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

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**I. INSURING CLAUSES**

**(A) Individual Non-Indemnified Liability Coverage**

The **Company** shall pay **Loss** on behalf of the **Insured Persons** resulting from any **D&O Claim** first made against such **Insured Persons** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts**, but only to the extent the **Insured Organization** does not indemnify the **Insured Persons** for such **Loss**.

**(B) Individual Indemnified Liability Coverage**

The **Company** shall pay **Loss** on behalf of the **Insured Organization** resulting from any **D&O Claim** first made against **Insured Persons** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** to the extent the **Insured Organization** indemnifies the **Insured Persons** for such **Loss**.

**(C) Corporate Liability Coverage (Optional)**

If the Corporate Liability Coverage is purchased as set forth in Item 5 of the Declarations, the **Company** shall pay **Loss** on behalf of the **Insured Organization** resulting from any **Insured Organization Claim** first made against such **Insured Organization** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts**.

**(D) Securityholder Derivative Demand Coverage**

The **Company** shall pay **Investigative Costs** on behalf of the **Insured Organization** resulting from any **Securityholder Derivative Demand** first made during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts**, in an amount not to exceed \$100,000, which amount is part of and not in addition to the applicable Limit of Liability as set forth in Item 4 of the Declarations and no Deductible Amount shall apply to such amount.

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**II. DEFINITIONS**

For purposes of this Coverage Section:

**(A) Claim** means for purposes of coverage under:

- (1) Insuring Clauses (A) and (B): any **D&O Claim**;
- (2) Insuring Clause (C): any **Insured Organization Claim**; and
- (3) Insuring Clause (D): any **Securityholder Derivative Demand**.

**(B) Debtor in Possession** means a debtor in possession as such term is used in Chapter 11 of the United States of America Bankruptcy Code.



- (C) **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.
- (D) **D&O Claim** means:
- (1) any of the following:
    - (a) a written demand for monetary damages or non-monetary relief;
    - (b) a civil proceeding commenced by the service of a complaint or similar pleading;
    - (c) a criminal proceeding commenced by a return of an indictment; or
    - (d) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;against an **Insured Person** for a **Wrongful Act**, including any appeal therefrom; or
  - (2) a formal civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by the **Insured Person** of a written notice from the investigating authority specifically identifying the **Insured Person** as a target individual against whom formal charges may be commenced; or
  - (3) a written request received by an **Insured** to toll or waive a statute of limitations, relating to a potential **D&O Claim** as described in paragraphs (1) and (2) above.
- (E) **Employee** means any natural person whose labor or service is engaged by and directed by the **Insured Organization**, including part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any independent contractor.
- (F) **Executive** means any natural person specified below:
- (1) duly elected or appointed directors, officers, members of the Board of Managers or management committee members of any **Insured Organization** incorporated in the United States of America;
  - (2) in-house general counsel of any **Insured Organization** incorporated in the United States of America; or
  - (3) equivalent positions of (1) or (2) above in any **Insured Organization** chartered in any other jurisdiction anywhere in the world.
- (G) **Financial Impairment** means the status of an **Insured Organization** resulting from:
- (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Insured Organization**; or
  - (2) such **Insured Organization** becoming a **Debtor in Possession**.
- (H) **Insured** means the **Insured Organization** and any **Insured Person**.



- (I) **Insured Organization Claim** means:
- (1) any of the following:
    - (a) a written demand for monetary damages or non-monetary relief;
    - (b) a civil proceeding commenced by the service of a complaint or a similar pleading; or
    - (c) a criminal proceeding commenced by a return of an indictment;against an **Insured Organization** for a **Wrongful Act**, including any appeal therefrom; or
  - (2) a written request received by an **Insured Organization** to toll or waive a statute of limitations, relating to a potential **Insured Organization Claim** as described in paragraph (1) above.
- (J) **Insured Person** means any past, present or future **Executive** or **Employee** of the **Insured Organization**.
- (K) **Investigative 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 or fees of the **Executives** or **Employees**) incurred by the **Insured Organization**, including its board of directors, Board of Managers, or any committee thereof, in connection with the **Insured Organization's** investigation or evaluation of any **Securityholder Derivative Demand**.
- (L) **Loss** means the total amount which any **Insured** becomes legally obligated to pay as a result of any **Claim** made against any **Insured** for **Wrongful Acts**, including, but not limited to, damages (including punitive or exemplary damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, the **Company**, this Policy or the **Claim** and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment and post-judgment interest and **Defense Costs**. **Loss** does not include:
- (1) any amount for which an **Insured Organization** or an **Insured Person** is absolved from payment by reason of any covenant, agreement (other than indemnification of an **Insured Person** by the **Insured Organization**) or court order;
  - (2) matters uninsurable under the law pursuant to which this Policy is construed;
  - (3) taxes, fines or penalties imposed by law, or the multiple portion of any multiplied damage award;
  - (4) any amount incurred by the **Insured Organization** (including its board of directors, Board of Managers, or any committee thereof) in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Insured Organization**, except, solely with respect to the Securityholder Derivative Demand Coverage, **Investigative Costs**; or
  - (5) any amount allocated to uncovered loss pursuant to Section X Allocation of the General Terms and Conditions.



- (M) **Outside Capacity** means service by an **Insured Person** as a director, officer, trustee, regent, governor or any equivalent executive position in an **Outside Entity**, but solely during the time that such service is with the knowledge and consent or at the request of the **Insured Organization**.
- (N) **Outside Capacity Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an **Insured Person** in his or her **Outside Capacity**.
- (O) **Outside Entity** means:
- (1) any non-profit corporation, community chest, fund or foundation that is not included in the definition of **Insured Organization** and that is exempt from federal income tax as an organization described in Section 501(C)(3) of the Internal Revenue Code of 1986, as amended;
  - (2) any other entity organized for a religious or charitable purpose under any non-profit organization act or statute; and
  - (3) any other non-profit or any for-profit entity if such entity is specifically added as an **Outside Entity** by written endorsement attached to this Policy.
- (P) **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- (Q) **Pollution** means the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- (R) **Securities Laws** means the Securities Act of 1933, Securities Exchange Act of 1934, Investment 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.
- (S) **Securityholder Derivative Action** means any **Claim** brought on behalf of, or in the name or the right of, the **Insured Organization** by one or more securityholders of the **Insured Organization** in their capacity as such if such **Claim** is brought and maintained without the assistance, participation or solicitation of any **Executive**.
- (T) **Securityholder Derivative Demand** means any written demand, by one or more securityholders of an **Insured Organization** without the assistance, participation or solicitation of any **Executive**, upon the board of directors or Board of Managers of such **Insured Organization**, to bring a civil proceeding in a court of law against any **Executive** for a **Wrongful Act** by an **Executive**.



(U) **Wrongful Act** means:

- (1) any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by:
  - (a) For purposes of coverage under Insuring Clauses (A) and (B): any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her status as such;
  - (b) For purposes of coverage under Insuring Clause (C): any **Insured Organization**; or
  - (c) For purposes of coverage under Insuring Clause (D): any **Executive**; or
- (2) any **Outside Capacity Wrongful Act**.

**III. EXCLUSIONS**

(A) No coverage will be available under this Coverage Section for any **Claim** against an **Insured**:

- (1) based upon, arising from, or in consequence of any circumstance, if written notice of such circumstance has been given under any policy of which this Coverage Section is a direct or indirect renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such **Claim**, in whole or in part, as a result of such notice;
- (2) based upon, arising from, or in consequence of a written demand, suit, or other proceeding pending, or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Litigation Date as set forth in Item 10 of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
- (3) based upon, arising from, or in consequence of **Pollution**, including but not limited to any securities **Claim**, **Securityholder Derivative Demand** or **Securityholder Derivative Action** for financial loss to any **Insured Organization**, its securityholders or its creditors in connection with **Pollution**; provided that this Exclusion (A)(3) shall not apply to any **Securityholder Derivative Demand** or **Securityholder Derivative Action** under Insuring Clause (A) for which the **Insured Organization** does not indemnify the **Insured Person** either because the **Insured Organization** is not permitted by common or statutory law to grant such indemnification or because of the **Financial Impairment** of the **Insured Organization**;
- (4) for bodily injury, mental anguish, emotional distress, sickness, 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; provided that this Exclusion (A)(4) shall not apply to mental anguish, humiliation or emotional distress asserted in an employment-related **D&O Claim**;



- (5) brought or maintained by or on behalf of any **Insured** in any capacity; provided that this Exclusion (A)(5) shall not apply to:
- (a) a **Securityholder Derivative Demand** or **Securityholder Derivative Action**;
  - (b) a **Claim** brought or maintained by an **Insured Person** for contribution or indemnification, if such **Claim** directly results from another **Claim** covered under this Coverage Section;
  - (c) a **D&O Claim** brought or maintained by **Employees** who are not past or present **Executives** of an **Insured Organization** if such **D&O Claim** is brought and maintained without the assistance, participation or solicitation of any such **Executives**;
  - (d) a **D&O Claim** brought or maintained by an **Executive** for the actual or alleged wrongful termination of such **Executive**;
  - (e) a **Claim** brought or maintained by an **Executive** who has not served as an **Executive** of the **Insured Organization** for at least four (4) years prior to the date such **Claim** is first made and who brings and maintains such **Claim** without the assistance, participation or solicitation of the **Insured Organization** or any **Insured Person** who: (i) is serving as an **Executive** of the **Insured Organization**; or (ii) has served as an **Executive** of the **Insured Organization** within such four (4) year period; or
  - (f) a **Claim** brought and maintained in a jurisdiction outside the United States of America, Canada or Australia by an **Insured Person** of an **Insured Organization** chartered in such foreign jurisdiction;
- (6) brought or maintained by or on behalf of any **Outside Entity**, or one or more directors or officers of any **Outside Entity**; provided that this Exclusion (A)(6) shall not apply to:
- (a) a **Claim** that is a derivative action brought or maintained on behalf of an **Outside Entity** by one or more persons who are not: **Insured Persons**; or directors, officers, trustees, regents, governors or any equivalent executive position of the **Outside Entity**; and who bring and maintain such **Claim** without the solicitation, assistance or participation of any such person; or
  - (b) a **Claim** brought or maintained by: an **Insured Person**; or directors, officers, trustees, regents, governors or any equivalent executive position of an **Outside Entity**; for contribution or indemnification, if such **Claim** directly results from another **Claim** covered under this Coverage Section;
- (7) for **Wrongful Acts** of an **Insured Person** in his or her capacity as a director, officer, trustee, regent, governor or employee of an entity other than an **Insured Organization**, even if such service is with the knowledge or consent or at the request of the **Insured Organization**, provided this exclusion shall not apply to service in an **Outside Capacity**;
- (8) for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;



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- (9) based upon, arising from, or in consequence of the actual or alleged violation of any **Securities Laws**; provided that this Exclusion (A)(9) shall not apply to any **Claim**:
- (a) based upon or arising out of the offering, sale or purchase of securities, whether debt or equity, in a transaction or a series of transactions that are in fact in law exempt from registration under the Securities Act of 1933 and any amendments thereto or any rules or regulations promulgated thereunder; or
  - (b) made by any securityholder of the **Insured Organization** for the failure of the **Insured Organization** to undertake or complete the initial public offering or sale of securities of the **Insured Organization**;
- (10) based upon, arising from, or in consequence of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation; or
- (11) based upon, arising from, or in consequence of such **Insured** having gained in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled.
- (B) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Costs**, which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
- (C) No coverage will be available under Insuring Clause (C) for any **Insured Organization Claim**:
- (1) based upon, arising from, or in consequence of the actual or proposed payment by the **Insured Organization** of allegedly inadequate consideration in connection with an **Insured Organization's** purchase of securities issued by any **Insured Organization**; provided that this Exclusion (C)(1) shall not apply to **Defense Costs**;
  - (2) based upon, arising from, or in consequence of any actual or alleged liability of an **Insured Organization** under any written or oral contract or agreement, provided that this Exclusion (C)(2) shall not apply to the extent that an **Insured Organization** would have been liable in the absence of the contract or agreement;
  - (3) based upon, arising from, or in consequence of any employment-related **Wrongful Act**;
  - (4) based upon, arising from, or in consequence of any actual or alleged discrimination or sexual harassment of any third party;
  - (5) based upon, arising from, or in consequence of libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
  - (6) based upon, arising from, or in consequence of any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services for others by any person or entity otherwise entitled to coverage under this Coverage Section; provided that this Exclusion (C)(6) shall not apply to any securities **Claim**, **Securityholder Derivative Demand** or **Securityholder Derivative Action**;



- (7) based upon, arising from, or in consequence of any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress, service mark or misappropriation of ideas or trade secrets; or
- (8) based upon, arising from, or in consequence of allegations of price fixing, restraint of trade, monopolization, unfair trade practices or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes; or any similar provision of any federal, state, or local statutory law or common law anywhere in the world.

**(D) Severability of Exclusions**

With respect to the Exclusions (A)(10) and (A)(11) in this Coverage Section:

- (1) no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine if coverage is available; and
- (2) only facts pertaining to and knowledge possessed by any past, present or future Chief Financial Officer, President, Chief Executive Officer or Chairperson of any **Insured Organization** shall be imputed to any **Insured Organization** to determine if coverage is available.

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**IV. ADDITIONAL LIMIT OF LIABILITY DEDICATED FOR EXECUTIVES (Optional)**

- (A) Notwithstanding anything in this Policy to the contrary, the Additional Limit of Liability Dedicated For Executives, if purchased as set forth in Item 5 of the Declarations, will be an additional Limit of Liability in an amount not to exceed \$500,000, which amount is in addition to and not part of the Limit of Liability as set forth in Item 4 of the Declarations.
- (B) This Additional Limit of Liability Dedicated For Executives is available solely for **Loss** resulting from any **D&O Claim** against any **Executive** covered under Insuring Clause (A) of this Coverage Section.
- (C) The Additional Limit of Liability Dedicated For Executives shall be excess of any insurance available that is specifically excess to this Policy and such excess insurance must be completely exhausted by payment of loss, damages or defense costs thereunder before the **Company** shall have any obligation to make any payment on account of the Additional Limit of Liability Dedicated For Executives.

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**V. PAYMENT OF LOSS**

- (A) In the event of **Loss** arising from one or more **Claims** for which payment is otherwise due under this Coverage Section but which **Loss** in the aggregate exceeds the remaining available Limit of Liability for this Coverage Section, the **Company** shall:
  - (1) first pay such **Loss** for which coverage is provided under Insuring Clause (A) of this Coverage Section; then



- (2) with respect to whatever remaining amount of the Limit of Liability is available after payment of (1) above, pay such **Loss** for which coverage is provided under any other Insuring Clause of this Coverage Section.
- (B) Subject to the provisions of paragraph (A)(2) above, the **Company** shall, at the written request of the **Parent Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring Clause other than Insuring Clause (A) until such time as the **Parent Corporation** designates; provided that the **Company's** liability with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Parent Corporation** shall provide written notice to the **Company** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Company** shall have no further obligation under this Policy with respect to such funds.
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## **VI. SECURITIES TRANSACTIONS**

If, during the **Policy Period**, the **Insured Organization** intends to sell or offer to sell securities of any kind or nature whatsoever, issued at any time by the **Insured Organization** in a transaction that is not exempt from registration under the Securities Act of 1933, as amended (a "Transaction"), the **Insured Organization** will, no later than thirty (30) days prior to the effective date of the registration statement for such sale or offering, give the **Company** written notice of the proposed sale or offering and all information requested by the **Company** relating thereto. The **Company** shall provide to the **Insured Organization** a quotation for coverage with respect to such sale or offering; provided any such coverage shall be subject to such terms, conditions, limitations of coverage and such additional premium as the **Company**, in its sole discretion, may require. Unless and until the **Company** determines to issue coverage there shall in fact be no coverage for such Transaction.

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## **VII. OTHER INSURANCE**

- (A) If any **Loss** under this Coverage Section is insured under any other valid and collectible insurance policy(ies), prior or current, 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 amount of 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 Limit of Liability provided in this Coverage Section.
- (B) Any coverage for **Claims** for **Outside Capacity Wrongful Acts** will be specifically excess of any insurance provided by or indemnification available from the **Outside Entity** or any other source, other than the **Insured Organization**, for the benefit of the **Insured Person** serving in such **Outside Capacity**. Payment by the **Company** or any affiliate of the **Company** under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Capacity** shall reduce, by the amount of such payment, the **Company's** Limit of Liability under this Coverage Section with respect to such **Claim**.



**VIII. COORDINATION OF COVERAGE**

Any **Loss** covered under both this Coverage Section and the Employment Practices Liability Coverage Section, if purchased, shall be first covered under the Employment Practices Liability Coverage Section, subject to the terms, conditions and limitations therein. Any remaining portion of such **Loss** otherwise covered under this Coverage Section which is not paid under the Employment Practices Liability Coverage Section shall be covered under this Coverage Section, subject to its terms, conditions and limitations.

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SPECIMEN