



In consideration of the premium paid, in reliance upon the statements in the **Application** and subject to the Declarations, limitations, conditions, definitions and other provisions of this Coverage Part, including endorsements hereto, the **Insurer** and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

A. Insured Individual Non-Indemnified Liability

The **Insurer** shall pay, on behalf of an **Insured Individual**, **Loss** on account of a **Claim** first made during the **Policy Period**, to the extent that such **Loss** has not been paid or indemnified by any **Insured Entity**.

B. Corporate Entity Reimbursement for Indemnification of Insured Individual

The **Insurer** shall pay, on behalf of the **Insured Entity**, **Loss** on account of a **Claim** first made during the **Policy Period** to the extent the **Insured Entity** pays or indemnifies an **Insured Individual** for such **Loss**.

C. Corporate Entity Liability

The **Insurer** shall pay, on behalf of the **Insured Entity**, **Loss** on account of a **Claim**, and **Defense Costs** on account of a **Securityholder Derivative Investigation**, first made during the **Policy Period**.

II. DEFINITIONS

Claim means:

A. with respect to Insuring Agreements A. and B.:

1. any investigation, evidenced by any written document, including a subpoena, arrest or confinement warrant, target letter or search warrant, against an **Insured Individual** for a **Wrongful Act**; and
2. any request to interview, depose or otherwise meet with, or a sworn statement obtained from, an **Insured Individual** or any request for an **Insured Individual** to produce documents or information in connection with:
 - a. an **Insured Individual** acting in their capacity as such;
 - b. an **Insured Entity's** business activities; or
 - c. an **Insured** responding to or cooperating with an inquiry or investigation by an Investigative Bodyprovided that any such request or sworn statement included in this paragraph shall not include any request by an Investigative Body that is part of any routine or regularly scheduled Investigative Body oversight, compliance, audit, inspection or examination; and

B. with respect to Insuring Agreements A., B. and C.:

1. a written demand for monetary or non-monetary (including injunctive) relief, including demands for arbitration, mediation, waiving or tolling of a statute of limitations or **Extradition**;
2. a civil or criminal proceeding, evidenced by:
 - a. the service of a complaint or similar pleading in a civil proceeding; or
 - b. the filing of an indictment, information or similar document or an arrest in a criminal proceeding; and
3. a formal administrative or regulatory proceeding or investigation, evidenced by:
 - a. the filing of a formal notice of charges or the entry of a formal order of investigation;

- b. receipt of a subpoena resulting from any notice of charges or order of investigation included in item a. herein;
- c. receipt of Wells notice; or
- d. receipt of a written notice from an **Investigative Body** initiating an enforcement proceeding, against an **Insured** for a **Wrongful Act**, including any appeal therefrom.

The time when a **Claim** shall be deemed first made for the purposes of this Policy shall be:

1. with respect to any **Claim** described in paragraphs A.1. and 2. above, the date on which the **Claim** is first made against, served upon or received by the **Insured** or the applicable notice or order is filed or entered; and
2. with respect to any **Claim** described in paragraph A.2. above, the date on which notice of such **Claim** is provided to the **Insurer** in accordance with the Reporting and Notice provisions in the Common Policy Terms and Conditions.

Crisis means the public announcement that an **Incident** occurred on the **Named Insured's** premises or at an event sponsored by the **Named Insured**.

Crisis Management Emergency Response Expenses means expenses for services provided by a Crisis Management Firm. **Crisis Management Emergency Response Expenses** do not include:

- A. Compensation, fees, benefits, overhead, charges or expenses of any **Insured**; or
- B. Any expenses that are covered or reimbursable to the **Named Insured** under any other valid and collectible insurance.

Crisis Management Firm means any service provider hired by the **Named Insured** and approved in writing by the **Insurer**. The **Insurer's** consent will not be unreasonably withheld.

Defense Costs means that part of **Loss** consisting of:

- A. reasonable costs, charges, fees (including, attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred in:
 1. investigating, defending, opposing or appealing any **Claim** or
 2. any **Securityholder Derivative Investigation**; and
- B. the premium for appeal, attachment or similar bonds (but the **Insurer** shall be under no obligation to furnish any bond).

Employed Lawyer means any **Employee** who is or was admitted to practice law and employed as a full-time and salaried attorney to perform legal services for an **Insured Entity**, solely in their capacity as an admitted and employed attorney.

Employed Lawyer Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by an **Employed Lawyer** solely in connection with performing or failing to perform legal services for any **Insured Entity** by which such **Employed Lawyer** is employed as such, and at such **Insured Entity's** written request.

Employed Lawyer Wrongful Act shall not mean that portion of any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by an **Employed Lawyer** in connection with performing legal services for any individual or any entity other than an **Insured Entity** by which they are employed as such.

Entity General Partner means any entity solely while acting in its fiduciary capacity as a general partner of an **Insured Entity**.

Insured means any **Insured Entity** or **Insured Individual**.

Insured Individual means:

- A. an **Executive**;
- B. an **Employee**;
- C. a holder of an equivalent position to those included in paragraph A. above in an **Outside Entity**, while serving at the specific request or direction of the **Named Insured**;
- D. any natural person who was, now is or shall be a board observer or duly elected member of an advisory board including a **Scientific Advisory Board**;
- E. shadow or de facto Director; and
- F. an **Employed Lawyer**.

Loss means the amount that an Insured becomes legally obligated to pay on account of any Claim including:

- A. compensatory damages;
- B. judgments and settlements, including a judgment or settlement awarding plaintiffs' attorneys fees, provided that with respect to any settlement including plaintiffs' attorneys fees, that portion of the settlement can be demonstrated to be reasonable, taking into consideration the nature of legal action, time and expense involved in prosecuting such action, and the likelihood of a court awarding a similar amount as part of a judgment;
- C. pre and post-judgment interest;
- D. **Defense Costs**;
- E. solely with respect to Insuring Agreement I.A, taxes imposed by law upon an **Insured Individual** in his capacity as such in connection with any bankruptcy, receivership, conservatorship or liquidation of an **Insured Entity**, to the extent such taxes are insurable by law; and
- F. punitive, exemplary or multiplied portion of multiplied damages, fines or penalties, if and to the extent that any such damages, fines or penalties are insurable under the law of the jurisdiction most favorable to the insurability of such damages, fines or penalties.

In determining the most favorable jurisdiction as set forth in paragraph F. above, due consideration shall be given to the jurisdiction with a substantial relationship to the relevant **Insureds** or to the **Claim** giving rise to such damages, fines or penalties, and the **Insurer** shall not challenge any opinion of independent legal counsel (mutually agreed to by the **Insurer** and the **Insured**) that such damages, fines or penalties are insurable under applicable law.

Loss does not include any portion of such amount that constitutes any:

1. amount not insurable under the law pursuant to which this Coverage Part is construed provided that the **Insurer** shall not assert that any **Loss** attributable to violations of Sections 11, 12, or 15 of the Securities Act of 1933 is uninsurable;
2. cost incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
3. amount that represents or is substantially equivalent to an increase in consideration paid (or proposed to be paid) by an Insured Entity in connection with its purchase of any securities and assets;
4. tax, other than taxes described in paragraph E. above;
5. cost incurred to clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

Outside Entity means:

- A. any non-profit entity, community chest, fund or foundation; or
- B. any other entity specifically added as an **Outside Entity** by endorsement to this Coverage Part, that is not an **Insured Entity**.

Professional Services means services which are performed for others for a fee.

Scientific Advisory Board means a group of scientists, independent from management, created by or requested by an **Insured Entity** to provide objective feedback and guidance on the **Insured Entity's** progress and goals.

Securityholder Derivative Investigation means an investigation by an **Insured Entity** to determine whether it is in the best interest of such **Insured Entity** to prosecute the claims alleged in a securityholder derivative demand or lawsuit. Where a **Securityholder Derivative Investigation** is initiated because of a lawsuit rather than a demand, any coverage provided for **Defense Costs** on account of such **Securityholder Derivative Investigation** shall in no way limit the coverage otherwise afforded under this Coverage Part to an Insured for **Loss** on account of a **Claim**.

Wrongful Act means:

- A. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by:
 - 1. an **Insured Individual** in his capacity as such;
 - 2. any **Entity General Partner** while acting in its capacity as such;
 - 2. by an **Insured Entity**; or
- B. any other matter claimed against an **Insured Individual**.

III. EXCLUSIONS

A. Exclusions Applicable to All Insuring Agreements

This Insurance does not apply to **Loss** on account of that portion of a **Claim**:

1. Insured vs. Insured

Brought by, or on behalf of:

- a. an **Insured Entity** against another **Insured Entity**;
- b. an **Insured Entity** or **Outside Entity** against an **Insured Individual**;
- c. an **Insured Individual**, in any capacity, against an **Insured**;

provided that:

i. Exclusion 1.b. above shall not apply to a **Claim** brought:

- (a.) outside the United States of America, Canada or their territories or possessions;
- (b.) while the **Named Insured** or **Outside Entity** is in **Financial Impairment**;
- (c.) as a securityholder derivative action; or
- (d.) while an **Insured Individual** is no longer serving in his capacity as such; and

ii. Exclusion 1.c. above shall not apply to any **Claim**:

- (a.) for employment-related **Wrongful Acts** against an **Insured Individual**;
- (b.) for contribution or indemnity;
- (c.) brought by an **Insured Individual** who has ceased serving in his capacity as such for at least 1 year;

(d.) brought by, on behalf of or with the participation of a whistleblower;

(e.) brought by an **Employee**; or

(f.) brought while the **Named Insured** is in **Financial Impairment**

2. Public Securities

Based upon, arising out of or resulting from any public offering of, or purchase or sale of, equity or debt securities issued by any **Insured Entity** or **Outside Entity** that is declared effective by the Securities and Exchange Commission, provided that this Exclusion 2. shall not apply to any **Claim** based upon, arising out of or resulting from an **Insured Entity**:

a. securities of an **Insured Entity** for which registration is not required;

b. failure to undertake or complete an initial public offering or sale of its securities; or

c. preparation for any public offering, including any "road show" presentation to potential investors or other similar presentation but only if such offering does not occur;

B. Exclusions Applicable to Insuring Agreement C. Corporate Entity Liability, Only

This Insurance does not apply to **Loss** on account of that portion of a **Claim**:

1. Antitrust

For any anti-trust, price fixing or discrimination, restraint of trade, monopolization, unfair trade practices, predatory pricing or false advertising;

2. Contract

For any liability in connection with any contract or agreement to which a **Named Insured** is a party, provided that this Exclusion B.2. shall not apply to the extent that such **Insured Entity** would have been liable in the absence of such contract or agreement;

3. Employment Practices

Based upon, arising out of or resulting from any employment-related **Wrongful Act**;

4. Intellectual Property

For any infringement of copyright, patent, trademark, trade dress, trade name or service mark or any misappropriation of ideas, trade secrets or other intellectual property rights, provided this Exclusion B.4 shall not apply to any **Claim** brought by a securityholder of an **Insured Entity** against an **Insured Entity**;

5. Personal Injury

For any defamation (including libel and slander), disparagement, wrongful entry or eviction, invasion of privacy (including but not limited to access to or disclosure of material in violation of an individual's right of privacy), false arrest, false imprisonment, assault, battery, loss of consortium, malicious use or abuse of process or malicious prosecution;

6. Professional Services

For the performance of or failure to perform **Professional Services**, provided that this Exclusion B.6. shall not apply to any **Claim** brought by a securityholder or limited partner of a **Named Insured** against an **Insured**;

7. Third Party Discrimination or Harassment

Based upon, arising out of or resulting from any discrimination against, or harassment of, any third party;

8. Foreseeable Claims

Based upon, arising out of or resulting from any **Employed Lawyer Wrongful Act** committed by an **Employed Lawyer** who knew or reasonably could have foreseen, as of the Pending or Prior Date, that such **Employed Lawyer Wrongful Act** could result in a **Claim**;

9. Non-Employed Period
Based upon, arising out of or resulting from any **Employed Lawyer Wrongful Act** actually or allegedly committed by an **Employed Lawyer** before such individual became an **Employed Lawyer** or after such individual ceased being an **Employed Lawyer**; and
 10. Product Defect
Based upon, arising out of or in any way related to 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, provided this Exclusion B.10 shall not apply to **Loss** arising from any securities **Claim**, or **Securityholder Derivative Investigation**.
- C. With respect to the Directors & Officers and Entity Liability Coverage Part, the following exceptions shall apply to Section III. **EXCLUSIONS** of the Common Policy Terms and Conditions:
1. A. Bodily Injury/Property Damage shall not apply to any **Claim**:
 - a. under Insuring Clause A; or
 - b. brought by a securityholder of an **Insured Entity** against an **Insured** or for a **Loss** on account of a **Securityholder Derivative Investigation**; and
 2. E. Pollution shall not apply to any **Claim**:
 - a. under Insuring Agreement I.A.; or
 - b. brought by a securityholder of an **Insured Entity** against an **Insured Individual**.

IV. CONDITIONS

- A. Retention
1. No retention shall apply to any **Claim** under Insuring Agreement A. or to any **Securityholder Derivative Investigation**.
 2. In determining whether a Retention stated in Item 4. of the Declarations of this Coverage Part is applicable with respect to a **Claim** based upon, arising out of or resulting from an **Employed Lawyer Wrongful Act**, it is assumed that each **Insured Entity** will indemnify each of its **Employed Lawyers** to the full extent permitted by law and by any applicable charter, by-laws, operating agreement or other similar document.
- B. Limit of Liability
1. The **Securityholder Derivative Investigation** Limit stated in Item 3. of the Directors & Officers and Entity Liability Coverage Declarations represents the maximum amount payable under this Coverage Part during the **Policy Period** for **Defense Costs** on account of all **Securityholder Derivative Investigations**, which amount shall be part of, and not in addition to, the Limit of Liability stated in Item 3. of such Declarations.
 2. The Additional Limit for Non-Indemnifiable Loss stated in Item 3. of the Directors & Officers and Entity Liability Coverage Declarations represents an additional limit of liability available solely to an **Executive** or natural person **General Partner** for **Loss** on account of a **Claim** covered under Insuring Agreement A.1. This additional limit of liability shall be in addition to and not part of, and excess of any other insurance written specifically as excess of, the Limit of Liability stated in Item 3. of such Declarations.
 3. The **Employed Lawyer** Limit stated in Item 3. of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for **Loss** arising from any **Claim** alleging **Employed Lawyer Wrongful Act** which shall be part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 3. of the Directors & Officers and Entity Liability Coverage Declarations.
 4. The Crisis Expense Limit stated in Item 3. of the Declarations of this Coverage Part represents the Insurer's maximum liability for all Crisis Management Emergency Response Expenses resulting from an Incident that

causes a Crisis that occurs during the Policy Period.

The Crisis Management Emergency Response Expenses must occur during the Policy Period and be reported to the Insurer no later than six (6) months after the date the Crisis began.

C. Advancement

1. If an **Insured Entity** fails to respond to an **Insured Individual's** request for indemnification within 60 days of the **Insured Individual's** request to the **Insured Entity** for such indemnification, then upon the reporting of the **Claim**, the **Insurer** shall advance **Defense Costs** and any other incurred **Loss** until such time that the **Insured Entity** accepts the **Insured's** request for indemnification or the Limit of Liability set forth in Item 3. of the Declarations of Directors & Officers and Entity Liability Coverage Declarations has been exhausted, whichever occurs first. In any other **Claim**, the **Insurer** shall advance **Defense Costs** on a current basis, but no later than 60 days after receipt of the legal bills and any supporting documentation.
2. If it is determined by a final adjudication that any advanced **Defense Costs** are not covered under this Coverage Part, the **Insureds**, severally according to their respective interests, shall repay such uncovered **Defense Costs** to the **Insurer**, provided that nothing in this paragraph 2. shall limit the final non-appealable adjudication

requirement in Section III.B. Conduct of the Common Policy Terms and Conditions. If the **Insurer** recovers any portion of an amount paid under this Coverage Part, the **Insurer** shall reinstate the applicable limit of liability with any amounts recovered up to such amount paid, less any costs incurred by the **Insurer** in its recovery efforts.

D. Reporting

Notice of any **Claim** described in paragraph A.2. of the definition of **Claim** or a **Securityholder Derivative Investigation** is optional, but only **Loss** incurred after such **Securityholder Derivative Investigation** is reported is eligible for coverage under this Coverage Part. If an Insured elects to report any **Securityholder Derivative Investigation**, any **Claim** that may subsequently arise out of any reported **Securityholder Derivative Investigation** shall be deemed to have been first made during the **Policy Period** in which such investigation was first reported.

E. Other Insurance

1. With the exception of insurance which is written specifically as excess of the Limit of Liability of this Coverage Part, this Coverage Part shall be excess of and shall not contribute with any valid and collectible insurance providing coverage for **Loss** for which this Coverage Part also provides coverage, provided that any payment by an Insured of a retention or deductible under any such other insurance shall reduce the applicable Retention under this Coverage Part by the amount of such payment which would otherwise have been **Loss** under this Coverage Part.
2. This Coverage Part shall also be excess of and shall not contribute with any indemnity provided, and any valid and collectible insurance maintained, by an **Outside Entity** for an **Insured Individual** serving in his capacity as such for the **Outside Entity**.
3. This Coverage Part shall be specifically primary of any valid and collectible:
 - a. private equity or venture capital liability, general partner liability, directors' and officers' liability, or other similar management or professional liability insurance maintained by any direct or indirect shareholder of the **Named Insured**;
 - b. indemnity provided by any current or former direct or indirect shareholder of the **Named Insured** (or any affiliate or control person of such shareholder); and
 - c. personal umbrella excess liability insurance, independent directors' liability insurance, personal liability insurance, or any other similar personal liability insurance available to any **Insured**.
4. Coverage for **Loss** on account of that portion of a **Claim** based upon, arising out of or resulting from any **Employed Lawyer Wrongful Act** shall be excess of any other valid and collectible lawyers' professional liability, legal malpractice or errors and omissions insurance and shall provide insurance only in the event of exhaustion

of all such other insurance due to the payment of loss thereunder.

F. Priority of Payments

1. In the event that **Loss** under Insuring Agreement A.1. and any other Loss are concurrently due under this Coverage Part, then the **Loss** under Insuring Clause A.1. shall be paid first. In all other instances, the **Insurer** may pay **Loss** as it becomes due under this Coverage Part without regard to the potential for other future payment obligations under this Coverage Part.
2. The coverage provided by this Coverage Part is intended first and foremost for the benefit and protection of **Insured Individuals**. In the event a liquidation or reorganization proceeding is commenced by or against an **Insured Entity** pursuant to United States bankruptcy law:
 - a. the **Insureds** hereby agree not to oppose or object to any efforts by the **Insurer**, the **Insured Entity** or an Insured to obtain relief from any stay or injunction issued in such proceeding; and
 - b. the **Insurer** shall first pay Loss on account of a **Claim** for a **Wrongful Act** occurring prior to the date such liquidation or reorganization proceeding commences, and then pay **Loss** in connection with a **Claim** for a **Wrongful Act** occurring after the date such liquidation or reorganization proceeding commences.