

**ARCH ESSENTIAL D&O<sup>SM</sup>  
EXECUTIVE AND ORGANIZATION LIABILITY POLICY**

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**ARCH ESSENTIAL D&O<sup>SM</sup>**  
**EXECUTIVE AND ORGANIZATION LIABILITY POLICY**

In consideration of the payment of the premium, the Insurer specified in the Declarations (the “**Insurer**”) and the **Insureds** agree as follows:

**1. INSURING AGREEMENTS**

**A. Insured Person Liability**

Except for Loss paid as indemnification by an **Insured Organization**, the **Insurer** shall pay **Loss** on behalf of any **Insured Person** resulting from a **Claim** first made against such **Insured Person** during the **Policy Period** or Extended Reporting Period, if applicable.

**B. Organization Reimbursement**

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** that such **Insured Organization** is permitted or required to indemnify any **Insured Person** resulting from a **Claim** first made against such **Insured Person** during the **Policy Period** or Extended Reporting Period, if applicable.

**C. Organization Liability**

The **Insurer** shall pay **Loss** on behalf of an **Insured Organization** resulting from a **Securities Claim** first made against such **Insured Organization** during the **Policy Period** or Extended Reporting Period, if applicable.

**2. DEFINITIONS**

The following terms shall have the meanings specified below:

**A. “Application”** means:

1. the application for this Policy, including any information submitted in connection with or incorporated therein; and
2. any public documents filed by an **Insured Organization** with the Securities and Exchange Commission or any similar state, local, or foreign regulatory agency during the 12 months prior to the inception of the **Policy Period**.

**Application** excludes any such public documents filed more than 12 months prior to the inception of the **Policy Period**.

**B. “Claim”** means any:

1. written demand for civil monetary damages or civil non-monetary relief, commenced by the receipt by any **Insured** of such demand, including, without limitation, a **Derivative Demand**;
2. civil proceeding, including, without limitation, a lawsuit, arbitration, mediation or other alternative dispute resolution proceeding, commenced by the receipt by, or service upon, any **Insured** of a complaint, demand for arbitration, request for mediation, or similar document;

3. criminal proceeding, including any related **Extradition**, commenced by the return of an indictment, information, or similar document; or
4. administrative or regulatory proceeding, other than an investigation, commenced by the receipt by, or service upon, any **Insured** of a notice of charges or similar document,

for a **Wrongful Act**; or any

5. **Insured Person Investigation** commenced by: (i) the receipt by, or service upon, an **Insured Person** of a formal order of investigation, Wells Notice, subpoena, or target letter (within the meaning of title 9-11.151 of the United States Attorneys Manual); or (ii) the arrest and detainment or incarceration for more 24 hours of such **Insured Person** by any law enforcement authority in a jurisdiction other than the United States of America or its territories or possessions;
6. regarding Insuring Agreements A and B only, **Inquiry** which shall be deemed commenced only at the time that such **Inquiry** is noticed to the **Insurer**, regardless of when an **Insured Person** received such **Inquiry**; or
7. written request to an **Insured** to toll or waive a period or statute of limitations regarding a potential **Claim** as described in 2, 3, or 4 above commenced by the receipt by such **Insured** of such request.

All **Claims**, including, without limitation, any **Insured Person Investigation** or **Inquiry**, for the same **Wrongful Act**, any **Interrelated Wrongful Acts**, or the same or related facts, circumstances, or situations shall be deemed to be a single **Claim** first made on the earliest date that:

1. any of such **Claims** was commenced, even if such date is before the **Policy Period**;
2. proper notice of such **Wrongful Act** or any **Interrelated Wrongful Act** was given to the **Insurer** pursuant to Section 11.B; or
3. notice of any such **Wrongful Act**, **Interrelated Wrongful Act**, or fact, circumstance or situation was given under any prior directors and officers, management, employment practices or similar liability insurance policy.

No coverage is provided for any **Claim** made, or deemed first made, before the **Policy Period**.

C. “**Claim Manager**” means any:

1. chief executive officer;
2. chief financial officer;
3. chief legal officer; or
4. risk manager,

of the **Named Organization**.

D. “**Debtor in Possession**” means a “debtor in possession” as defined in Chapter 11 of the United States Bankruptcy Code or an equivalent status under any similar law.

- E. “Defense Costs”** means reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**, including **Extradition Costs** and **UK Corporate Manslaughter Act Defense Costs**. **Defense Costs** include the premium for any appeal, attachment or similar bond, provided that the **Insurer** shall have no obligation to issue such bond. **Defense Costs** exclude any: (i) compensation, benefit expenses, or overhead of any **Insureds**; (ii) **Derivative Investigation Costs**; or (iii) **Inquiry Response Costs**.
- F. “Derivative Demand”** means any written demand by any securities holder of an **Insured Organization**, in their capacity as such, upon the board of directors or other governing board of such **Insured Organization** to bring a lawsuit against an **Insured Person** for a **Wrongful Act**.
- G. “Derivative Investigation Costs”** means reasonable and necessary fees and expenses incurred by an **Insured Organization**, or on its behalf by its board of directors or other governing board or any committee thereof, to investigate a **Derivative Demand** or **Derivative Suit** for the purpose of determining how an **Insured Organization** should respond to such demand or suit. **Derivative Investigation Costs** exclude any: (i) compensation, benefits expenses or overhead of any **Insureds**; or (ii) **Defense Costs**.
- H. “Derivative Suit”** means any lawsuit against an **Insured Person** for a **Wrongful Act** of such **Insured Person** made on behalf of an **Insured Organization** by any securities holder of such **Insured Organization**, in their capacity as such.
- I. “Domestic Partner”** means any natural person who enters into a civil union or qualifies as a domestic partner under any federal, state or local law or under the provisions of any formal program established by an **Insured Organization**.
- J. “Employee”** means any natural person who is, was, or becomes employed by an **Insured Organization**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers, in their capacity as such.
- K. “Employment Claim”** means any **Claim** by an **Employee**, applicant for employment with an **Insured Organization** in such person's capacity as such, or the Equal Employment Opportunity Commission or any state or local fair employment practices agency for an **Employment Practices Wrongful Act** other than any:
1. criminal proceeding or investigation; or
  2. labor or grievance proceeding initiated pursuant to any collective bargaining agreement.
- L. “Employment Practices Wrongful Act”** means any actual or alleged:
1. wrongful dismissal, discharge or termination of employment, including constructive dismissal, discharge, or termination;
  2. employment discrimination based on age, gender, race, color, national origin, religion, creed, sexual orientation or preference, marital status, gender identity or expression, pregnancy, disability, health status, HIV status, military or veteran status, genetic makeup, political affiliation, or any other protected status specified under federal, state or local law;
  3. sexual or other workplace harassment, including, without limitation, hostile work environment, bullying, or quid-pro-quo;

4. wrongful deprivation of a career opportunity, demotion, failure to employ or promote, discipline of employees, or failure to grant tenure;
5. breach of any oral, written, or implied employment contract or agreement including, without limitation, any obligation arising out of any employee manual, handbook, or policy statement;
6. **Retaliation**;
7. violation of the Family and Medical Leave Act; or
8. provided that the following conduct relates to matters described in paragraphs 1 through 7 above:
  - a. invasion of privacy;
  - b. infliction of emotional distress or mental anguish;
  - c. employment related defamation, including, without limitation, a negative or defamatory employment reference;
  - d. employment related misrepresentation;
  - e. failure to provide or enforce adequate or consistent corporate employment policies and procedures; or
  - f. negligent hiring, retention, supervision, evaluation or training of **Employees**,

committed or attempted: (i) against any **Employee**, employee of an **Outside Organization**, or applicant for employment with any **Insured Organization** or **Outside Organization**; and (ii) by any **Insured Person** in their capacity as such.

The conduct described in 1 through 8 above includes matters carried out by any means in any location, including, without limitation, the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected: (i) on or off the premises of any **Insured Organization**; or (ii) through any computer or device owned or leased by any **Insured Organization**, **Insured Person**, or others.

**M. “Executive”** means any natural person who is, was, or becomes a:

1. chief executive officer;
2. chief financial officer; or
3. chief legal officer,

of the **Named Organization**.

**N. “Extradition”** means any formal process by which an **Insured Person** is surrendered from his or her current country of employment and domicile to any other country for trial or otherwise to answer any criminal accusation.

**O. “Extradition Costs”** means **Defense Costs** incurred to lawfully oppose any **Extradition**, including the appeal of any order or other grant of **Extradition**.

**P.** “**Inquiry**” means any:

1. subpoena or similar document compelling witness testimony or document production by an **Insured Person** regarding such **Insured Person’s** capacity in an **Insured Organization** or an **Insured Organization’s** business activities;
2. written request by an **Investigating Authority** for an **Insured Person** to appear for an interview or meeting or to produce documents regarding such **Insured Person’s** capacity in an **Insured Organization** or an **Insured Organization’s** business activities; or
3. written request by an **Insured Organization** for an **Insured Person** to appear for an interview or meeting or to produce documents regarding such **Insured Person’s** capacity in an **Insured Organization** or an **Insured Organization’s** business activities if such request is in response to any investigation: (i) by an **Insured Organization’s** board of directors or other governing board of a **Derivative Demand** or a **Derivative Suit**; or (ii) by an **Investigating Authority** of an **Insured Organization’s** business activities.

**Inquiry** excludes any routine or regularly scheduled oversight, compliance, audit, examination or inspection conducted by an **Investigating Authority** or an **Insured Organization**.

**Q.** “**Inquiry Response Costs**” means reasonable and necessary fees and expenses incurred by an **Insured Person** in response to an **Inquiry**, including, without limitation, fees and expenses incurred in preparation for, and attendance at, an interview or meeting requested by an **Investigating Authority** or an **Insured Organization**. **Inquiry Response Costs** exclude any: (i) compensation, benefits expenses or overhead of any **Insureds**; or (ii) fees and expenses to comply with any discovery or production request seeking documents, records or electronic information in the possession of an **Insured Organization** or any third-party.

**R.** “**Insolvency**” means the status of any **Insured Organization** due to:

1. the appointment of any conservator, liquidator, receiver, examiner, trustee or similar official to control, supervise, or liquidate such **Insured Organization**; or
2. such **Insured Organization** becoming a **Debtor in Possession**.

**S.** “**Insured Organization**” means:

1. the **Named Organization**; or
2. any **Subsidiary**,

including any such organization as a **Debtor in Possession**.

**T.** “**Insured Person**” means any natural person who is, was or becomes:

1. a director, officer, or member of any governing board of an **Insured Organization**;
2. an **Employee** acting as legal counsel to an **Insured Organization**;

3. a manager of any **Insured Organization** organized outside the United States of America if such manager holds an office equivalent to those specified in 1 or 2 above; or
4. regarding any **Securities Claim**, an **Employee**.

A person acts in an insured capacity only during the time that such person occupies the positions described in 1 through 4 above. After termination of employment or service with an **Insured Organization**, an **Insured Person** remains an **Insured Person** for any **Wrongful Act** occurring prior to termination of employment or service.

- U. “**Insured Person Investigation**” means any civil, criminal, administrative or regulatory investigation of an **Insured Person**, in their capacity as such, once such **Insured Person** is identified by name in writing by an **Investigating Authority** as a target against whom a civil, criminal, administrative or regulatory proceeding may be brought.
- V. “**Insureds**” means any:
  1. **Insured Person**; or
  2. **Insured Organization**.
- W. “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- X. “**Investigating Authority**” means any federal, state, local or foreign law enforcement or governmental investigative authority (including, without limitation, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general) or the enforcement unit of any securities or commodities exchange or other self-regulatory body.
- Y. “**Loss**” means **Defense Costs**, damages, settlements, judgments, and pre- and post-judgment interest. Regarding Insuring Agreements A and B only, “**Loss**” also means **Inquiry Response Costs** and **SOX 304/Dodd-Frank 954 Costs**. Regarding Section 4. Coverage Extensions, B. Derivative Investigation Costs Coverage, “**Loss**” means **Derivative Investigation Costs** only.

The following items are specifically included in, or excluded from, **Loss**:

1. **Loss** includes any:
  - a. judgment or settlement amounts attributable to violations of Sections 11, 12 or 15 of the Securities Act of 1933, provided that if any **Insured Person** and an **Insured Organization** are co-defendants in any **Claim** in which such judgment or settlement occurs, the **Insurer** shall allocate 100% of such **Loss** to the **Insured Person(s)**;
  - b. punitive, exemplary or multiple damages; or
  - c. civil penalties assessed against an **Insured Person** for any non-willful violation of the Foreign Corrupt Practices Act.

Except where required by law, the **Insurer** shall not assert that the above types of loss are uninsurable. Notwithstanding 2.e below, the insurability of the above types of

**Loss** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such **Loss**.

2. **Loss**, other than **Defense Costs**, excludes any:
  - a. fines and penalties imposed by law, other than for any non-willful violation of the Foreign Corrupt Practices Act by an **Insured Person**;
  - b. taxes;
  - c. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**;
  - d. non-monetary relief;
  - e. matters that are uninsurable pursuant to applicable law;
  - f. amount representing, or substantially equivalent to, an increase in consideration paid, or proposed to be paid, in connection with any purchase of securities or assets of an **Insured Organization**; or
  - g. costs incurred in cleaning up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring hazardous materials or pollutants.
3. Regarding an **Employment Claim, Loss**, other than **Defense Costs**, also excludes any:
  - a. amounts sought under any contract or agreement;
  - b. future compensation for any person hired, promoted or reinstated to employment;
  - c. employment related benefits (including, without limitation, retirement benefits, perquisites, vacation or sick days, medical or insurance benefits, stock benefits, stock options, stock appreciation rights, deferred compensation or any other type of compensation);
  - d. costs of any accommodation required by the Americans with Disabilities Act or any similar law;
  - e. employment termination severance payments other than payments negotiated with and consented to by the **Insurer** as part of a settlement; or
  - f. compensation earned by, or due to, a claimant in the course of employment but **not paid**.

**Z. “Management Control” means the Named Organization:**

1. directly or indirectly owning interests representing more than 50% of the voting, appointment or designation power for the selection of: (i) a majority of the board of directors of a corporation; (ii) the members of the board of managers of a limited liability company or (iii) the general partners of a limited partnership; or

2. having the right, pursuant to a written contract or the articles of incorporation, bylaws, operating agreement, or equivalent organizational or governance documents of an entity, to control the operation of such entity.
- AA. “Named Organization”** means the organization named in Item 1 of the Declarations.
- BB. “Non-Indemnifiable Loss”** means **Loss** incurred by an **Insured Person** that no **Insured Organization** can indemnify because of:
1. legal prohibition; or
  2. **Insolvency.**
- CC. “Outside Capacity”** means service by an **Insured Person** as a director, officer, trustee, regent, governor, board observer or equivalent executive of an **Outside Organization** with the knowledge and consent, or at the request, of an **Insured Organization**.
- DD. “Outside Organization”** means any not-for profit corporation, community chest, fund or foundation that is: (i) not an **Insured Organization**; and (ii) exempt from federal income tax as an entity described in Section 501(c)(3), (4) or (10) or Section 527 of the Internal Revenue Code of 1986.
- EE. “Policy Period”** means the period specified in Item 2 of the Declarations, subject to any cancellation prior to the scheduled expiration date.
- FF. “Retaliation”** means any negative treatment of an **Employee** in response to an **Employee**:
1. exercising his or her rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
  2. refusing to violate any law;
  3. assisting, testifying in, or cooperating with, a proceeding or investigation regarding alleged violations of law;
  4. disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
  5. filing any claim under the False Claims Act, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any similar law protecting “whistleblowers”.
- GG. “Securities Claim”** means any **Claim**:
1. for violation of any securities laws involving securities issued by an **Insured Organization**, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar law;
  2. arising out of the purchase or sale, or an offer or solicitation of an offer to purchase or sell, any securities issued by an **Insured Organization**, regardless of whether such purchase, sale or offer occurs in the open market or in a transaction with such **Insured Organization**; or

3. brought by a securities holder of an **Insured Organization** in such person's capacity as such securities holder, including a **Derivative Suit**.

**HH. "SOX 304/Dodd-Frank 954 Costs"** means reasonable and necessary fees and expenses (including a premium or origination fee for a loan or bond) incurred by any **Insured Person** to facilitate any reimbursement under Section 304 (a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. **SOX 304/Dodd-Frank 954 Costs** exclude any amounts required to be reimbursed under Section 304 (a) or Section 954.

**II. "Subsidiary"** means any:

1. entity while under **Management Control**; or
2. not for profit organization exempt from federal income tax as an entity described in Section 501(c)(3), (4) or (10) or Section 527 of the Internal Revenue Code of 1986 while sponsored exclusively by an **Insured Organization**.

**JJ. "UK Corporate Manslaughter Act Defense Costs"** means **Defense Costs** incurred by an **Insured Person** resulting from a **Claim** made against an **Insured Organization** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar law.

**KK. "Wrongful Act"** means:

1. regarding an **Insured Person**, any actual or alleged:
  - a. act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** in his or her capacity as such, including any **Employment Practices Wrongful Act**; or
  - b. matter claimed against an **Insured Person** by reason of their serving in such capacity, including service in an **Outside Capacity**; or
2. regarding an **Insured Organization**, any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such **Insured Organization**.

### 3. **COVERAGE TERRITORY**

- A.** This Policy shall apply on a worldwide basis.
- B.** If a judgment is rendered, a settlement is denominated, or any other element of covered **Loss** is stated or incurred in a currency other than in United States of America dollars, payment of such **Loss** shall be made in either such other currency, at the option of the **Insurer** and if agreeable to the **Named Organization**, or in United States of America dollars at the rate of exchange published in the Wall Street Journal on the date that the **Insurer's** obligation to pay such **Loss** is established. If the Wall Street Journal is not published on such date, the rate of exchange published in the Wall Street Journal on its next publication date shall apply.

### 4. **COVERAGE EXTENSIONS**

- A. Insured Organization Securities Investigation Co-Target Coverage**

If an **Insured Organization** receives, or is served with, a formal order of investigation, Wells Notice, subpoena or target letter (within the meaning of title 9-11.151 of the United States Attorneys Manual) from an **Investigating Authority** identifying such **Insured Organization** as a target of an investigation:

1. for violations of any securities laws involving securities issued by an **Insured Organization**, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar law; and
2. that may lead to a civil, criminal, administrative or regulatory proceeding,

then such **Insured Organization** shall be entitled to coverage for such investigation to the extent that, and for as long as, an **Insured Person Investigation** for the above-described violations of securities laws is also maintained against an **Insured Person**.

Coverage for such investigation shall be on the same terms and conditions (including, without limitation, the Retention) as apply to a **Securities Claim** made against an **Insured Organization**.

#### **B. Derivative Investigation Costs Coverage**

Coverage shall apply to any **Derivative Investigation Costs** resulting from a **Derivative Demand** or **Derivative Suit** first made during the **Policy Period** or Extended Reporting Period, if applicable. Such coverage shall be subject to the Sublimit of Liability specified in Item 3.B. of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay for all **Derivative Investigation Costs** under this Policy. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability specified in Item 3.A. of the Declarations.

No Retention shall apply to coverage for **Derivative Investigation Costs**.

Except as stated above, coverage for such **Derivative Investigation Costs** shall be on the same terms and conditions as apply to a **Securities Claim** made against an **Insured Organization**.

#### **C. Outside Position Coverage**

Subject to the provisions of this Policy, coverage shall apply to a **Claim** made against an **Insured Person** for a **Wrongful Act** while serving in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnification and valid and collectible insurance available from or provided by the **Outside Organization**. Payment by the **Insurer**, or any insurance company controlling, controlled by or under common control with the **Insurer**, under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the limit of liability available under this Policy for such **Claim**.

#### **D. Spousal, Domestic Partner, Estate, & Legal Representative Coverage**

Coverage shall apply to a **Claim** made against the lawful spouse or **Domestic Partner** of an **Insured Person** or, if an **Insured Person** dies, becomes incapacitated, or files for bankruptcy, the estate, heirs, or legal representatives of such **Insured Person** provided that:

1. such **Claim** arises solely out of:
  - a. such person's status as the spouse, **Domestic Partner**, estate, heir, or legal representative of such **Insured Person**; or

- b. such person's ownership of property sought as recovery for a **Wrongful Act**; and
- 2. no coverage shall apply to any **Claim** for any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty of such persons or entities.

Coverage for such **Claim** shall be on the same terms and conditions (including, without limitation, the Retention) as apply to a **Claim** made against an **Insured Person**.

## 5. EXTENDED REPORTING PERIOD

- A. If this Policy is canceled or not renewed, other than cancellation for non-payment of premium, the **Insureds** shall have the right to elect a continuation of coverage for the Additional Period stated in Item 7.A of the Declarations (the "Extended Reporting Period"). If elected, the Extended Reporting Period shall commence upon the effective date of such cancellation or non-renewal. Such continuation of coverage shall apply only to any **Claim** other than an **Inquiry**:
  - 1. first made against the **Insureds** during the Extended Reporting Period for a **Wrongful Act** occurring prior to the end of the **Policy Period**; and
  - 2. otherwise covered under this Policy.
- B. The rights contained in this Section shall terminate unless a written notice of election together with the additional premium stated in Item 7.B of the Declarations is received by the **Insurer** within 30 days after the effective date of cancellation or non-renewal.
- C. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D. There is no separate limit of liability for the Extended Reporting Period.

## 6. EXCLUSIONS

The **Insurer** shall not pay **Loss**:

- A. in connection with any **Claim** for, based upon, arising from, or in any way related to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other directors and officers, management, employment practices or similar liability policy;
- B. in connection with any **Claim** for, based upon, arising from, or in any way related to any written demand, suit or proceeding made or initiated against any **Insured** on or prior to the applicable Prior Litigation Date in Item 5 of the Declarations, any **Wrongful Act** specified in such prior demand, suit or proceeding or any **Interrelated Wrongful Acts** thereto;
- C. for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof, provided that this exclusion shall not apply to any **Loss**: (i) resulting from a **Securities Claim**; or (ii) constituting **UK Corporate Manslaughter Act Defense Costs**;

- D. for emotional distress or mental anguish, defamation or disparagement, or any violation of a right to privacy, provided that this exclusion shall not apply to any **Loss** resulting from any: (i) **Securities Claim**; or (ii) **Employment Claim**;
- E. for any violation of the Employee Retirement Income Security Act of 1974 or any similar law involving any employee benefit plan sponsored by an **Insured Organization**;
- F. in connection with any **Claim** by or on behalf of any **Insured Organization** or **Outside Organization**, provided that this exclusion shall not apply to:
1. Defense Costs that are Non-Indemnifiable Loss;
  2. Loss resulting from any Claim:
    - a. that is a **Derivative Suit** or any derivative lawsuit made on behalf of an **Outside Organization** by any person legally authorized to bring such lawsuit provided that such **Derivative Suit** or a derivative lawsuit is made without the assistance, participation, or solicitation of any **Executive**;
    - b. by any bankruptcy or insolvency trustee, examiner, receiver, creditors committee or similar official for any **Insured Organization** or **Outside Organization** or any assignee of such trustee, examiner, receiver, creditors committee or similar official; or
    - c. brought outside the United States of America, Canada, Australia or any other common law jurisdiction due to a pleading requirement of such jurisdiction;
- G. brought about or contributed to by any **Insured Person's** service at any time as a director, officer, trustee, regent, governor or equivalent executive, or as an employee, of any entity other than an **Insured Organization** even if such service is with the knowledge and consent, or at the request, of an **Insured Organization**, provided that this exclusion shall not apply to **Loss** resulting from a **Wrongful Act** by an **Insured Person** in an **Outside Capacity**;
- H. in connection with any **Claim** for, based upon, arising from or in any way related to any: (i) violation of the Fair Labor Standards Act (except the Equal Pay Act), National Labor Relations Act, Worker Adjustment and Retraining Notification Act, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Occupational Safety and Health Act (OSHA), or any similar law to those mentioned in this item (i); (ii) overtime compensation; (iii) on-call time compensation, including, without limitation, compensation for waiting time and dressing time; (iv) minimum wage compensation; (v) classification of employees for the purpose of determining eligibility for overtime, on-call time, and minimum wage compensation; (vi) meal and rest periods; or (vii) maintenance of accurate records, provided that this exclusion shall not apply to **Loss** resulting from any **Securities Claim**;
- I. of an **Insured** for, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which such **Insured** was not legally entitled if established by a final non-appealable adjudication adverse to such **Insured** in any proceeding other than in a proceeding initiated by the **Insurer** to determine coverage, provided that this exclusion shall not apply to: (i) **Defense Costs**; or (ii) amounts attributable to violations of Sections 11, 12 or 15 of the Securities Act of 1933; or
- J. of an **Insured** for, based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by such **Insured** if established by a final non-appealable adjudication adverse to such **Insured** in any

proceeding other than in a proceeding initiated by the **Insurer** to determine coverage, provided that this exclusion shall not apply to **Defense Costs**.

Regarding exclusions I and J above: (i) no **Wrongful Act** of any **Insured** shall be imputed to any **Insured Person**; and (ii) only the **Wrongful Act** of an **Executive** shall be imputed to an **Insured Organization**.

## 7. LIMIT OF LIABILITY

- A. The Limit of Liability specified in Item 3.A of the Declarations is the maximum aggregate amount that the **Insurer** shall pay for all **Loss** under this Policy. If the Limit of Liability is exhausted, the premium for this Policy shall be fully earned.
- B. **Defense Costs** shall be part of, and not in addition to, the Limit of Liability. Payment of **Defense Costs** by the **Insurer** shall reduce the Limit of Liability.

## 8. RETENTION

The **Insurer** shall pay **Loss** arising from each **Claim** covered under this Policy only to the extent that such **Loss** exceeds any applicable Retention specified in this Policy. If a **Claim** is subject to multiple Retentions, the maximum aggregate Retention for such **Claim** shall be the largest applicable Retention.

## 9. DEFENSE & SETTLEMENT OF CLAIMS

### A. Insured Duty to Defend

It shall be the duty of the **Insureds** to defend any **Claim**, provided that the **Insurer** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim** and make any investigation it deems appropriate.

### B. Current Advancement of Defense Costs

At the written request of the **Insureds**, the **Insurer** shall advance on a current basis **Defense Costs** excess of the applicable Retention. If it is subsequently determined that such **Defense Costs** are not covered under this Policy, then such **Defense Costs** shall be repaid to the **Insurer** by any **Insured Organization** or **Insured Person** severally by the entity or person on whose behalf such advancement was made.

### C. Advancement & Indemnification within Retention

All **Insured Organizations** shall provide indemnification for **Loss**, and advance **Defense Costs**, on behalf of any **Insured Person** to the fullest extent permitted or required by law. If such indemnification or advancement is permitted or required by law and all such **Insured Organizations**:

1. refuse in writing to indemnify or advance **Loss** within the Retention; or
2. fail to indemnify or advance **Loss** within the Retention within 60 days after any written request of an **Insured Person** for such indemnification or advancement,

other than because of **Insolvency**, then the **Insurer** shall indemnify or advance such amounts under Insuring Agreement A. In such case, such **Insured Organizations** shall reimburse the **Insurer** for such amounts within the applicable Insuring Agreement B Retention that would have applied if indemnification or advancement had been made. Such

amounts shall become immediately due and payable as a direct obligation of such **Insured Organizations** to the **Insurer**. The refusal or failure of any **Insured Organization** to perform any of its obligations to indemnify **Loss** or to advance **Defense Costs** shall not impair the rights of any **Insured Person** under this Policy. No advancement of **Loss** by the **Insurer** shall relieve an **Insured Organization** of any duty it may have to provide advancement or indemnification to any **Insured Person**.

**D. Insurer Consent**

The **Insureds** shall neither admit nor assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs, Derivative Investigation Costs, Inquiry Response Costs, or SOX 304/Dodd-Frank 954 Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any admission, assumption, offer, settlement, stipulation, **Defense Costs, Derivative Investigation Costs, Inquiry Response Costs, or SOX 304/Dodd-Frank 954 Costs** to which it has not consented.

**E. Settlements within Retention**

Notwithstanding Section 9.D above, the **Insureds** may make a settlement offer of a **Claim** without the **Insurer's** prior consent if the total amount of **Loss** for such **Claim**, including **Loss** resulting from any other **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** that are deemed to be a single **Claim**, does not exceed 75% of the applicable Retention.

**F. Duty of Cooperation**

The **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request.

**G. Claim Cooperation Severability**

The failure of any **Insured Person** to cooperate with the **Insurer** shall not affect coverage for any other **Insured Person**.

**10. PRIORITY OF LOSS PAYMENTS**

**A.** If **Loss** is incurred that is acknowledged by the **Insurer** to be covered under this Policy except that such **Loss** exceeds the remaining Limit of Liability for this Policy, the **Insurer** shall pay **Loss** due under Insuring Agreement A before paying any other **Loss**.

**B.** If **Loss** is incurred that is acknowledged by the **Insurer** to be covered under this Policy other than under Insuring Agreement A, the **Named Organization** shall have the right to direct the **Insurer** to delay payment of such **Loss** until such time as the **Named Organization** specifies. Any such direction by the **Named Organization** to delay or make payment of **Loss** shall be authorized by the board of directors or other governing board of the **Named Organization** and conveyed by written notice to the **Insurer** from the chief executive officer of the **Named Organization**. The **Insurer's** liability under this Policy shall not be increased, and the **Insurer** shall not be liable for any interest, as a result of any such delayed **Loss** payment. Any such delayed **Loss** payment shall be available to the **Insurer** to pay **Loss** covered under Insuring Agreement A. Any **Loss** payment by the **Insurer** under Insuring Agreement A out of funds withheld pursuant to this provision shall terminate the **Insurer's** liability to make a delayed **Loss** payment under any other Insuring Agreement by the amount of such payment.

- C. Except as otherwise provided in this Section 10, the **Insurer** may pay **Loss** without regard to any other current or future payment obligations under this Policy.

## 11. CLAIM, POTENTIAL CLAIM, & INQUIRY NOTICES

As a condition precedent to coverage:

- A. The **Insureds** shall give the **Insurer** written notice of any **Claim** other than an **Inquiry** as soon as practicable after any **Claim Manager** becomes aware of such **Claim**, but no later than: (i) 180 days after the end of the **Policy Period** if this Policy is renewed with the **Insurer**; (ii) 60 days after the end of the **Policy Period** if this Policy is not renewed with the **Insurer**; or (iii) the end of the Extended Reporting Period, if applicable. Notwithstanding the foregoing, if the **Insurer** provides written notice that this Policy is being canceled for non-payment of premium, then written notice of any **Claim** shall be given to the **Insurer** prior to the effective date of cancellation.
- B. If any **Claim Manager** becomes aware of a **Wrongful Act** during the **Policy Period** that may reasonably be expected to give rise to a **Claim** against an **Insured** for which coverage may be available under this Policy, and if written notice of such **Wrongful Act** is given to the **Insurer** during the **Policy Period** specifying the (i) reasons for anticipating such a **Claim**, (ii) nature and date of the **Wrongful Act**, (iii) identity of the **Insureds** involved, (iv) injuries or damages sustained, (v) names of potential claimants, and (vi) manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made at the time that the **Insurer** receives such notice.
- C. Notice of an **Inquiry** is optional and at the **Insureds'** sole discretion. An **Inquiry** shall not be deemed a **Claim** unless and until it is noticed to the **Insurer**. If the **Insureds** elect to seek coverage for an **Inquiry**, written notice of such **Inquiry** must be provided to the **Insurer** during the **Policy Period**. No coverage shall be provided for any fees or expenses incurred by the **Insureds** prior to the **Insureds** giving such notice.

## 12. ALLOCATION

- A. If the **Insureds** incur **Loss** that is only partially covered by this Policy because a **Claim** includes both covered and uncovered matters or is made against both covered and uncovered parties, the **Insurer** and the **Insureds** shall use their best efforts to allocate such **Loss** based upon: (i) the relative legal and financial exposures of any covered and uncovered matters or covered and uncovered parties; and (ii) if a settlement occurs, the relative benefit of the parties from settlement of such covered and uncovered portions of such **Claim**.
- B. If the **Insurer** and the **Insureds** cannot agree on the amount of **Defense Costs** to be advanced under this Policy, then the **Insurer** shall advance on a current basis the **Defense Costs** it believes to be covered under this Policy, if any, until a different amount shall be agreed upon or determined pursuant to this Policy and applicable law.

## 13. SUBROGATION

- A. The **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the **Insurer's** position or any rights of recovery.

B. The **Insurer** shall not subrogate against any **Insured**.

#### 14. OTHER INSURANCE

Coverage under this Policy shall apply only in excess of any other valid and collectible insurance regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other insurance to this Policy's Policy Number.

#### 15. ORGANIZATIONAL CHANGES

##### A. Takeover of Named Organization

If, during the **Policy Period**:

1. any person or entity or group of persons and/or entities acting in concert acquires securities resulting in ownership by such person(s) and/or entity(ies) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or equivalent positions of the **Named Organization**; or
2. the **Named Organization** merges into or consolidates with another organization such that the **Named Organization** is not the surviving organization,

then coverage shall continue for any **Wrongful Act** occurring before such transaction. No coverage shall be available for any act, error, omission, misstatement, misleading statement, neglect or breach of duty occurring after such transaction. Upon such transaction, the entire premium for this Policy shall be deemed fully earned. The **Insureds** shall give the **Insurer** written notice of such transaction as soon as practicable, but not later than 90 days after the effective date of such transaction.

##### B. Acquisition or Creation of New Subsidiary

If, during the Policy Period, any Insured Organization:

1. acquires or creates a **Subsidiary**; or
2. merges with another organization such that the **Insured Organization** is the surviving entity,

then such newly acquired, created or merged organization and its **Insured Persons** shall be covered for any **Wrongful Act** occurring after such transaction.

If the fair value of the assets of any newly acquired or merged organization exceeds 25% of the total consolidated assets of the **Named Organization** as reflected in its most recent consolidated audited financial statements prior to such acquisition or merger, then the **Named Organization** shall give the **Insurer** written notice of the acquisition or merger as soon as practicable but not later than 90 days after the effective date of such transaction. Subject to the expiration of the **Policy Period**, any continuation of coverage for such newly acquired or merged entity and its **Insured Persons** beyond 90 days after the transaction shall be subject to any additional terms and conditions, including additional premium, required by the **Insurer**. The **Insureds** shall furnish all information regarding such transaction as the **Insurer** shall request.

##### C. Subsidiary Coverage

Coverage for any **Wrongful Act** of a **Subsidiary** or its **Insured Persons** shall apply only when such **Wrongful Act** occurs while such entity or organization is a **Subsidiary**. No coverage shall apply for any act, error, omission, misstatement, misleading statement, neglect or breach of duty by any entity or organization that was or is a **Subsidiary** or any of its directors, governing board members, officers, or employees to the extent that such act, error, omission, misstatement, misleading statement, neglect or breach of duty occurred prior to such entity or organization becoming a **Subsidiary** or after such entity or organization ceased to be a **Subsidiary**.

## 16. APPLICATION

- A.** The **Insureds** represent that the information contained in the **Application** is true, accurate and complete. This Policy is issued in reliance upon only such representations contained in the **Application** as are material to the acceptance of the risk. The **Application** shall be deemed attached to, and incorporated into, this Policy.
- B.** For the purpose of determining coverage:
1. the **Application** shall be construed as a separate application for coverage by each **Insured**;
  2. knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and
  3. only knowledge possessed by an **Executive** shall be imputed to an **Insured Organization**.

Except as described above, knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

- C.** Notwithstanding any provision of this Policy, the **Insurer** shall not rescind this Policy.

## 17. SUITS AGAINST THE INSURER

- A.** No suit or other proceeding shall be commenced by the **Insureds** against the **Insurer** unless there shall have been full compliance with all the terms and conditions of this Policy.
- B.** No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any such **Claim**.

## 18. ENTIRE AGREEMENT

This Policy, including the Declarations, written endorsements, and the **Application** shall constitute the entire agreement between the **Insurer** and the **Insureds** regarding the insurance provided hereunder.

## 19. POLICY CHANGES

This Policy shall not be changed except by a written endorsement issued by the **Insurer**.

## 20. ASSIGNMENT

Assignment of any interest under this Policy shall not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.

## 21. NAMED ORGANIZATION'S AUTHORITY

The **Named Organization** shall act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, election of the Extended Reporting Period, transmission and receipt of notices, reporting of **Claims**, acceptance of endorsements, payment of premiums, and receipt of return premiums.

## 22. CANCELLATION

- A. The **Insurer** may cancel this Policy for non-payment of premium by sending not less than 10 days prior written notice to the **Named Organization**. This Policy may not otherwise be cancelled by the **Insurer**.
- B. Except as otherwise provided, the **Named Organization** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice shall be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- C. If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Insureds** cancel this Policy, unearned premium shall be calculated at the **Insurer's** customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall refund any unearned premium as soon as practicable.

## 23. BANKRUPTCY

- A. Bankruptcy or insolvency of an **Insured** shall not relieve the **Insurer** of any of its obligations under this Policy.
- B. If a bankruptcy or insolvency of an **Insured Organization** occurs, the **Insurer** and **Insureds** shall cooperate to obtain relief from any stay or injunction preventing the payment of policy proceeds for the benefit of **Insured Persons**.

## 24. NOTICES

- A. Notices to the **Insureds** shall be sent to the **Named Organization** at the address specified in Item 1 of the Declarations.
- B. Notices to the **Insurer** shall be sent to the applicable e-mail, facsimile, or other address specified in Item 8 of the Declarations, include the policy number of this Policy, and become effective upon receipt.

## 25. TITLES

The titles of the sections of, and endorsements to, this Policy are for reference only. Such titles shall not be part of the terms and conditions of coverage.

## 26. REFERENCES TO LAWS

- A. Any statute, act, or code mentioned in this Policy shall be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.
- B. Any statute, act, or code mentioned in this Policy that is followed by the phrase "or any similar law" shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.