

<Product Name>

PRIVATE ORGANIZATION DIRECTORS, OFFICERS AND ENTITY LIABILITY CLAUSE

I. INSURING CLAUSES

- A. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** which is not indemnified by the **Insured Organization** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- B. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** which the **Insured Organization** is required or permitted to pay as indemnification to any of the **Insured Persons** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- C. The Underwriters shall pay on behalf of the **Insured Organization** all **Loss** resulting from any **Claim** first made against the **Insured Organization** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- D. The Underwriters shall pay on behalf of the **Insured Organization** all **Costs of Investigation** resulting from any **Derivative Demand** first made and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act**.
- E. The Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period**, if applicable, for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity**.

II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof, or any other directors, officers or corporate liability policies issued by the Underwriter of which this Policy is a renewal, replacement or which it succeeds in time.
- B. **“Claim”** means:
 - 1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;

2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds** commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charges, investigative order or similar document; or
 - c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. solely for the purpose of coverage afforded under Insuring Clause I.D., a **Derivative Demand**;
 4. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with the Underwriter's prior written consent, such consent not to be unreasonably withheld.
- C. "**Costs of Investigation**" means reasonable and necessary legal 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 **Insured Persons** or the **Insured Organization's** overhead expenses) incurred by the **Insured Organization** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Derivative Demand**.
- D. "**Defense Costs**" means reasonable and necessary legal fees and expenses to which the Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, the Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses. **Defense Costs** means only "**Costs of Investigation**" for the purpose of coverage afforded under Insuring Clause I.D.
- E. "**Derivative Demand**" means a written demand by one or more owners of voting securities of the **Insured Organization** upon the board of directors of the **Insured Organization** to bring a civil proceeding in a court of law against any of the **Insured Persons** for a **Wrongful Act**.
- F. "**Executive Officer**" means the chairperson, chief executive officer, chief operating officer, president, **Manager**, chief financial officer, in-house general counsel, risk manager, human resources staff or an individual acting in a similar capacity with the **Insured Organization**.
- G. "**Insureds**" means the **Insured Persons** and the **Insured Organization**.
- H. "**Insured Persons**" means all persons who were, now are, or shall be duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** including all persons outside the United States serving in a functionally equivalent role for the **Insured**

Organization including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.

- I. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by the Underwriters), settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:
1. the cost of providing non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought);
 2. civil or criminal fines, penalties, sanctions, liquidated damages; payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this Policy is construed;
 3. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree;
 4. any investigative costs other than **Costs of Investigation** or **Defense Costs** in connection with a **Claim**; or
 5. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- J. **“Outside Entity”** means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax; or
 2. any other entity, if specified in an endorsement to this Policy.
- K. **“Outside Executive Position”** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Persons** in an **Outside Entity** if service in such position is at the specific request of the **Insured Organization**.
- L. **“Wrongful Act”** means:
1. any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission by:

- a. any of the **Insured Persons** solely in their capacity as such;
 - b. any of the **Insured Persons** while in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E;
 - c. the **Insured Organization** solely with respect to the coverage afforded under Insuring Clause I.C.;
2. any matter claimed against any of the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Executive Position** solely with respect to the coverage afforded under Insuring Clause I.E.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. for actual or alleged libel, slander, defamation, bodily injury, sickness, disease, death, false arrest, false imprisonment, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof);
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 1. the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 2. any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so (such costs hereinafter "Clean Up Costs") including, but not limited to, any **Claim** alleging damage to the **Insured Organization** or its securities holders, purchasers or sellers;

provided, however, this exclusion shall not apply to the extent such **Claim** is otherwise covered under Insuring Clause I.A., other than Clean Up Costs; or **Loss** resulting from any **Claim** covered under Insuring Clauses I.B., I.C., I.D. or I.E., other than Clean Up Costs, to the extent such **Claim** is brought by any security holders of the **Insured Organization** solely in their capacity as such whether directly in their own name or right or derivatively on behalf of the **Insured Organization** and such **Claim** is instigated and continuously pursued totally independent of and totally without the solicitation, assistance, active participation or intervention of the **Insureds**;

- C. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, the Fair Labor Standards Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations;

- D. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 (“ERISA”), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto 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 **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA;
- E. by, on behalf of, or at the direction of any of the **Insureds**, except and to the extent such **Claim**:
1. is a derivative action brought or maintained by or on behalf of a securities holder of the **Insured Organization** who, when such **Claim** is first made, is acting independently of and without the solicitation, assistance, participation or intervention of any **Insured**;
 2. is brought by any of the **Insureds** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** not otherwise excluded by the terms of this Policy;
 3. is a **Derivative Demand**;
 4. is brought by a receiver, liquidator, trustee or similar official of the **Insured Organization**; or
 5. is brought by any former **Insured Person** who has not served in such capacity or as a consultant to 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 any active assistance or participation of, or solicitation by, the **Insured Organization** or any other **Insured Persons** or consultants to the **Insured Organization** who are serving or have served in such capacity within such four (4) year period;
- F. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Persons** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy; or
 2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity’s** directors, officers, trustees or equivalent executives;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. the public offer, sale, solicitation or distribution of securities of the **Insured Organization** or an **Outside Entity**; or

2. the actual or alleged violation of any federal, state, local or provincial statute relating to securities, including but not limited to the Securities Act of 1933 and the Securities and Exchange Act of 1934, or any rules or regulations promulgated thereunder;

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

If at least thirty (30) days prior to an offering of securities of the **Insured Organization**, other than pursuant to an Exempt Transaction, the Underwriters receive notice of the proposed transaction and any additional information requested by the Underwriters, the **Insured Organization** may request a proposal for coverage subject to any additional terms and conditions and payment of any additional premium the Underwriters may specify in such proposal. However, the Underwriters will not be obligated to provide such coverage;

H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, the purchase by the **Insured Organization** of securities of any entity whose securities are traded on any public stock exchange which purchase results in the **Insured Organization** having the right to vote for the election of such entity's directors, either directly or indirectly;

I. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

1. any deliberately dishonest, fraudulent or criminal act or omission by any of the **Insureds**; or

2. any personal profit or advantage gained by any of the **Insured Persons** to which they were not legally entitled

as determined by a judgment, settlement or a final adjudication; provided, however, this exclusion shall not apply to **Defense Costs** incurred up until such determination is made;

J. for the return by any of the **Insured Persons** of any remuneration paid to them without the previous approval of the appropriate governing body of the **Insured Organization** provided that this exclusion shall not apply to **Defense Costs** incurred in connection with any such **Claim** until such time as it is determined by a judgment, settlement or a final adjudication that such payment was unlawful;

K. with respect to Insuring Clause C. only:

1. for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade name, trade secret, trade dress, or any other intellectual property rights;

2. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged 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;

3. for actual or alleged breach of written contract, agreement, warranty, or guarantee where such **Claim** is brought by or on behalf of a party to or beneficiary of such contract, agreement, warranty, or guarantee except to the extent that the **Insured** would have been liable in the absence of such contract, agreement warranty, or guarantee;
4. for the liability of others assumed by the **Insured Organization** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
5. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act or omission in connection with the rendering of, or actual or alleged failure to render, professional services by or on behalf of the **Insured Organization** for the benefit of any other entity or person; or
6. by, on behalf of, or at the direction of any employee of or applicant for employment with the **Insured Organization** including without limitation any leased employee, seasonal employee or volunteer; provided that this exclusion shall not apply to a **Claim** brought by any such person in his or her capacity as a shareholder of the **Insured Organization**.

No **Wrongful Acts** shall be imputed to any other natural person for the purpose of determining the applicability of Exclusions I. and J.

IV. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- a. merges with another entity such that the **Named Insured** is the surviving entity, or
- b. acquires assets of another entity or creates or acquires a **Subsidiary** whose assets exceed 25% of the total assets of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of ninety (90) days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors or officers of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

V. ORDER OF PAYMENTS

The Underwriters shall pay **Loss** in the order in which **Loss** is incurred. If **Loss** payable under Insuring Clause I.A. and one or more of the other Insuring Clauses is incurred contemporaneously, the

Underwriters shall pay **Loss** payable under Insuring Clause I.A. The **Named Insured** may elect through its chief executive officer to decline or defer such payment under the other Insuring Clauses. The Underwriters shall have no obligation to pay **Loss** after exhaustion of the applicable Limits of Liability, regardless of whether the **Named Insured** has declined or deferred payment.

VI. ADDITIONAL SIDE A D&O LIMIT

If purchased as indicated in Item 4. of the Declarations, the applicable amount shown in Item 4. shall be the Additional Side A D&O Limit of Underwriters applicable only to **Claims** under Insuring Clause I.A. above, which Limit shall be separate and in addition to any other limit shown in Item 4. of the Declarations. The Additional Side A D&O Limit shall apply excess of the aggregate limit of liability applicable to the Private Organization Directors, Officers and Entity Liability Clause and all policies of insurance providing excess coverage.