: (1) profits in fact made from the purchase or sale by an Insured of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or (2) payments to an

Insured of any remuneration without the previous approval of the stockholders of the Company, which payment without such previous approval shall be held to have been illegal;

- (c) alleging, arising out of, based upon, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, 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);
- (d) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Insured serving in any capacity, other than as a Director, Officer, Outside Entity Executive or Employee of the Company;
- (e) for any Wrongful Act arising out of an Individual Insured serving in a capacity as an Outside Entity Executive, if such Claim is brought by the Outside Entity or a director, officer, trustee or governor thereof;
- (f) alleging, arising out of, based upon or attributable to the purchase by the Company of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an Affiliate or Subsidiary of the Company; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming an Affiliate or Subsidiary, the Named Entity gives written notice of the transaction to the Insurer together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the Insurer relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;
- (g) with respect to Coverage B(i) only:
  - (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
  - (2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
  - (3) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any Insured under any contract or agreement (either oral or written);

- (4) seeking fines or penalties or non-monetary relief against the Company;
- (5) for the rendering or failure to render any service to a customer or client of the Insured;

Provided, however, that exclusions (g)(4) and (g)(5) shall not apply to any Securities Claim.

- (h) for emotional distress, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, that this exclusion shall not apply to any Securities Claim;
- (i) which is brought by any Insured; or which is brought by any security holder of the Company, whether directly or derivatively, unless such security holder's Claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any Insured. This exclusion, however, shall not apply to any Claim brought by an Individual Insured where such Claim is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded by the terms of this policy;
- (j) alleging, arising out of, based upon or attributable to any public offering of securities by the Company, an Outside Entity or an Affiliate or alleging a purchase or sale of such securities subsequent to such public offering;

provided, however, that this exclusion shall not apply to:

- (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the Named Entity shall give the Insurer written notice of any public offering exempted pursuant to section 3(b), together with full particulars and as soon as practicable, but not later than 30 days after the effective date of the public offering;
- (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (i) the Named Entity shall give the Insurer written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the Named Entity accepts such terms, conditions and additional premium required by the Insurer for such coverage. Such coverage is also subject to the Named Entity paying

when due any such additional premium. In the event the Company gives written notice with full particulars and underwriting information pursuant to (i) above, then the Insurer must offer a quote for coverage under this paragraph.

For the purpose of determining the applicability of the foregoing Exclusions, other than exclusion (i): (1) the facts pertaining to and knowledge possessed by any Insured shall not be imputed to any other Individual Insured; and (2) 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 equivalent positions) of the Company shall be imputed to the Company.

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