PRIVATE COMPANY DIRECTORS AND OFFICERS LIABILITY

THIS IS A CLAIMS-MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE POLICY CAREFULLY.

I. INSURING AGREEMENTS

The Company will pay on behalf of:

A. the Insured Persons, Loss for Wrongful Acts, except for Loss which the Insured Organization pays to or on behalf of the Insured Persons as indemnification;

B. the Insured Organization, Loss for Wrongful Acts which the Insured Organization pays to or on behalf of the Insured Persons as indemnification; and

C. the Insured Organization, Loss for Wrongful Acts, resulting from any Claim first made during the Policy Period, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period.

The Company will also pay on behalf of the Insured Organization, Investigation Expense resulting from any Security Holder Derivative Demand first made during the Policy Period, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, against an Insured Organization for Wrongful Acts. The Company’s maximum limit of liability for all Investigation Expense will be the Investigation Expense Limit of Liability set forth in ITEM 5 of the Declarations for this Liability Coverage.

II. SUPPLEMENTAL PERSONAL INDEMNIFICATION

If ITEM 5 of the Declarations indicates that coverage for Supplemental Personal Indemnification Coverage has been purchased, and if the Liability Coverage Limit of Liability under this Liability Coverage or a Liability Coverage Shared Limit of Liability, if applicable, has been exhausted, the Company will provide the Insured Persons with an additional Supplemental Personal Indemnification Limit of Liability under Insuring Agreement A. Such Supplemental Personal Indemnification Limit of Liability will not exceed the amount set forth in ITEM 5 of the Declarations, which amount is in addition to and not part of the Liability Coverage Limit of Liability or Liability Coverage Shared Limit of Liability, if applicable. This Supplemental Personal Indemnification Limit of Liability applies solely to Loss resulting from any Claim, other than a Claim for an employment-related Wrongful Act, against an Insured Person to which Insuring Agreement A. is applicable.

III. DEFINITIONS

Wherever appearing in this Liability Coverage, the following words and phrases appearing in bold type will have the meanings set forth in this Section III. DEFINITIONS:

A. Claim means:
   1. a written demand, other than a Security Holder Derivative Demand, for monetary damages or non-monetary relief;
   2. a civil proceeding commenced by service of a complaint or similar pleading;
   3. a criminal proceeding commenced by filing of charges;
   4. a formal administrative or regulatory proceeding, commenced by a filing of charges, formal investigative order, service of summons, or similar document;
   5. an arbitration, mediation or similar alternative dispute resolution proceeding if the Insured is obligated to participate in such proceeding or if the Insured agrees to participate in such proceeding, with the Company’s written consent, such consent not to be unreasonably withheld;
6. a Security Holder Derivative Demand solely with respect to Investigation Expenses and subject to the Investigation Expense Limit of Liability set forth in ITEM 5 of the Declarations;

7. the service of a subpoena on an Insured Person identified by name if served upon such person pursuant to a formal administrative or regulatory proceeding, or

8. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding; against an Insured for a Wrongful Act, provided that Claim does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

A Claim is deemed to be made on the earliest date that any Executive Officer first receives written notice of such Claim. However, if any Insured Person who is not an Executive Officer first receives written notice of a Claim during the Policy Period, but no Executive Officer receives written notice of such Claim until after the Policy Period has expired, then such Claim will be deemed to have been made on the date such Insured Person first received written notice of the Claim.

B. Executive Officer means the chairperson, chief executive officer, president, chief financial officer, in-house general counsel, or LLC Manager of the Insured Organization or a functional equivalent thereof.

C. Insured means the Insured Persons and the Insured Organization.

D. Insured Organization means the Named Insured, any Subsidiary, and any such entity as a debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended, or the equivalent of a debtor in possession under any applicable foreign law.

E. Insured Person means any natural person who was, is or becomes a duly elected or appointed member of the board of directors, officer, or a functional equivalent to a member of the board of directors or officer of the Insured Organization in the event the Insured Organization is incorporated or domiciled outside the United States, member of the board of managers, Executive Officer, employee, or member of a management committee or an advisory committee of the Insured Organization.

In the event of the death, incapacity or bankruptcy of an Insured Person, any Claim against the estate, heirs, legal representatives or assigns of such Insured Person for a Wrongful Act of such Insured Person will be deemed to be a Claim against such Insured Person.

F. Investigation Expense means reasonable and necessary fees, costs and expenses incurred by the Insured Organization, including its board of directors, board of managers or any duly constituted committee thereof, in connection with any investigation or evaluation by the Insured Organization of any Security Holder Derivative Demand.

G. Loss means Defense Expenses and money which an Insured is legally obligated to pay as a result of a Claim, including settlements, judgments, back and front pay, compensatory damages, punitive or exemplary damages or the multiple portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary, or multiplied damages, prejudgment and postjudgment interest, and legal fees and expenses awarded pursuant to a court order or judgment. Loss does not include:

1. civil or criminal fines, sanctions, liquidated damages other than liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, payroll or other taxes, or damages, penalties or types of relief deemed uninsurable under applicable law; or

2. any amount allocated to non-covered loss pursuant to Section III. CONDITIONS. P. ALLOCATION of the Liability Coverage Terms and Conditions.

H. Outside Entity means a corporation or organization:

1. other than the Insured Organization, which is exempt from federal income tax as an entity described in Section 501(c)(3), 501(c)(4), or 501(c)(10) of the Internal Revenue Code of 1986, as amended; or

2. specifically scheduled as an Outside Entity by endorsement to this Liability Policy.
I. **Outside Position** means service by an **Insured Person** as a member of the board of directors, officer, member of the board of trustees, member of the board of managers, or a functional equivalent thereof with an **Outside Entity**, but only during such time that such service is with the knowledge, consent, and at the specific request of the **Insured Organization**.

J. **Security Holder Derivative Claim** means any **Claim** brought on behalf of, or in the name or right of, the **Insured Organization** by one or more security holders of the **Insured Organization** in their capacity(ies) as such, but only if such **Claim** is brought without the assistance, participation or solicitation of any member of the board of directors, officer, member of the board of managers, or a functional equivalent thereof.

K. **Security Holder Derivative Demand** means a written demand by one or more security holders of the **Insured Organization** in their capacity(ies) as such to bring a civil proceeding in a court of law on behalf of, or in the name or right of, the **Insured Organization** against any **Insured Person** for a **Wrongful Act** by an **Insured Person**, but only if such demand is asserted without the assistance, participation or solicitation of any member of the board of directors, officer, member of the board of managers, or a functional equivalent thereof.

L. **Subsidiary** means:
   1. any corporation, partnership, limited liability company or other entity organized under the laws of any jurisdiction in which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to elect, appoint or exercise a majority control over such entity’s board of directors, board of trustees, board of managers, natural person general partners, or functional equivalent;
   2. any non-profit entity over which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** has the ability to exercise managerial control;
   3. any entity operated as a joint venture, in which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or indirectly, exactly 50% of the issued and outstanding voting stock and whose management and operation the **Insured Organization** solely controls, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock; or
   4. subject to the provisions set forth in Section III. CONDITIONS L. ACQUISITIONS of the Liability Coverage Terms and Conditions, any entity that the **Insured Organization** acquires or forms during the **Policy Period** in which the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to elect, appoint or exercise a majority control over such entity’s board of directors, board of trustees, board of managers, natural person general partners, or functional equivalent, or, in the case of any non-profit entity that does not issue securities, over which the **Named Insured** has the ability to exercise managerial control.

M. **Wrongful Act** means:
   1. any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty or neglect by, or any matter asserted against, an **Insured Person** in his or her capacity as such;
   2. any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty or neglect by, or any matter asserted against, an **Insured Person** in his or her **Outside Position**;
   3. any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty or neglect by, or any matter asserted against, the **Insured Organization**; or
   4. any matter asserted against an **Insured Person** solely by reason of his or her status as such.

All **Related Wrongful Acts** are a single **Wrongful Act** for purposes of this **Liability Coverage**, and all **Related Wrongful Acts** will be deemed to have occurred at the time the first of such **Related Wrongful Acts** occurred whether prior to or during the **Policy Period**.
IV. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

1. The Company will not be liable for Loss for any Claim for any damage to, destruction of, loss of, or loss of use of any tangible property including damage to, destruction of, loss of, or loss of use of tangible property that results from inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot.

2. The Company will not be liable for Loss for any Claim for any bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, humiliation, loss of reputation, libel, slander, oral or written publication of defamatory or disparaging material, or invasion of privacy; provided that this exclusion will not apply to:
   a. any Claim for emotional distress, mental anguish, or humiliation with respect to any employment related Wrongful Act; or
   b. any Security Holder Derivative Claim.

3. The Company will not be liable for Loss for any Claim:
   a. based upon or arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any Pollutant;
   b. based upon or arising out of any request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any Pollutant; or
   c. brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, any Pollutant, provided this exclusion does not apply to any Security Holder Derivative Claim.

4. The Company will not be liable for Loss for any Claim based upon or arising out of any fact, circumstance, situation, event, or Wrongful Act underlying or alleged in any prior or pending civil, criminal, administrative or regulatory proceeding, including audits initiated by the Office of Federal Contract Compliance Programs, against any Insured as of or prior to the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this Liability Coverage.

5. The Company will not be liable for Loss for any Claim for any fact, circumstance, situation, or event that is or reasonably would be regarded as the basis for a claim about which any Executive Officer had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this Liability Coverage.

6. The Company will not be liable for Loss for any Claim based upon or arising out of, any fact, circumstance, situation, event, or Wrongful Act which, before the Inception Date set forth in ITEM 2 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any Insured under any policy of insurance of which this Liability Coverage is a direct renewal or replacement or which it succeeds in time.

7. The Company will not be liable for Loss for any Claim for any violation of responsibilities, duties or obligations under any law concerning Social Security, unemployment insurance, workers’ compensation, disability insurance, or any similar or related federal, state or local law or regulation or for any violation of the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the National Labor Relations Act (NLRA), Fair Labor Standards Act (FLSA) (except the Equal Pay Act), or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation.

8. The Company will not be liable for Loss for any Claim for any violation of responsibilities, duties or obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including
amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; or for an Insured’s failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an employee or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA.

9. The Company will not be liable for Loss for any Claim by or on behalf of, or in the name or right of, any Insured; provided that this exclusion will not apply to:
   a. any Security Holder Derivative Claim or any Security Holder Derivative Demand;
   b. any Claim in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an Insured Person and which is part of or results directly from a Claim which is not otherwise excluded by the terms of this Liability Coverage;
   c. any Claim brought by a receiver, liquidator, bankruptcy trustee or similar official of the Insured Organization;
   d. any Claim brought or maintained by a natural person who was a member of the board of directors, officer, member of the board of trustees, member of the board of managers, or a functional equivalent thereof, but who has not served in such capacity for at least four (4) years preceding the date the Claim is first made; and who brings and maintains the Claim without the solicitation, assistance or participation of any current member of the board of directors, officer, member of the board of trustees, board of managers, or a functional equivalent thereof or anyone who has served in such capacity during the four (4) year period immediately preceding the date the Claim is first made;
   e. any Claim for an employment related Wrongful Act brought by an employee; or
   f. any Claim brought by an employee for a Wrongful Act in connection with an offer, purchase or sale of securities if:
      i. the employee brings the Claim solely in his or her capacity as a security holder of the Insured Organization without the solicitation, assistance or participation of any current member of the board of directors, officer, member of the board of trustees, board of managers, or a functional equivalent thereof or anyone who has served in such capacity during the four (4) year period immediately preceding the date the Claim is first made; and
      ii. the employee is not a member of the board of directors, officer, member of the board of trustees, board of managers, or a functional equivalent thereof and has not served in such capacity during the four (4) year period immediately preceding the date the Claim is first made.

10. The Company will not be liable for Loss for any Claim by or on behalf of, or in the name or right of, any Outside Entity against an Insured Person for a Wrongful Act in his or her Outside Position with respect to such Outside Entity; provided that this exclusion will not apply to any Claim brought derivatively by a security holder of such Outside Entity in his or her capacity as such.

11. The Company will not be liable for Loss for any Claim based upon or arising out of:
   a. the public offer, sale, solicitation or distribution of securities issued by the Insured Organization; or
   b. the violation of any federal, state, local or provincial statute relating to securities, including the Securities Act of 1933 and the Securities and Exchange Act of 1934, or any rules or regulations promulgated thereunder.

provided that this exclusion will not apply to any offer, purchase or sale of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933 (an “Exempt Transaction”).

In addition, if at least thirty (30) days prior to an offering of securities of the Insured Organization, other than pursuant to an Exempt Transaction, the Company receives notice of the proposed transaction and any additional information requested by the Company, the Insured Organization may request a proposal for coverage subject to any additional terms and conditions, and payment of any additional premium, described in such proposal.

12. The Company will not be liable for Loss for any Claim based upon or arising out of any Wrongful Act by an entity that is, or was a Subsidiary, or any Insured Person of such entity, occurring at any time during which such entity was not a Subsidiary.
13. The Company will not be liable for Loss for any Claim, with respect to Insuring Agreement C. only:
   a. for any plagiarism;
   b. for any misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade secret or any other intellectual property rights;
   c. based upon or arising out of any malfunction of any product or failure of any product to perform in any manner as a result of any defect, deficiency, inadequacy or dangerous condition in such product or in its design or manufacture;
   d. based upon or arising out of any employment related Wrongful Act; or
   e. for any liability of the Insured Organization under any express contract or agreement. For the purposes of this exclusion, an express contract or agreement is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making.

B. EXCLUSIONS APPLICABLE TO LOSS, OTHER THAN DEFENSE EXPENSES

1. The Company will not be liable for Loss, other than Defense Expenses, for any Claim based upon or arising out of any Insured:
   a. committing any intentionally dishonest or fraudulent act or omission;
   b. committing any willful violation of any statute, rule or law, or
   c. gaining any profit, remuneration or advantage to which such Insured was not legally entitled;

provided that this exclusion will not apply unless a final adjudication establishes that such Insured committed such intentionally dishonest or fraudulent act or omission, or willful violation of any statute, rule or law, or gained such profit, remuneration or advantage to which such Insured was not legally entitled.

2. The Company will not be liable for Loss, other than Defense Expenses, for any Claim seeking costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or other equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including actual or anticipated costs and expenses associated with or arising from an Insured’s obligation to provide reasonable accommodation under, or otherwise comply with, the Americans With Disabilities Act or the Rehabilitation Act of 1973, including amendments thereto and regulations thereunder, or any related or similar federal, state or local law or regulation.

V. SEVERABILITY OF EXCLUSIONS

No conduct of any Insured Person will be imputed to any other Insured Person to determine the application of any of the exclusions set forth in Section IV. EXCLUSIONS above. Solely with respect to exclusion B.1. set forth above, no conduct of any Insured will be imputed to any other Insured to determine if coverage is available.

VI. CONDITIONS

A. RETENTION

This Section VI. CONDITIONS A. RETENTION will supplement, and not replace, Section III. CONDITIONS B. RETENTION of the Liability Coverage Terms and Conditions.

No retention will apply to Defense Expenses resulting from any Claim, other than a Claim for an employment related Wrongful Act, and the Company will reimburse the Insured Organization for any such retention paid by the Insured Organization in connection with any such Claim, if:

1. with respect to such Claim, there is a final adjudication of no liability obtained prior to or during trial, in favor of all Insureds, by reason of a motion to dismiss or a motion for summary judgment or any similar motion or process, after exhaustion of all appeals, or a final judgment of no liability obtained after trial, in favor of all Insureds, after exhaustion of all appeals; or
2. such Claim is dismissed or there is a stipulation to dismiss such Claim with prejudice and without the payment of any monetary consideration by the Insureds.

In no event will a settlement of a Claim be considered a final adjudication of no liability for purposes of this subsection.

As a condition of any reimbursement of the retention as set forth above, the Company may require a written undertaking on terms and conditions satisfactory to the Company guaranteeing the repayment of such amounts in the event that such Claim is reinstated after payment by the Company.

B. SETTLEMENT

The Company may, with the written consent of the Insured, make such settlement or compromise of any Claim as the Company deems expedient. In the event that the Company recommends an offer of settlement (a “Settlement Offer”) of any Claim which is acceptable to the claimant(s), and if the Insured will refuse to consent to such Settlement Offer, the Insured will be solely responsible for thirty percent (30%) of all Defense Expenses incurred or paid by the Insured after the date the Insured refused to consent to the Settlement Offer, and the Insured will also be responsible for thirty percent (30%) of all Loss, other than Defense Expenses, in excess of the Settlement Offer, provided that the Company's liability under this Liability Coverage for such Claim does not exceed the remaining applicable limit of liability.

C. PRESUMPTION OF INDEMNIFICATION

Regardless of whether Loss resulting from any Claim against Insured Persons is actually indemnified, Insuring Agreement B. and the Retention set forth in the Declarations will apply to any Loss as to which indemnification by the Insured Organization or any Outside Entity is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the Insured Organization or such Outside Entity solely by reason of its Financial Insolvency.

The certificate of incorporation, charter, articles of association or other organizational documents of the Insured Organization and each Outside Entity, including by-laws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the Insured Persons to the fullest extent permitted by law.

D. OTHER INSURANCE AND INDEMNIFICATION

This Liability Coverage will apply only as excess insurance over, and will not contribute with: (1) any other valid and collectible insurance available to any Insured, including any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this Liability Coverage by reference in such other policy to the Policy Number of this Liability Policy; or (2) indemnification to which an Insured Person is entitled from any Outside Entity other than the Insured Organization. This Liability Coverage will not be subject to the terms of any other insurance.

E. OUTSIDE POSITIONS – LIMIT OF LIABILITY

If any Claim against the Insureds gives rise to an obligation both under this Liability Coverage and under any other coverage or policy of insurance issued by the Company or any of its affiliates to any Outside Entity, the Company's maximum aggregate limit of liability under all such policies for all Loss, including Defense Expenses, for such Claim will not exceed the largest single available limit of liability under any such coverage.

F. ORDER OF PAYMENTS

If Loss, other than Defense Expenses, from any Claim exceeds the remaining applicable limit of liability as set forth in ITEM 5 of the Declarations:

1. the Company will first pay Loss for such Claim to which Insuring Agreement A. applies; then
2. to the extent that any amount of the applicable limit of liability will remain available, the Company will pay Loss for such Claim to which Insuring Agreements B. and C. apply.
Upon written request of the Insured Organization by and through any Executive Officer, the Company will either pay or withhold payment of Loss from such Claim under Insuring Agreements B. and C., as applicable. In the event of a written request to withhold payment, the Company will make any future payment only for Loss from any such Claim to which Insuring Agreement A. applies, unless otherwise so instructed upon written request by and through an Executive Officer of the Insured Organization.